

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES

NV ENERGY, INC.  
Respondent

and

CASE 28-CA-22476

ARTHUR GOODSPEED,  
an Individual

**David C. Lonergan, Hunton & Williams,**  
of Dallas, Texas, for the Respondent  
**Joel C. Schochet** of Las Vegas, Nevada,  
for the General Counsel

DECISION

Mary Miller Cracraft, Administrative Law Judge. This case was tried in Las Vegas, Nevada, on August 25, 2009,<sup>1</sup> pursuant to Complaint and Notice of Hearing<sup>2</sup> alleging that Respondent NV Power, Inc. violated Section 8(a)(1) of the National Labor Relations Act (the Act)<sup>3</sup> by twice denying Charging Party Arthur Goodspeed's request for union representation during investigatory interviews and subsequently discharging Mr. Goodspeed for his protected, concerted activity. On the entire record, including my observation of the demeanor of the witnesses,<sup>4</sup> and after considering the briefs filed by counsel for the General Counsel and counsel for the Respondent, I make the following findings of fact and conclusions of law.

Jurisdiction

Respondent, a Nevada corporation with an office and place of business in Las Vegas, Nevada, is a public utility engaged in the business of generating, distributing, and selling electricity to customers in Nevada and California. During the 12-month period ending April 20, Respondent derived gross revenues in excess of \$250,000 and sold electricity valued in excess of \$50,000 to customers located outside the State of Nevada. Respondent admits that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.<sup>5</sup>

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<sup>1</sup> All dates are in 2009 unless otherwise referenced.

<sup>2</sup> The Complaint and Notice of Hearing issued on June 30, pursuant to an unfair labor practice filed by Mr. Goodspeed on April 20, 2009.

<sup>3</sup> 29 U.S.C. §158(a)(1).

<sup>4</sup> Credibility resolutions have been made based upon a review of the entire record and all exhibits in this proceeding. Witness demeanor and inherent probability of the testimony have been utilized to assess credibility. Testimony contrary to my findings has been discredited on some occasions because it was in conflict with credited testimony or documents or because it was inherently incredible and unworthy of belief.

<sup>5</sup> 29 U.S.C. §152(2), (6), and (7).

### Labor Organization Status

5 The International Brotherhood of Electrical Workers, Local Union #396, AFL-CIO, represents customer service representatives and various other employees at Respondent's facility pursuant to the terms of the parties 2008-2011<sup>6</sup> collective bargaining agreement. Respondent admits and I find that the Union is a labor organization within the meaning of the Act.

### 10 Facts

#### First Training Course

15 Mr. Goodspeed began employment as a bilingual customer service representative with Respondent in late February. He immediately commenced a seven to eight week training program with trainer Madeline Anzinger. After about two weeks of training, Mr. Goodspeed was absent due to a family medical emergency which occurred on Sunday, March 1. At 7 a.m. on Monday, March 2, Mr. Goodspeed left messages for trainer Anzinger and Rustye Barzoni-Covington, senior human resources representative, stating that he would not be at work that day due to the emergency. He did not actually speak to any representative of Respondent on Monday, March 2.

25 On Tuesday, March 3, Mr. Goodspeed called and spoke with Ms. Anzinger. He told her that he would not be in that day either. According to Mr. Goodspeed, Ms. Anzinger responded, "I don't think you have employment with NV Energy anymore." Mr. Goodspeed explained that he really needed the job and asked if there was anything he could do to prove the medical emergency. Ms. Anzinger told him to bring in the medical records and she would review them and "I'll let you know."

30 On Wednesday, March 4, Mr. Goodspeed reported to work and gave Ms. Anzinger various documents relating to the medical emergency. Ms. Anzinger examined the documents, advised Mr. Goodspeed to have a seat at his computer, and she would talk to her boss. She also told him to take the medical documents to human resources at some point. Mr. Goodspeed took the documents to human resources about ten days later. He gave the documents to Ms. Barzoni-Covington. In the meantime, Mr. Goodspeed remained in Ms. Anzinger's class until Friday, March 13.

#### Second Training Course

40 Mr. Goodspeed was transferred to trainer Susan Penrod's class beginning Monday, March 16. There were five students in this class plus Mr. Goodspeed. The class had commenced about two weeks prior to Mr. Goodspeed's transfer into the class.

