UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C. 20424-0001

MEMORANDUM DATE: February 1, 2007

TO: The Federal Labor Relations Authority

FROM: CHARLES R. CENTER
Chief Administrative Law Judge

SUBJECT: SOCIAL SECURITY ADMINISTRATION
BALTIMORE, MARYLAND

Respondent

AND Case No. WA-CA-06-0395

PAMELA J. LONEY, AN INDIVIDUAL

Charging Party

Pursuant to section 2423.34(b) of the Rules and Regulations 5 C.F.R. ∋ 2423.34(b), I am hereby transferring the above case to the Authority. Enclosed are copies of my Decision, the service sheet, and the transmittal form sent to the parties. Also enclosed are the transcript, exhibits and any briefs filed by the parties.

Enclosures

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C. 20424-0001

SOCIAL SECURITY ADMINISTRATION BALTIMORE, MARYLAND Respondent AND PAMELA J. LONEY, AN INDIVIDUAL Charging Party	Case No. WA-CA-06-0395

NOTICE OF TRANSMITTAL OF DECISION

The above-entitled case having been heard before the undersigned Chief Administrative Law Judge pursuant to the Statute and the Rules and Regulations of the Authority, the undersigned herein serves his Decision, a copy of which is attached hereto, on all parties to the proceeding on this date and this case is hereby transferred to the Federal Labor Relations Authority pursuant to 5 C.F.R. ∋ 2423.34(b).

PLEASE BE ADVISED that the filing of exceptions to the attached Decision is governed by 5 C.F.R. ∋∋ 2423.40 - 2423.41, 2429.12, 2429.21 - 2429.22, 2429.24 - 2429.25, and 2429.27.

Any such exceptions must be filed on or before **MARCH 5, 2007**, and addressed to:

Office of Case Control
Federal Labor Relations Authority
1400 K Street, NW, 2nd Floor
Washington, DC 20005

_____
CHARLES R. CENTER

Chief Administrative Law Judge

Dated: February 1, 2007
Washington, DC

OALJ 07-10

FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C.

SOCIAL SECURITY ADMINISTRATION BALTIMORE, MARYLAND Respondent AND PAMELA J. LONEY, AN INDIVIDUAL Charging Party	Case No. WA-CA-06-0395

Gina Grippando, Esq.
Tresa A. Rice, Esq.
For the General Counsel

Eddie Taylor
Richard A. Matthews
Frieda Cheslow
For the Respondent

Before: CHARLES R. CENTER
Chief Administrative Law Judge

DECISION

Statement of the Case

This is an unfair labor practice proceeding under the Federal Service Labor-Management Relations Statute, 5 U.S.C. §§ 7101-7135 (Statute), and the Rules and Regulations of the Federal Labor Relations Authority (Authority), 5 C.F.R. part 2423.

This case was initiated on April 21, 2006, when Pamela J. Loney, an individual (the Charging Party or Loney) filed an unfair labor practice charge. (G.C. Exh. 1(a)) After investigating the charge, the Regional Director of the San Francisco Region of the Authority issued an unfair labor practice complaint on September 8, 2006 (G.C. Exh. 1(c)),

alleging the Social Security Administration (the Respondent or Agency) violated section 7116(a)(1) of the Statute by making

comments to Loney to the effect that if she did not withdraw grievances and charges that she had filed against the Agency, her employment would be terminated. On October 2, 2006, the Respondent filed its answer to the complaint, admitting some of the factual allegations, denying others, and denying that its conduct violated the Statute. (G.C. Exh. 1(f)) By order dated October 11, 2006, the case was transferred to the Washington Region of the Authority for processing. (G.C. Exh. 1(b))

A hearing was held in Washington, D.C., on November 8, 2006, at which all parties were represented and afforded the opportunity to be heard, to introduce evidence, and to examine and cross-examine witnesses. Additionally, at the undersigned's request during the hearing, both the General Counsel and Respondent submitted additional evidence post-hearing that is included in the record. The General Counsel and the Respondent subsequently filed post-hearing briefs, which I have fully considered.

Based on the entire record, including my observations of the witnesses and their demeanor, I conclude the Respondent violated 5 U.S.C. § 7116(a)(1) and make the following findings of fact, conclusions of law, and recommendations.

