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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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RELEASED

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JUN 20 1973

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The Honorable Ronald V. Dellums
House of Representatives

Dear Mr. Dellums:

In response to your letter of March 15, 1973, and subsequent discussion with your staff, we:

1. Investigated the validity of allegations concerning the firing "without cause" of two Office of Economic Opportunity (OEO) attorneys: Mr. Thomas J. Mack, Regional Legal Services Director, San Francisco, and Mr. H. Tim Hoffman, an attorney in the San Francisco regional legal services office and President of the American Federation of Government Employees, Local 3009.
2. Reviewed the general policy and procedures followed by OEO's San Francisco regional office in releasing employees.
3. Determined if such policy and procedures conformed with Civil Service Commission (CSC) regulations.

OEO REDUCTION-IN-FORCE PROCEDURES

The San Francisco regional office was initially scheduled for a reduction in force (RIF) on April 28, 1973. The RIF was designed to reduce the staff ceiling from 92 permanent positions to a residual force of 30. Effective July 1, 1973, these 30 positions and their responsibilities were to have been transferred to the General Services Administration. However, on April 11, 1973, the United States District Court for the District of Columbia enjoined OEO from any further efforts to dismantle. On April 13, 1973, preparation for the scheduled RIF was halted, and it is our understanding that OEO does not intend to appeal this court order.

As of April 11, 1973, 77 of the 92 permanent positions were occupied by full-time employees. To test the procedures that would have been used to implement the RIF, we took a random sample of 25 names from the retention register and compared the data on the register with the data in the employees' personnel files. Specifically, we tested the accuracy of the register's data on the employees' preference for retention

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(tenure group, veterans' preference, and service computation date). We found incorrect service computation dates for three employees. However, these minor errors did not affect the standing of these employees on the register. We brought these errors to the attention of OEO regional officials who promptly initiated corrective action.

We then obtained a list of positions scheduled to be included in the residual force and the names of the individuals scheduled to fill the positions. Headquarters in Washington, D.C., developed the list of residual positions and forwarded it to the San Francisco office. Individuals were selected by the office, with verbal approval by OEO headquarters. We reviewed the qualifications of the 30 individuals selected and compared them with those of other individuals on the register who appeared to be qualified.

We identified two cases in which, on the basis of length of service, the wrong individual had been selected to fill the residual position. We discussed this with the Regional Chief of Personnel who concurred in our findings and who initiated corrective action immediately. We believe these errors were more serious; however, they were the only errors of this type we noted.

On January 31, 1973, Mr. Howard Phillips, Acting Director of OEO, issued a directive temporarily suspending all actions to secure outstanding performance awards for OEO employees. San Francisco office officials correctly interpreted this order, according to OEO headquarters officials, to mean that no employees could receive outstanding performance ratings. The order, issued before the RLF was announced, was intended to prevent supervisors from rating employees as outstanding to improve the employees' ranking on the register. (An outstanding rating adds 4 years to an employee's seniority.)

We also evaluated an allegation that union members were being systematically excluded from the residual force. Of the 77 employees in the San Francisco office at the time of our review, 49 were union members. Because the residual force was scheduled to have 18 of the 30 positions filled by union members, it appears that union members were not being systematically excluded.

One position allocation which seemed irregular was that of a supply systems analyst. Five of these positions were scheduled for the residual force, but previously the region had only two such positions. OEO headquarters officials explained that, since operations in the region were being

phased out, they anticipated the additional positions would be necessary to assist with the disposal of property.

Only three employees in the region appeared to have the background necessary to qualify for these positions. The other two positions were to be filled by employees who did not qualify on the basis of past experience but who had received qualification waivers by OEO headquarters. We were told that these two employees were selected on the basis of regional officials' opinions as to who could most easily adapt to this type of work. One of the two is a union member.

We have concluded that, except for the errors we noted, the policy and procedures followed by the San Francisco office conformed with pertinent CSC regulations.