45 On Wednesday, March 18, Mr. Goodspeed was told to report to the office of Evelyn Hollins, manager of training and performance. Both Union Steward Cynthia Wesson and Mr. Goodspeed agree that she was already present in the office with Ms. Hollins when Mr. Goodspeed arrived. Ms. Wesson testified that Respondent "always" calls a steward for "any discipline." Jesse Newman, senior business manager of the Union, testified that before he became a union business manager, he worked for Respondent and for seven years (roughly

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<sup>6</sup> The contract is effective February 1, 2008, to February 1, 2011.

1999 through 2004), he was a union steward. He testified that Respondent’s policy regarding steward participation in disciplinary meetings was to call the steward ahead of time, explain that there is an issue and request the steward’s presence. Ms. Wesson testified there was no difference in application of this policy between probationary and permanent employees. HR Partner Lenear-Liston agreed. “We provide a Union steward when we are giving discipline or we are doing an investigation that may lead into discipline.” The policy is not difference for probationary employees than for permanent employees.

In any event, Ms. Hollins stated, “This is a meeting to let you know that you exceeded the time allowed for taking off.” She informed Mr. Goodspeed that he would be suspended for one day. Mr. Goodspeed responded that he was unaware of the policy regarding allowed time off and he also told Ms. Hollins that he thought the matter was “taken care of” by virtue of the fact that he showed Ms. Anzinger the medical documentation supporting his absence. Mr. Goodspeed recited the steps he had taken to call in on Monday, March 2, and speaking with trainer Anzinger on Tuesday, March 3, about supplying medical documentation, and his meeting with her on Wednesday, March 4, to examine the documents. Nevertheless, Mr. Goodspeed was suspended for the day of Thursday, March 19. During the course of this meeting, Mr. Goodspeed complained to Ms. Hollins of Ms. Anzinger’s treatment of him.<sup>7</sup> The above account given by Mr. Goodspeed is substantially corroborated by the testimony of Ms. Wesson and Ms. Hollins. Ms. Wesson added that Mr. Goodspeed was very upset and threatened a lawsuit for violation of HIPAA due to his having to bring in medical documentation. Additionally, Ms. Wesson recalled that at her request, Ms. Hollins gave Mr. Goodspeed her card and told him she had an open door policy. According to Mr. Lenear-Liston, he found out that the medical documentation had been placed in Mr. Goodspeed’s personnel file. He retrieved the documents and returned them to Mr. Goodspeed.

On Friday, March 20, Mr. Goodspeed was called into a meeting with human resources partner Michael Lenear-Liston. After sitting down in Mr. Lenear-Liston’s office, Mr. Goodspeed requested a union representative. Mr. Lenear-Liston said no, “I’m just going to be asking you questions of what the allegations you brought up against Anzinger.” Mr. Lenear-Liston also told Mr. Goodspeed that he wanted to get some information regarding what was happening in the class relating to the allegations Mr. Goodspeed had made about Ms. Anzinger. Mr. Goodspeed testified, “That’s the only things we discussed is just her and what had happened with my medical records, that she said that I had been, I was already terminated.”

Mr. Goodspeed continued in Ms. Penrod’s training class during the weeks of March 23 and 30. Mr. Goodspeed observed that although Ms. Penrod treated him “fine,” she treated other employees “very badly, pretty much like they were stupid” particularly fellow trainees Rosa [last name unknown] and Doris Barela. Coincidentally, during the week of April 6, according to Mr. Goodspeed, Gloria Virden,<sup>8</sup> during the course of a 20-minute presentation, admonished Ms. Penrod’s training class that it was not a good idea to go to human resources. “If you want to get ahead in this company you have to stay quiet.” She added that if employees were called to human resources, they should say that you don’t know anything.

<sup>7</sup> There is no specific testimony regarding the substance of these complaints regarding Ms. Anzinger in the Hollins/Goodspeed meeting.

<sup>8</sup> Ms. Virden is a bargaining unit employee who served as a mentor during this training class.

Events of Friday, April 9

As trainees, all the students of Ms. Penrod's class were required to take and pass the customer service representative certification test. During a one-on-one conversation, Mr.  
5 Goodspeed discussed the test with Ms. Penrod on Wednesday, April 8, and suggested that the students be given an outline of the course to utilize for studying for the test.