Findings of Fact

The American Federation of Government Employees, Local 1923, (the Union) represents a nationwide unit of employees at the Respondent. (G.C. Exh. 1(c)) At the time of the events that gave rise to the complaint in this case, Pamela J. Loney was employed by the Respondent in the Office of the Deputy Commissioner for Finance Assessment and Management (DCFAM). (TR. 50) Loney served as a Union steward from September 1992 until May 1995 and again from September 2005 until April 2006. (TR. 51) During her tenure as a Union steward, Loney was a prolific filer of grievances, Unfair Labor Practice charges, and Equal Employment Opportunity (EEO) complaints and prohibitive personnel practice complaints against the Respondent. (TR. 32, 52) In this regard, Vincent Tumminello, who was the secretary of the Union, testified Loney, as a Union representative, was a "go-getter" who was in "Battle One mode" and filed something every day. (TR. 32)

At the time surrounding the events involved in this case, there were serious tensions between Loney and her first-line supervisor. Loney asserted during the hearing in this case that her first-line supervisor physically assaulted her in April 2004, 7 months prior to becoming her supervisor. (TR. 66) By letter dated January 6, 2006, the Agency proposed to suspend Loney for 30 calendar days based on incidents that occurred in December 2005 in which Loney allegedly refused to follow direct work orders by her supervisors to discuss the status of her work projects with them. (G.C. Ex. 2) In the proposed suspension, the Agency noted Loney had received a short-term suspension on December 14, 2005, for the "disrespectful and insolent manner" in which Loney treated her first-line supervisor. (G.C. Ex. 2, p. 3) It was in conjunction with the January 6 proposal that the events central to the complaint in this case occurred.

Loney and Tumminello, who have a personal relationship, were driving home from work on Friday, January 6, 2006, when Loney told Tumminello about the notice of proposed suspension she received. (TR. 16) That evening, Tumminello, who professed concern for Loney's situation especially because she was a single mother of three children, decided to contact Ronald Blavatt, a labor relations specialist at the Agency. (TR. 15-17) In addition to a long history of dealing with Blavatt in a professional capacity involving labor relations matters between the Union and Agency, Tumminello had a relationship with Blavatt extending beyond the workplace. (TR. 15, 49) Among other things, Blavatt did some legal work for Tumminello and his family.[1/] (TR. 15, 96, 137) In their respective testimony, Blavatt and Tumminello differed concerning the degree of closeness between them and the extent to which they socialized together outside work; however, it can safely be said based on the record Blavatt and Tumminello had a friendly relationship that extended beyond the workplace. (TR. 29, 31-32, 88, 96, 109)

Tumminello testified he called Blavatt at home on the evening of January 6, 2006, in hopes of gaining some insights concerning the seriousness of Loney's situation and how to approach representing her. (TR. 16- 17) Loney also testified a telephone conversation including Tumminello, Blavatt and herself occurred that evening. (TR. 76-77) Blavatt, on the other hand, denied he had any telephone conversation with Tumminello and/or Loney that evening. (TR. 102, 108,

---

[1/] Blavatt had also handled some outside legal matters for Loney in the past. (TR. 78, 96)

Affidavit of Ronald Blavatt, attached to Agency's Post-Hearing Submission)

On the question of whether telephone conversations occurred on the evening of January 6, 2006, I credit the testimony of Tumminello and Loney over that of Blavatt. It is clear Tumminello was very concerned about Loney's situation and it follows that he was interested in determining the seriousness of Loney's predicament and what he could do to assist her effectively. Blavatt's position with the Agency and his friendly and long-term relationship with Tumminello made him a good potential source for the type of information and insights that would be useful to Tumminello. In view of his concerns about the action being initiated against Loney and the financial impact it would have on her, I find it probable that Tumminello felt some urgency about contacting Blavatt and would have attempted to reach him as soon as possible. The record also supports a conclusion that Tumminello knew how to contact Blavatt after hours. In this latter regard, Blavatt had done personal legal work for him and a business card existed for the law office of Blavatt, Blavatt & Blavatt (G.C.'s Submission of Additional Evidence, Exh. 9) with a phone number that corresponded to one of the phone lines billed to Blavatt. (Respondent's Post-hearing submission, Attachment 2) It is also consistent with Tumminello's testimony that he was asking Blavatt to find out what was going on with respect to Loney's situation "on the QT," that he would have contacted Blavatt during non-duty hours and away from the workplace. (TR. 31) Although telephone records for both Tumminello and Blavatt were included in the post-hearing submissions from both the Respondent and General Counsel, they failed to disclose with certainty whether any telephone conversations occurred between the three parties on January 6, 2006. (Respondent's Post-hearing submission, Attachment 2; G.C. Exhs. 6, 7 and 8) Both Tumminello and Loney testified forthrightly and convincingly at the hearing they had telephone conversations with Blavatt that evening. In contrast, Blavatt's testimony denying any telephone conversations occurred was not given in a confident manner and his recollection that he was on a cruise on that date proved erroneous.