FIRING OF MR. MACK AND MR. HOFFMAN

Mr. Mack and Mr. Hoffman alleged that Mr. Hoffman was fired solely due to his union activities which "pointed out illegal activities on the part of Mr. Howard Phillips" and that Mr. Mack was fired because he was counseling the union and representing employees on his own time. In particular, Mr. Mack and Mr. Hoffman felt that Mr. Hoffman's press release, issued in his capacity as union president, exposing the San Francisco Regional Director's "junket" to Samoa was the catalyst for the firings. They stated that they were fired without notice on February 14, 1973, and were the first attorneys employed by OEO's Legal Services who were ever fired. They feel that since they were fired for union activities, their firings were illegal.

On February 14, 1973, Mr. Lawrence McCarty, Acting Associate Director for Legal Services, instructed Mr. Thomas Mercer, the San Francisco Regional Director, to fire Mr. Mack and Mr. Hoffman. Mr. Mercer stated that regional Legal Services personnel report directly to OEO headquarters and not to the Regional Director. He added that although the decision to fire Mr. Mack and Mr. Hoffman was made in Washington, Mr. McCarty had asked him about it ahead of time and that he had told Mr. McCarty he had "no problem" with firing them. Mr. Mercer denied the allegation that Mr. Mack and Mr. Hoffman were fired because of union activities. He emphasized, however, that the decision was made in Washington and that we would have to contact Mr. McCarty to determine the specific reasons for the firings.

Mr. McCarty joined OEO on February 5, 1973, as an expert. On February 12, 1973, the resignation of Mr. Ted Tetzlaff, who

had been Director of Legal Services, was accepted and Mr. McCarty became Acting Director. Mr. McCarty told us that he had fired Mr. Mack and Mr. Hoffman on February 14, 1973, because he was told they were a "disruptive influence" but would not elaborate further.

Mr. Tetzlaff told us he had been requested several times to fire them. Specifically, Mr. Phillips had requested that he fire them several times; Mr. Phillip V. Sanchez; Mr. Phillips' predecessor, had asked once; and Mr. Mercer had asked several times. Mr. Tetzlaff said that Mr. Mercer gave as his reasons (1) the notoriety caused by Mr. Mercer's trip to Samoa and (2) a list of allegations compiled by union members under Mr. Hoffman's direction (apparently with Mr. Mack's help) to which Mr. Mercer would have to respond. Mr. Tetzlaff said that he had refused to fire them because he thought they were doing a generally good job. He had received no report specifically charging them with any misconduct, although he had asked Mr. Mercer to prepare one if he felt it was warranted.

As attorneys, both Mr. Mack and Mr. Hoffman were employed under schedule A of the excepted service. The excepted service is made up of positions which are not governed by the usual civil service requirements in such matters as selection on the basis of open competition and the right to appeal certain actions to CSC. As nonveterans in the excepted service, Mr. Mack and Mr. Hoffman did not have the channels for appeal available to other civil service employees.

According to CSC officials, Mr. Mack and Mr. Hoffman can be legally fired simply by notification by OEO, without any appeal privileges.

Mr. Mack and Mr. Hoffman appealed their firings to CSC's San Francisco regional office. Their appeals were denied. Both have taken legal action in Federal district court to petition for reinstatement with back pay and to question the legality of denying appeal rights to employees in the excepted service.

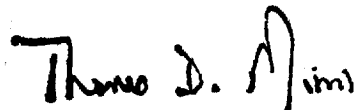
Since Mr. Mack and Mr. Hoffman were schedule A employees, it appears that they could be legally terminated "without cause" and have no appeal rights. They recognize this, and in their pending court action, they hope to prove that they were fired for union activities, which they believe is a violation of their rights under the first amendment. It appears that OEO has complied with governing regulations and that any further questions about their rights to employment must be determined in a court of law.

B-130515

We do not plan to distribute this report further unless you agree or publicly announce its contents.

We hope this information satisfies your request. If you would like additional information, we would be glad to discuss the matter with you.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Thomas D. Mims". The signature is written in a cursive style with a large, looped initial "T".

Assistant Comptroller General
of the United States