A Chronology of Related ULP's

The two Unfair Labor Practice ("ULP") filings made by Lewis on August 10, 2012 are closely interconnected to the other ULP's Lewis filed, beginning in late 2007. All of these earlier ULP's were dismissed by FLRA. A critical difference with the two latest ULP's, though, is that when ULP's [SF-CA-12-0543] and [SF-CO-12-0544] were submitted,[1] Lewis was able to attach a set of exhibits that fully documented the failures by both FAA and NATCA. Such was not the case with the earlier filings, which proved fatal to those ULP's.

Here is a Chronology of the earlier ULP's that are related to the present case:

SF-CO-08-0046:

Filed 10/22/07, charging two failures by NATCA:

(1) ...by retaliating against an individual who had filed a grievance using the Whitebook collective bargaining agreement, which agency had imposed, and about which NATCA was infuriated; and,

(2) ...by failure of a local facility representative (who had been a reporting party for a charge that led to discipline) to recuse himself from subsequent Weingarten meetings.[2]

Subsequent Informational Submissions, etc.:

- 11/9/07: Charging Party's ***Supporting Documentation Package***; a Witness List (2p), an Index of Documents (2p), and copies of exhibits (41p).
- 6/4/08: Charging Party's ***Affidavit*** (11-pages).
- 6/23/08: FLRA's ***Proposed Settlement Agreement***.
- 7/6/08: Charging Party's ***Letter to FLRA***, agreeing to sign FLRA's proposed final settlement (a posting at the Concord workplace) so long as FLRA will accept the amendment and post at all other union facilities within the union's Western Pacific Region.[3]
- 11/4/11: Charging Party's ***Affidavit*** (11-pages; substantially updated with official FAA records obtained in the intervening three years).[4]

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[1] These two ULP's charge a collusion between FAA and NATCA to discriminate against Lewis and obstruct his Due Process and grievance rights.

[2] It was eight months after the last Weingarten meeting that I first learned that my local union representative had made charges. He alleged my misbehavior, which initiated meetings, at which he was 'representing' me.

[3] FLRA took no action. Also, please note that all of this correspondence (the Affidavit, the Proposed Settlement, and the counter-Proposal) were done PRIOR to July 16, 2008, when I received FAA's first letter proposing my removal. In fact, I had received a letter in mid-April advising a *'return to work plan'* would be discussed; so, I fully expected to soon be returning to work.

[4] There were many important updates, but one key that was still missing was proof that FAA had retaliated for my filing a grievance on 5/1/08; i.e., that a lesser disciplinary action was in fact revised to the eventual removal. The very next day after submitting this new ***Affidavit***, on 11/5/11, I received a FOIA response with a 4/5/08 email in which LR Specialist Dick Fossier slandered me and briefed LR Specialist Ros

OUTCOME:

Dismissed, citing prosecutorial discretion.[5]

Material Facts & Statements by the Regional Director:

A. [at pg.2 of the ***12/28/11 Dismissal letter***, which was not issued until 3/7/12] – Regional Director Cole declares that grievance NC-07-63982-CCR was resolved as part of the settlement of ULP [SF-CA-08-0087].

> Mr. Cole fails to note that this settlement was breached by FAA, precipitating ULP [SF-CA-09-0098], filed on 12/1/08.

B. [at pg.2 of the ***12/28/11 Dismissal letter***, which was not issued until 3/7/12] – Regional Director Cole states: *"This settlement also allowed you to file a new grievance, which you did, and* ***which is still pending arbitration with NATCA's assistance****, though it has been postponed until at least March 2012. In any event, NC-07-63982-CCR, the original grievance that underlies the charge against NATCA in this case, was conclusively resolved."* (emphasis added)

> Mr. Cole is here, in effect, declaring the importance of a full and fair arbitration, with a reasonable expectation that the arbitration will happen, with NATCA's assistance. It did not happen. Also, contrary to Mr. Cole's statement, the original grievance (NC-07-63982-CCR) was not 'conclusively resolved'.