Based on Tumminello's testimony, I find he called Blavatt at his home and inquired whether the latter knew what was going on with respect to Loney. (TR. 16) When Blavatt responded that he had been out on leave for a while, Tumminello informed him Loney had received a proposed suspension and expressed concern for her job and her situation

as a single mother of three children. (TR. 16-17) This call led to a three-way conference call with Loney at her home and the two men at their homes. (TR. 17) At the hearing, Tumminello asserted he did not know how to make a conference call and it must have been Blavatt who established the necessary conference connections. (TR. 38) At some point during their conversations, Tumminello asked Blavatt to find out what was going on. (TR. 31-32) Blavatt indicated he would look into the matter and suggested to Loney that she not file any more charges or grievances against the Agency. (TR. 17-18, 43)

It is undisputed that a meeting occurred between the three on Tuesday, January 11, 2006, and it took place in the labor relations area where Blavatt worked. (TR. 21, 55-56, 89) Both Tumminello and Blavatt thought the meeting lasted 30 to 45 minutes; Loney thought it lasted about an hour. (TR. 27, 65 and 103) Blavatt's account of how the meeting came about and what occurred during the meeting differs significantly from those of Tumminello and Loney. According to Tumminello, on January 11, Blavatt called him and expressed unhappiness about Loney filing another charge or grievance despite Blavatt's advice that she refrain from doing so and requested to meet with him and Loney that day. (TR. 19-20) According to both Tumminello and Loney, Tumminello relayed this information to Loney and the two went to the labor relations area to meet with Blavatt. (TR. 20, 55)

Under Blavatt's account, the meeting came about in response to a telephone call he received that day from Tumminello asking Blavatt's assistance with respect to problems between Loney and her supervisors. (TR. 89) Under Blavatt's portrayal of events, Tumminello asked if he and Loney could come and talk to Blavatt in hopes that Blavatt could have a "calming" influence on Loney. (TR. 89-90) According to Blavatt, he asked to have the meeting in the labor relations offices rather than at another site because recent surgery made walking difficult for him. (TR. 89) Tumminello and Loney testified Loney was uneasy about having the meeting with Blavatt in the labor relations area and although Tumminello harbored some reservations about the consistency of that locus with what he saw as the *sub rosa* character of his dealings with Blavatt on the matter, he responded to Loney's discomfort by opining to her that perhaps Blavatt's feet bothered him. (TR. 21, 27-28, 73)

It appears the participants at the meeting were not all in the same type of duty status when they met. Tumminello

testified the meeting occurred when he was on "official time" (TR. 36); Loney stated it occurred sometime "after lunch" and she was on "official time" (TR. 56); Blavatt testified that he asked Tumminello to come during lunchtime and the meeting occurred during Blavatt's lunch break, which was around 11:00 or 11:30 am, and he viewed it as "off the clock." (TR. 89, 102-03).

The accounts of Tumminello and Loney regarding what occurred at the meeting depicted Blavatt as beginning the meeting by forcefully expressing his unhappiness about Loney filing something after he told her not to. (TR. 22, 56) Tumminello testified Loney responded that the particular filing occurred prior to the point at which Blavatt advised her to refrain from filing further actions against the Agency. (TR. 22, 25) While not addressing that particular detail, Loney's testimony portrayed herself as trying to calm Blavatt down. (TR. 60) Both Tumminello and Loney testified Blavatt told Loney the Agency was serious about taking action against her and wanted to terminate her employment. (TR. 23, 56) During the course of the meeting as described by Tumminello and Loney, Blavatt displayed knowledge of information relating to her length of service and identified his source as her personnel file, which he told them was in the labor relations office and was being studied by that office and Office of the General Counsel in an effort to ensure the action taken against Loney would "stick." (TR. 23, 59-60) Also, as recounted by Tumminello and Loney, the meeting included a discussion between Loney and Blavatt of some of the actions she filed against the Agency and a statement by Blavatt to the effect that the Agency had not forgotten what she did during her previous service as a steward. (TR. 23, 24, 56-57, 61) According to them, Blavatt's comment was a reference to the volume of Loney's activity during her previous tenure as a steward. (TR. 24, 56-57)