C. [at pg.2 of the ***12/28/11 Dismissal letter***, which was not issued until 3/7/12] – Regional Director Cole states: *"****NATCA should not have attempted to withdraw your grievance*** *NC-07-63982-CCR on June 22, 2007, as section 7121(b) of the Statute guarantees the right of employees to file grievances on their own behalf without interference."* (emphasis added)

D. [at pg.2 of the ***12/28/11 Dismissal letter***, which was not issued until 3/7/12] – Regional Director Cole states: *"Although the* ***NATCA violated the Statute by interfering with your grievance****, I have determined that* ***further processing of this charge is no longer warranted****. You resolved the grievance with the FAA years ago, and* ***NATCA is now assisting you with your new grievance****. So at this point, the only remaining remedy in this case would be to require NATCA to post a notice acknowledging its* ***unlawful attempt in 2007 to stop your initial grievance*** *which was resolved in 2008. Under the circumstances, the most meaningful remedies have already been accomplished."* (emphasis added)

> I disagree with Mr. Cole's statements, inasmuch as there remains a need to resolve this matter. Also, he inaccurately refers to the NATCA violation

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Marable, as she was preparing to take over his work and draft a disciplinary letter. A redacted portion of this email, eventually confirmed on 12/27/12 in a Judgment by a magistrate judge at the U.S. District Court in Portland, OR ***(Lewis v. FAA, 3:11-CV-01458-AC, 12-27-12, Opinion & Order, Pg.15)***, was defined within a Vaughn Index filed by FAA. That Vaughan Index declared: "(the redaction) ... *contains the manager's proposed recommendations on what he considers to be appropriate in this matter. However, in this case the recommendations were not adopted as the final agency action."* ***(Lewis v. FAA, 3:11-CV-01458-AC, 5-31-12, Kreischer Declaration, Exh.8, Pg.3)***.

[5] The dismissal took four and a half years, from filing (10/22/07) to issuance to Lewis (3/7/12).

in 2007 as an 'unlawful attempt'; it was not just an 'attempt', it was a deliberate and punitive action by NATCA.

SF-CA-08-0087:

Filed 11/14/07, charging collusion by FAA:

(1) ...by failing to guard against the known improper attendance of a charging party, whom management selected to attend in a Weingarten meeting context; and,

(2) ...by knowingly scuttling the grievance rights of an individual employee through the improper acceptance of NATCA's punitive and premature grievance withdrawal letter.

The original ULP filing included a Witness List (2p), an Index of Documents (2p), and copies of exhibits (24p).

Subsequent Informational Submissions, etc.:

- mid-April 2008: FLRA Agent Pamela Richards telephones Charging Party, and advises that LR Specialist Glen Rotella at FAA wants to discuss a settlement proposal. Charging Party accepts the offer and settlement discussions quickly produce an apparent conclusion.
- 4/29/08: Charging Party's ***Letter to FLRA***, formally withdrawing ULP SF-CA-08-0087, as a part of the settlement concluded with Glen Rotella.
- 5/1/08: Charging Party sends signed ***Settlement Agreement*** to Glen Rotella, with a new grievance attached. The grievance was a key element of the settlement, to ensure Charging Party would be made whole for the constructive suspension and apparent slanders of 2007. It sought reimbursement, as well as agency records/statements to aid in cleaning up after the damages related to the slanders. It also sought a return to work. This new grievance became NC-08-79364-CCR.
- 5/9/08: Regional Director Cole's ***Letter to Charging Party***, accepting the ULP withdrawal.
- 8/3/08: Charging Party's ***Letter to Glen Rotella (FAA)***, advising that the settlement was breached by FAA. A removal proposal letter had been received on 7/16/08. The situation was also discussed with Pamela Richards.
- 11/26/08: Charging Party's ***Letter to Regional Director Cole***, formally requesting that FLRA reopen ULP [SF-CA-08-0087], due to FAA's failure to comply with the terms of the Settlement Agreement. Attached were

copies of the 5/1/08 Settlement Agreement (1p), and the 8/3/08 letter to Glen Rotella. (1p)[6]

OUTCOME:

Settled by Lewis and Rotella, but the settlement was breached by FAA. FAA never produced the records; FAA retaliated against Lewis, firing him immediately after he filed this grievance.

SF-CA-09-0098:

Filed 12/1/08, charging FAA breach of settlement:

(1) ...by failing to pay the 72-hours of sick leave that had been improperly ordered at the start of the Constructive Suspension; and,

(2) ...by failing to properly respond to the grievance I had filed (NC-08-79364-CCR) as part of the Settlement Agreement.