Both Loney and Tumminello testified that during the meeting, Blavatt told Loney the Agency was suspending her because of all the grievances and charges she filed and if she didn't stop filing or withdraw them she was going to be terminated. (TR. 24, 26-27, 59, 65) The two also testified Blavatt informed Loney that the real purpose of an upcoming meeting scheduled with her supervisors was to place her on a performance assistance plan, which was a step toward possible termination. (TR. 25, 62) According to Tumminello and Loney, Blavatt offered to approach the Office of the General Counsel to explore working out an arrangement under which Loney would serve a "paid" suspension. (TR. 25, 65-66) Loney further

testified Blavatt suggested during the meeting that if she would withdraw the grievances and charges she had filed and not file any more, the Agency might consider rescinding the disciplinary actions against her. (TR. 59) Loney testified she told Blavatt she would not withdraw her complaints. (TR. 61) Loney maintained she also told Blavatt the Agency was wrong in threatening her employment based on whether she would withdraw the pending matters and he responded the Agency was going to fire her. (TR. 65)

In Blavatt's version of the meeting, it began with him asking Loney what was going on and why did she want to meet with him. (TR. 91) In the description presented by Blavatt, the meeting became centered on Loney talking about various grievances, her belief her supervisor was discriminating against her based on race, and her resolve not to talk to her supervisor or do anything her supervisor told her to do. (TR. 91-92, 104) According to Blavatt, he attempted, unsuccessfully, to discourage Loney from discussing the particulars of grievances; tried to calm her down; and told her she could challenge perceived wrongs through proper procedures but also needed to "play by the rules." (TR. 92) Blavatt denied telling Loney he or other managers wanted her to withdraw her complaints and refrain from filing any more or threatening that if she didn't she would be terminated. (TR. 93, 105) Blavatt also denied there was any mention of the Office of the General Counsel at the meeting. (TR. 94)

I credit the testimony of Tumminello and Loney that at the meeting Blavatt expressed irritation about what he believed was Loney's action of filing another action after he advised her to stop doing so, indicated the Agency was serious about pursuing disciplinary measures against her, advised her not to file any more actions and suggested she should withdraw those pending. I also credit their testimony that Blavatt linked his exhortation to Loney to withdraw existing complaints and cease further filings with her chances of avoiding termination and broached the possibility of his brokering a resolution of the contemplated disciplinary action with the Office of the General Counsel. On these particular points, their account is consistent with the facts, as I have found them, pertaining to the January 6 telephone conversations whereas that of Blavatt is not. I find it more believable that Tumminello would have initially contacted Blavatt on Friday off the clock rather than waiting until Tuesday and calling him at the office. Also, it seems more likely Tumminello was seeking something in the nature of "inside information" and insight from Blavatt in lieu of or in

addition to simply enlisting Blavatt's assistance in pacifying Loney. Under the circumstances, the probability that the Tuesday meeting was a follow-up to an earlier discussion is a more convincing scenario, as it gave Blavatt a chance to do a little internal probing. Additionally, the testimony of Tumminello and Loney was given in a confident manner and was mutually corroborative while Blavatt's manner in denying their claims lacked confidence and his attempted interloping in the case involving Loney was corroborated by Wayne Lawson.

I find it likely, however, that during the meeting Blavatt also advised Loney to "play by the rules" insofar as her behavior toward her supervisors in work matters were concerned. Such an admonition would be consistent with an effort to persuade Loney to take actions that might de-escalate the level of conflict between her and her supervisors and Blavatt's interest in finding some way to ameliorate the situation in which Loney found herself. It appears to me that at the trial each side presented only part of the picture of what occurred during the January 11 meeting. In any event, it is significant that neither Tumminello nor Loney denied or rebutted Blavatt's assertion that he advised Loney to adhere to proper procedures in her dealings with her supervisors on work matters and in challenging what she perceived as racial discrimination against her.

Blavatt testified that after the meeting, he approached Wayne Lawson, who worked in his office and was assigned to handle the disciplinary action against Loney and told Lawson he might be hearing from Tumminello and/or Loney. (TR. 95) Lawson testified Blavatt reported to him having a discussion with Tumminello and Loney and that they might call him. (TR. 122) Lawson also testified his supervisor previously told him there was concern about possible leaks to Loney and instructed him to take measures to ensure others in his office did not learn of information relating to her case. (TR. 123-29) Lawson stated that in compliance with this instruction, he did not discuss the circumstances surrounding Loney's disciplinary action with Blavatt. (TR. 123) Blavatt testified that a couple of days after the meeting, Tumminello called to thank him for meeting with Loney. (TR. 96, 106) Lawson testified Blavatt told him Tumminello had called to thank him and say Loney couldn't afford to be suspended. (TR. 123, 129-31) Lawson stated that in response to this later report from Blavatt, he and Loney's office attempted to fashion a settlement. (TR. 123, 131) Tumminello did not provide any testimony disputing this telephone call. Moreover, calling to thank Blavatt would be consistent with

Tumminello's view that he asked Blavatt for a favor. (TR. 17, 27) Also, Lawson's testimony corroborates Blavatt's claim that the telephone call occurred.

Subsequently, by letter dated February 15, 2006, the Agency rescinded the proposal to suspend Loney and in lieu thereof proposed to remove her from service. (G.C. Exh. 3) In explanation of the increase in penalty being proposed, the letter stated that following the earlier proposal, Loney "repeatedly engaged in inappropriate and unprofessional conduct" and "proved" she "completely lacked the potential for rehabilitation." (Id.) Loney was placed on administrative leave during the proposal period. (Id.) By letter dated April 14, 2006, the Agency informed Loney it had decided to remove her. (G.C. Exh. 4)

Position of the Parties

General Counsel

The General Counsel asserts that by the statements Blavatt made to Loney, the Respondent violated 5 U.S.C. § 7116 (a)(1). More specifically, the General Counsel argues Blavatt's statements to the effect the Agency wanted to terminate Loney because she filed so many grievances and unfair labor practice charges, and if she continued to file grievances and charges she would be fired were coercive because they connected Loney's exercise of rights protected under the Statute to possible termination of her employment. The General Counsel also contends Blavatt's statements cannot be viewed as an expression of his personal opinion protected under section 7116(e) of the Statute. In this regard, the General Counsel avers Blavatt gave no indication to Loney what he was saying was only his personal opinion but, instead, gave the impression he was informing her of facts he ascertained after looking into the matter.

As remedy, the General Counsel requests that the Respondent be ordered to post a nationwide notice to employees signed by the Commissioner of the Social Security Administration.

Respondent

The Respondent denies the alleged violation. In support, the Respondent asserts Blavatt's testimony should be credited over that of Tumminello and Loney. The Respondent argues that even if events occurred as represented by Tumminello and Loney, there was still no violation of the Statute. The

Respondent contends Blavatt was not acting on behalf of the Agency during the January 11, 2006, meeting. The Respondent claims that, in fact, it was completely unaware of the January 6 telephone conversation, which occurred when Blavatt was off duty and at his home, and as the January 11 meeting was merely a follow-up to the earlier conversation, it should be considered of the same nature as the earlier telephone call. Additionally, the Respondent asserts it is possible the meeting took place when Blavatt and Loney were on their lunch breaks and, thus, at a time when Blavatt was not acting in his official capacity. The Respondent characterizes Blavatt's actions as unofficially attempting to assist Loney.

The Respondent argues that in light of Loney's actions in informing Blavatt she would not withdraw any of her charges and subsequently filing an unfair labor practice charge over his statement, it is clear she did not feel threatened or coerced by his statements.

ANALYSIS AND CONCLUSIONS

The Relevant Legal Standard

The standard the Authority applies in determining whether statements by management representatives to employees constitute a violation of section 7116(a)(1) of the Statute is an objective one. *See, e.g., U.S. Department of Agriculture, U.S. Forest Service, Frenchburg Job Corps, Mariba, Kentucky*, 49 FLRA 1020, 1034 (1994) (*Frenchburg Job Corps*). Under that standard, the question is "whether, under the circumstances, the statement or conduct would tend to coerce or intimidate the employee, or whether the employee could reasonably have drawn a coercive inference from the statement." *Id.* It is not necessary to find other unfair labor practices or demonstrate union animus. *Id.* Although the circumstances surrounding the statement are taken into consideration, the standard is not based on the subjective perceptions of the employee or the intent of the employer. *Id.*

Although section 7116(e) of the Statute affords some leeway for the expression of personal views, arguments and opinions, such statements may not contain any threat or be made under coercive conditions. See, e.g., *Oklahoma City Air Logistics Center (AFLC) Tinker Air Force Base, Oklahoma*, 6 FLRA 159 (1981).