The Grievance filing included a Witness List (2p), an Index of Documents (2p), and copies of exhibits (24p).

Subsequent Informational Submissions, etc.:

- 12/14/08: Charging Party's ***Supporting Documentation Package***; a Witness List (1p), an Index of Documents (1p), and copies of exhibits (15p).
- 6/25/09: Charging Party's ***Letter to FLRA***, providing additional evidence, as had been requested by FLRA Agent Pamela Richards. Attachments to the one-page letter included an Index of Supplemental Exhibits (1p) and Supplemental Exhibits (5p)

OUTCOME:

Dismissed 6/30/09, primarily citing lack of evidence.

Material Facts & Statements by the Regional Director:

A. [at pg.1 of the ***6/30/09 Dismissal letter***] – Regional Director Cole states: *"**It is undisputed that** prior to the filing and investigation of the charge in this case **the Activity failed to make corrections in your time and attendance record***

[6] Lewis had been fired three weeks earlier, based solely on unsubstantiated charges from January-February 2007. His request within the new grievance (NC-08-79364-CCR) for FAA records related to these charges was ignored. His subsequent filing of an Appeal at MSPB also failed to produce these records, which FAA continued to conceal. Most of them were eventually obtained via FOIA responses, beginning in late 2009. Had these records been timely produced by FAA, in accordance with grievance NC-08-79364-CCR, Lewis would have been returned to work in June or July 2008; the removal would have been abandoned.

for the 72 hours of sick leave as required *by the settlement agreement. However, the record reveals that restoration of the 72 hours sick leave is now complete..*" (emphasis added)

> It is true that by late June 2009, the reimbursement was complete. However, it should also be noted that FAA declared in two grievance denial letters (6/19/08, and 9/25/08) that this payment had already been made. That was false; payment was not resolved until May 2009. Additionally, Ros Marable clearly pointed out this problem to Dan Castrellon via a 9/22/08 email;[7] Mr. Castrellon ignored Ms. Marable's assessment and issued the step-3 grievance denial anyway, on 9/25/08.[8]

B. [at pgs. 1-2 of the ***6/30/09 Dismissal letter***] – Regional Director Cole states: *"As to the alleged discrimination,* ***you engaged in protected activity by filing a grievance on May 1, 2008****, as part of the settlement agreement. This grievance has been processed through the steps of the grievance procedure and is* ***now at the arbitration stage****. In addition, you engaged in protected activity in June 2008, when you provided an affidavit to this office, in support of an unfair labor practice charge you had filed against a union.* ***No evidence was presented to establish that any statements of animus toward your protected activity were made by any FAA representatives****."* (emphasis added)

> Mr. Cole has confirmed my activities were protected. He again points toward the importance of the grievance arbitration, implying a faith that the process is not corrupted by a collusion between agency and union. He also notes the lack of evidence; this was in late June 2009, months after the MSPB hearing date (though no hearing was held), and years before the most critical FAA records were produced via delayed FOIA responses.

C. [at pg.2 of the ***6/30/09 Dismissal letter***] – Regional Director Cole lists out many of the material facts of this case. He notes the 4/17/08 letter by Andy Richards, advising a return to work plan would be discussed. He notes no subsequent discussion happened and, instead, a removal proposal letter was issued three months later. He notes the removal decision was issued in October, effective on 11/6/08, and that this spawned an MSPB Appeal. He then states: *"The* ***Activity clearly violated the settlement agreement*** *when it failed to restore 72 hours of sick leave to the leave balance in a timely manner. The* ***Activity's conduct amounted to a patent breach of the settlement which went to the heart of the agreement****."* He includes a legal cite, then ends with: *"However,* ***I have decided to exercise prosecutorial discretion and not issue a complaint*** *in this case concerning the Activity's repudiation of the agreement.* Mr. Cole then commences with a presentation of the factors applied by the Office of General Counsel, to justify use of prosecutorial discretion." (emphasis added)

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[7] ***(ULP [SF-CO-12-0544], at 8/28/12 Affidavit, Exh.43).*** That email stated: *"After a review of the attachments below, I don't see the changes or amendment for the 72 hour settlement agreement. Also I still do not see any time credit for pay periods 8-9. Tell me what I am missing?"*

[8] Other evidence indicates that Mr. Castrellon, who at the time was acting manager for the LR unit at FAA's Western Pacific Region, was in a rush to close out the grievance, so he could obtain Douglas Factors and issue Lewis' removal decision letter. Douglas Factors were obtained on 10/8/08; the removal letter draft was started on 10/9/08.