Application of the Legal Standard

It is undisputed in this case that Blavatt was a supervisor or management official at the times material to the complaint. (G.C. Exhs. 1(c) and 1(f)) The evidence also establishes that Loney was a union steward who filed, among other things, multiple grievances and unfair labor practice charges.[2/] Such activity is normally protected under section 7102 of the Statute. *See, e.g., Bureau of the Census*, 41 FLRA 436, 449 (1991) (*Census*), *rev'd as to other matters*, 976 F.2d 882 (4th Cir. 1992). Here, there is no claim on the part of the Respondent that Loney was using the ULP and grievance procedures in such an outrageous manner so as to constitute abuse of those forums and remove her conduct from the protection of the Statute. *See, Census*, 41 FLRA 449-51.

As discussed above, I find that during the January 11, 2006, meeting, Blavatt made statements to Loney to the effect there was a causal connection between her protected activity and the disciplinary action being taken against her and a way to avoid termination of her employment was to cease her activity and withdraw pending grievances and charges. Particularly in view of the link Blavatt made between Loney's protected activity and disciplinary action, I find his comments were of the sort that would reasonably tend to coerce and intimidate an employee. In determining whether comments about unions and union activity violate section 7116(a)(1), the Authority decisions tend to distinguish between those critical of or derogatory toward unions and union activity, but lack any suggestion that adverse consequences will befall an employee who engaged in activity on behalf of or associated with the union, and those that are accompanied by suggestion of a link between union activity and adverse consequences. *Compare Ogden Air Logistics Center, Hill Air Force Base, Utah*, 51 FLRA 1459 (1996) (statement that an employee who files multiple grievances might be a "troubled" employee could not reasonably be interpreted as a threat of adverse consequences to such employees) *and Army and Air Force Exchange Service (AAFES), Ft. Carson, Colorado,* 9 FLRA 620 (1982) (supervisor's statements, which showed disdain for the

[2/] The record establishes that Loney was also involved in filing EEO and prohibitive personnel practice complaints. It is not clear whether Loney's involvement in those actions was as an individual employee or in her capacity as a Union steward. I find in view of the fact Loney's conduct in filing grievances and unfair labor practice charges was activity protected under section 7102 of the Statute, it is not necessary to determine whether her activity involving EEO and prohibitive personnel practice complaints was also protected by that section.

union and might be construed as implying an employee should resign from the union, were devoid of any suggestion of retaliatory consequences for failing to do so did not violate the Statute) with *Frenchburg Job Corps*, 49 FLRA at 1034-35 (supervisor's comments to employee linking her protected activity with his perception of her performance violated section 7116(a)(1)) *and United States Department of Defense, Department of Air Force, San Antonio Air Logistics Center, (ALC), Kelly Air Force Base, Texas*, 13 FLRA 661 (1984) (supervisor's statement to employees that he received a call from someone in Washington who said given all the trouble the base was having with the union, he was surprised "they" hadn't closed the base violated section 7116(a)(1)).

I find the circumstances of Blavatt's relationship with Tumminello and Loney do not offset the coercive tendency of his remarks. That is, even if Blavatt's remarks lacked any hostility toward the union and were meant as friendly advice to Loney, those factors do not necessarily counter their tendency toward coercive impact. In this regard, advice from a friendly figure can be more convincing and have a coercive impact that is the same or greater than messages delivered by someone who is openly hostile to protected activity. *Cf. NLRB v. Big Three Industrial Gas & Equipment Co.*, 579 F.2d 304 (5th Cir. 1978) (court noted friends can unlawfully threaten their friends and warnings of retaliation cast as friendly advice from a familiar associate might be more credible and, hence, more offensive than generalized utterances by distant management officials). It is significant that Blavatt's comments were presented in a manner suggesting they were based on "inside" information he was privy to because of his position as an employee in an office responsible for handling the disciplinary actions against Loney. There is no evidence Blavatt presented himself as involved in the actions being prepared against Loney or representing the Agency in the matter and there is no basis for concluding that he conveyed anything more than his own interpretation or speculation as to the relationship between Loney's protected activity and the disciplinary actions being taken against her. Nevertheless, Blavatt presented his views and advice as based on his access to information and insights gained as a consequence of his position as a labor relations specialist for the Agency. Blavatt's purported source of information, experience and position added credibility to his expressed opinion there was a causal connection between Loney's protected activity and the disciplinary action against her as well as his advice that she stop her activity. These factors also enhanced the coercive tendency of his opinions and advice.