Mr. Cole's decision denied the opportunity for a Complaint hearing, at which key concealed evidence would have been produced, and at which the remaining facts of this case would have been revealed. His decision was based on a lack of evidence. Three years later, when the evidence had been collected and carefully compiled, a new ULP was filed against FAA [SF-CA-12-0543]; FLRA again dismissed.

D. [at pgs. 2-3 of the ***6/30/09 Dismissal letter***] – Regional Director Cole offers a discussion of ***Letterkenny***,[9] as it relates to complaints alleging violations of sections 7116(a)(2) or 7116(a)(4) of the Statute. He states: *"Under* Letterkenny, ***the facts must establish a* prima facie *case***, *showing that an employee was engaged in protected activity, and that this conduct was a motivating factor in an agency's decision adversely affecting the employee. Even if the* prima facie *showing is made, an agency will not be found to have violated section 7116(a)(2) of the Statute if it can demonstrate, by a preponderance of the evidence, that there was a legitimate justification for its action and the same action would have been taken even in the absence of protected activity.* ***In this case, there is insufficient evidence*** *of a connection between the Activity's decision to remove you and your protected activity."* (emphasis added)

Again, as this was written in June 2009 (prior to Agency production of many key records they knowingly concealed), it is understandable that the Regional Director would dismiss, citing lack of evidence. However, nearly four years later, the Regional Director again dismissed, this time choosing to completely ignore the vast evidence that had been compiled. Also, the full collection of evidence (after revealing the key records FAA had concealed) shows FAA had no standing to sustain a removal in the absence of the grievance; thus, it was clearly retaliatory.

E. [at pg.3 of the ***6/30/09 Dismissal letter***] – Regional Director Cole states: *"While the events giving rise to the removal occurred in 2007, the evidence revealed that the Activity's decision to remove did not occur until 2008, after your protected activity had taken place.* ***It is well settled that evidence of motive may be shown by suspicious timing of the questioned conduct.*** (removed cite) *As the Authority noted in DOL, the* ***timing establishes a violation if it is offered in conjunction with other facts and circumstances*** *that establish a violation.* ***In this case, however, no evidence was presented other than apparent timing****, and, without more, there is insufficient evidence of a nexus between the Activity's conduct and your protected activity. Therefore, the alleged violation of section 7116(a)(4) is dismissed."* (emphasis added)

Mr. Cole has again chosen to dismiss, solely for lack of evidence. Four years later, with evidence now on the record (after having been patiently revealed via years of persistent FOIA effort), is it not time for FLRA to issue a Complaint and set a hearing? Would not this action best serve the Public and Congress' intent when they formed FLRA?

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[9] ***Letterkenny Army Depot, 35 FLRA 113 (1990)(Letterkenny)***

SF-CA-11-0292:

Filed 3/22/11, charging two failures by FAA:

(1) ...by retaliating against an individual who had filed a grievance on 5/1/08, for which new evidence revealed that a lesser disciplinary action may have been upgraded to a removal immediately after the filing of the grievance; and,

(2) ...by obstructing justice through the concealment of official records.

The Grievance filing included a Witness List (1p), an Index of Documents (1p), and copies of exhibits (40p).

Subsequent Informational Submissions, etc.:

- 5/2/11: Charging Party's ***Letter to FLRA's Agent Bodnar***, with new FOIA evidence received 4/25/11; included a cover letter (1p), Index of new Exhibits (1p), and new exhibits (16p).
- 9/29/11: Charging Party's ***Affidavit*** (17p).

OUTCOME:

Dismissed 9/30/11, citing a failure to timely file.[10]

Material Facts & Statements by the Regional Director:

A. [at pg.1 of the ***9/30/11 Dismissal letter***] – Regional Director Cole states: *"I find* ***no legal basis exists to assert jurisdiction over your claim because it is untimely filed****, and thus I find no violation of the Federal Service Labor-Management Relations Statute."* (emphasis added)

> It is unfortunate that Mr. Cole dismissed. There was plenty of evidence presented and, had a hearing been held, it would have produced the remaining evidence. It is somewhat understandable, though, that FLRA would resist issuing Complaints due to their limited financial budget for conducting hearings.