Blavatt's choice of site and timing for the January 11, 2006, meeting further linked, perhaps unintentionally on his part, the views and advice he expressed to Loney with his position at the Agency. In contrast to the communication that occurred on January 6, the subsequent meeting was neither after-hours nor off-site. Rather, it was held in the office area where Blavatt worked and that location underscored the relationship between Blavatt's position and his ability to obtain information and develop an apparently informed opinion about the relationship between Loney's disciplinary situation and her protected activity. Also, although Blavatt may have viewed himself as being on his lunch break during their meeting, that was not evident to either Tumminello or Loney and, moreover, neither of them were on their lunch break.

Tumminello and Loney testified that during the January 11 meeting, Blavatt suggested he could talk to other Agency officials about the possibility of limiting the disciplinary action against Loney in return for her agreement to cease her activity. It might be that if the purpose of Blavatt's statements was to initiate settlement efforts, comments relating protected activity and the disciplinary action could be seen as non-coercive. *Cf. Frenchburg Job Corps*, 49 FLRA at 1035 (in finding a supervisor's comments violated the Statute, the Authority noted as significant that the statement was not made in an attempt to resolve a conflict between competing rights). In Blavatt's testimony, however, there is no claim his statements linking Loney's protected activity with disciplinary action were some sort of effort to explore settlement options. Rather, he simply denied making such statements. Because the record does not establish Blavatt made his remarks in the context of an effort to develop a settlement of the proposed disciplinary action and Loney's various pending claims, there is no reason to consider whether his remarks might lose their coercive tendency if viewed in such a light.

The Agency asserts because Loney rejected Blavatt's suggestion that she refrain from pursuing grievances, charges and the like, his comments were not coercive. The Agency's argument overlooks some significant points. For one thing, the test for determining whether comments are violative of the Statute is an objective one and not necessarily based on an individual employee's reaction to them. Thus, whether remarks are successful in deterring a particular employee from engaging in protected activity is not necessarily determinative of whether the remarks would ***tend*** to coerce or

intimidate employees and, thereby, violate the Statute. *Cf. U.S. Department of the Air Force, Griffiss Air Force Base, Rome, New York*, 38 FLRA 1552, 1559-60 (1991) (despite the fact that two employees resisted management coercion to participate in interviews regarding an upcoming unfair labor practice hearing, it was reasonable to assume other employees would not have withstood pressure to do so, and management efforts to force employees to participate violated section 7116(a)(1)). Also, in this particular case, although Loney rebuffed Blavatt's suggestion that she cease her protected activity, she still viewed the content of the remarks as threatening. Specifically, Loney testified she believed what Blavatt was saying and she told Blavatt the Agency was wrong for threatening her employment based on whether she would withdraw her charges. (TR. 65, 70)

In summary, I find Blavatt made statements to Loney linking her protected activity with adverse consequences and made them in such manner and circumstances that gave them the appearance of being based on inside information and his position as a labor relations specialist rather than simply representing his personal opinion. I find Blavatt's statements would reasonably tend to coerce or intimidate an employee in the exercise of rights assured by the Statute. I further find Blavatt's actions in making those statements to Loney violated section 7116(a)(1) of the Statute.

Remedy

The General Counsel seeks a remedy that includes a notice signed by the Commissioner of Social Security to be posted nationwide. While I recommend that posting of a notice be ordered, Authority precedent indicates the signatory and the scope of the posting should be different than what the General Counsel requests. With respect to the signatory, the Authority's general practice is to direct that postings be signed by the highest official of the activity responsible for the violation. *See, e.g., U.S. Department of Veterans Affairs*, 56 FLRA 696, 699 (2000) (*Veterans Affairs*). In this case, Blavatt is assigned to the Office of Labor-Management and Employee Relations at the Agency. (G.C. Exhs. 1(c) and 1 (f)) There is no evidence in the record implicating any other office or officials in the violation I have found. The circumstances in this case are analogous to those present in two recent Authority decisions--*United States Department of Labor, Washington, D.C.*, 61 FLRA 825 (2006) (Member Pope concurring to avoid impasse) and *United States Department of Labor, Washington, D.C.*, 61 FLRA 603 (2006) (Member Pope

concurring to avoid impasse). In those cases, the violations found were limited to actions on the part of the Director of the Office of Employee and Labor-Management Relations and, consequently, the Authority ordered the remedial notice be signed by the highest official in that office rather than by the Secretary of Labor as recommended by the Administrative Law Judge hearing the complaint. In view of the similarity between the circumstances involved in the Department of Labor cases and this one, I find the notice should be signed by the highest official in the Office of Labor-Management and Employee Relations rather than by the Commissioner of Social Security.