B. [at pg.2 of the ***9/30/11 Dismissal letter***] – Referring to the new exhibits,[11] Regional Director Cole states: *"You now have an email from a labor relations official to your supervisor dated May 7, 2008. This email mentions your May 1, 2008 grievance, stating* 'this grievance should not interfere with any other action you are planning with this employee such as returning him to work or

[10] Lewis filed an Appeal on 10/21/11. FLRA denied the Appeal on 11/30/11, signed by Richard Zorn. Lewis filed a letter formally requesting a reconsideration on 12/7/11. FLRA issued their final denial on 1/11/12, signed by Dennis Walsh. The justifications provided by FLRA had a strong appearance of arbitrary indifference to the duty Congress had intended FLRA to serve.

[11] these were from the 2,528-page FOIA response, received 4/25/08, with emails and attachments from the archives of District Manager Andy Richards. They showed the coordination between Mr. Richards and the Labor Relations specialists, to produce a draft suspension proposal, and then a retaliatory removal.

subjecting him to any discipline.' *You now know that on April 28, 2008, another labor relations official had drafted a 14-day suspension for you, but by May 15, 008, that official had* ***drafted a proposed removal, based in part on events occurring prior to your lockout*** *in February 2007."* (emphasis added)

> Mr. Cole has made an accurate assessment of newly revealed facts, but he is in error on the last point. The removal was NOT based *"in part on events occurring prior to your lockout...."* The removal was based SOLELY on my alleged misconduct prior to the moment I departed on sick leave, shortly after 10AM on 2/16/07.[12] All evidence used was contained within the Report of Investigation (ROI). FAA officials have asserted this.[13]

SF-CA-12-0543:

Filed 8/10/12, charging collusion and obstruction by FAA:

Subsequent Informational Submissions, etc.:

- 8/28/12: Charging Party's ***Supporting Documentation Package***; a joint-filed document (with ULP [SF-CO-12-0544]), including a cover letter (1p), an Affidavit (18p), a Witness List (1p), an Index of Documents (3p), and copies of exhibits (61-exhibits, totalling 91-pages). All of this was also posted online, with links to view PDF copies, at: http://aireform.com/?page_id=479
- 4/27/13: Charging Party's ***Supplemental Affidavit*** (28-pages), presenting new records obtained via FOIA responses, and emphasizing the extensive email history between NATCA and FAA/LR officials. An online viewing of these records is available from the same aiREFORM.com webpage (see above).

OUTCOME:

Dismissed 5/22/13, ignoring nearly all exhibits.

Material Facts & Statements by the Regional Director:

Regional Director Perata declared no Material Facts, and simply called all evidence prior to the date of the arbitration settlement 'untimely'.

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[12] It seems highly probable that this misinformation was fed to FLRA by an FAA official, who felt at liberty to make such a false (and neutralizing) statement, knowing they would not be held accountable for lies offered during the investigative process. FLRA has a serious flaw in their investigative process, in that if statements are not shared to both parties, there is no fair opportunity to rebut. What results is FLRA resources are wasted doing nothing but dismissing cases that devolve into he-said / she-said stories.

[13] Andy Richards declared this in an 8/15/08 letter to Lewis; Dan Castrellon declared this in a 10/8/08 grievance denial letter to Lewis.

SF-CO-12-0544:

Filed 8/10/12, charging collusion by NATCA:

Subsequent Informational Submissions, etc.:

- 8/28/12: Charging Party's ***Supporting Documentation Package***; a joint-filed document (with ULP [SF-CA-12-0543]), including a cover letter (1p), an Affidavit (18p), a Witness List (1p), an Index of Documents (3p), and copies of exhibits (61-exhibits, totalling 91-pages). All of this was also posted online, with links to view PDF copies, at: http://aireform.com/?page_id=479
- 4/27/13: Charging Party's ***Supplemental Affidavit*** (28-pages), presenting new records obtained via FOIA responses, and emphasizing the extensive email history between NATCA and FAA/LR officials. An online viewing of these records is available from the same aiREFORM.com webpage (see above).

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Dismissed 5/22/13, ignoring nearly all exhibits.

Material Facts & Statements by the Regional Director:

Regional Director Perata declared no Material Facts, and simply called all evidence prior to the date of the arbitration settlement 'untimely'.