In determining the scope of any notice posting ordered, the Authority focuses on the purposes served by such posting. The purposes identified by the Authority are to (1) demonstrate to employees that the rights afforded under the Statute will be vigorously enforced and (2) visibly indicate to employees that a respondent recognizes and intends to fulfill its obligations under the Statute. *See, e.g., Veterans Affairs*, 56 FLRA at 699. Where violations were committed only by a local subdivision of an agency and did not involve higher-level organizational components of an agency, the Authority has denied requests for nationwide postings. *See, e.g., id.* In this case, the violation was very localized in that it was limited to action by an employee of the Office of Labor-Management and Employee Relations. Moreover, there is no evidence any employees other than Loney and Tumminello were affected by Blavatt's action.[3/] In these circumstances, the violation involved does not establish a need to communicate on a nationwide basis that statutory rights will be vigorously enforced and statutory obligations will be fulfilled by the Agency. I recommend the notice be posted at the Respondent's Headquarters facility in Baltimore, Maryland.

Based on the above findings and conclusions, I recommend that the Authority adopt the following Order:

ORDER

Pursuant to § 2423.41(c) of the Rules and Regulations of the Authority and § 7118 of the Federal Service Labor-

[3/] Although there may have been an effect on other employees who learned of Blavatt's statements to Loney from either Tumminello or her, the record does not show, nor does the General Counsel claim, that knowledge of the incident was so widespread that a nationwide posting is needed to remedy the effect of such statements.

Management Relations Statute (Statute), it is hereby ordered that the Social Security Administration shall:

1. Cease and desist from:

(a) Making statements to Pamela J. Loney or any employee representative of the American Federation of Government Employees, Local 1923, AFL-CIO, that suggest a causal relationship exists between protected activity and disciplinary action against the employee; and

(b) In like or related manner, interfering with, restraining or coercing its employees in the exercise of their rights assured by the Statute.

2. Take the following affirmative action:

(a) Post at its Headquarters facility in Baltimore, Maryland, copies of the attached Notice on forms to be furnished by the Federal Labor Relations Authority. Upon receipt of such forms, they shall be signed by the highest official in the Office of Labor-Management and Employee Relations and shall be posted and maintained for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that such Notices are not altered, defaced or covered by any other material.

(b) Pursuant to ∋ 2423.41(e) of the Rules and Regulations of the Authority, notify the Regional Director of the Washington Region, Federal Labor Relations Authority, in writing, within 30 days of the date of this Order, as to what steps have been taken to comply.

Issued, Washington, DC, February 1, 2007

CHARLES R. CENTER
Chief Administrative Law Judge

NOTICE TO ALL EMPLOYEES

POSTED BY ORDER OF

THE FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the Social Security Administration violated the Federal Service Labor-Management Relations Statute (Statute) and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT make statements to Pamela J. Loney or any employee representative of the American Federation of Government Employees, Local 1923, AFL-CIO (Union), that suggest a causal relationship exists between protected activity and disciplinary action against the employee.

WE WILL NOT, in any like or related manner, interfere with, restrain or coerce our employees in the exercise of their rights assured by the Statute.

_____
(Agency)

Dated: _____ By: _____
(Signature) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any questions concerning this Notice or compliance with its provisions, they may communicate directly with the Regional Director, Washington Region, Federal Labor Relations Authority, whose address is: 1400 K Street, NW, Second Floor, Washington, DC 20424-0001, and whose telephone number is: 202-482-6700.

CERTIFICATE OF SERVICE

I hereby certify that copies of the **DECISION** issued by CHARLES R. CENTER, Chief Administrative Law Judge, in Case No. WA-CA-06-0395, were sent to the following parties:

_____

CERTIFIED MAIL & RETURN RECEIPT — **CERTIFIED NOS:**

Gina Grippando, Esq. — **7004 2510 0004 2351 2280**
Tresa Rice, Esq.
Federal Labor Relations Authority
Washington Region
1400 K Street, NW, Second Floor
Washington, DC 20424-0001

Eddie Taylor — **7004 2890 0003 8223 2079**
Agency Representative
Social Security Administration
Office of Labor-Management and
Employee Relations
2313 Annex Building
6401 Security Boulevard
Baltimore, MD 21235

Pamela J. Loney — **7005 2570 0001 8450 2279**
17 Walden Willow Court
Woodlawn, MD 21207

REGULAR MAIL:

President
American Federation of Government
Employees, AFL-CIO
80 F Street, NW
Washington, DC 20001

DATED: February 1, 2007

Washington, DC