At 7:30 a.m. on Thursday, April 9, Gloria began the training class by reviewing certification test materials and telling the trainees to ask any questions they had about the  
10 materials. The test was scheduled for about two weeks later. Rosa responded to Gloria's directive by stating that she did not understand why the trainees were going to work on the floor for one week before taking the certification test. Doris stated the same concern. All the students including Mr. Goodspeed asked Gloria for an outline or syllabus in order to study for the  
15 certification test. Mr. Goodspeed testified that he asked Gloria if there was any way she could give them an outline or tell them how she would study for the test. Gloria responded that she thought Mr. Goodspeed was asking for the answers to the certification test.

When Ms. Penrod entered the room around 9 a.m., the students were still rather heatedly discussing with Gloria how they should study for the exam and they were also working  
20 on their computers, practicing taking orders. Ms. Penrod asked what was going on and Gloria responded that the students wanted to find out about the test – they wanted an outline to study. Ms. Penrod recalled speaking to Mr. Goodspeed about his outline idea and said it was a good idea. However, Ms. Penrod then said, "You know what guys? I ought to just give you the test right now and get this out of the way because I'm getting tired of it. You guys just get me  
25 frustrated, why don't you guys just go to break right now."

Mr. Goodspeed spoke to the five other students (Doris, Elizabeth, Rosa and two whose names he could not recall). He told them he had had enough. Rosa responded, "I know, I've  
30 never worked for a company that – I mean the way they behave, they're so unprofessional." Elizabeth added, "That's what I told you about these guys, that's the way they are. You should have seen when I told them that I was going to resign. Boy, Evelyn, she just jumped all over me and says, 'You lied on your application.'" Doris added that Ms. Penrod treated her like a child. Mr. Goodspeed suggested that the group go to human resources "right now." Elizabeth and Doris said they would accompany him. One of the other trainees declined to join them citing  
35 Gloria's advice to not complain.

According to Union Steward Cynthia Wesson, she encountered the three employees as they walked toward human resources. Mr. Goodspeed told her the group had an issue with Ms.  
40 Penrod. Ms. Wesson suggested that the group meet with Ms. Hollins who was in charge of training, rather than going to human resources. Mr. Goodspeed declined and said they were going to human resources. Ms. Wesson explained to the group that she could accompany them to see Ms. Hollins but that she did not go to human resources unannounced.

The group encountered Ms. Barzoni-Covington upon entering human resources. She  
45 escorted the three employees to Mr. Lenear-Liston's office. Elizabeth told Mr. Lenear-Liston that Ms. Penrod was treating Doris "real bad." Elizabeth added that she was resigning from the training but would cooperate in any investigation. There was no mention of Ms. Anzinger during the five to ten minute meeting. The three employees returned to their training class immediately. HR Partner Lenear-Liston recalled that the meeting probably was about 15 minutes and the  
50 employees complained about how they were spoken to by their trainer and the fact that they had been "thrown out" of the training department during their training. His notes reflect that he wrote down that the employees told him that Gloria advised against going to human resources

with any problems. Lenear-Liston asked the three employees to go back to training and he would look into the matter.

5 Mr. Lenear-Liston then met with Ms. Hollins, manager of training, and told her about the employees' concerns. Ms. Hollins scheduled the employees to come to her office so that she could investigate their concerns.

10 Elizabeth submitted her resignation and left the training class shortly thereafter. Around 11 or 11:30 a.m., Ms. Penrod told Mr. Goodspeed that he was to meet with Eveyln Hollins at 11:45 a.m. She told Doris that when Mr. Goodspeed returned, Doris should leave the class and go meet with Ms. Hollins.

15 When Mr. Goodspeed arrived at Ms. Hollins office, he testified that Ms. Wesson<sup>9</sup> looked into the office and asked if Ms. Hollins needed a union steward in the meeting. Ms. Hollins replied no and the union steward left. Both Ms. Hollins and Ms. Wesson deny that Ms. Wesson came to the door and asked if she was needed. Based on their relative demeanors, I credit their testimony over that of Mr. Goodspeed. Moreover, Ms. Hollins and Mr. Lenear-Liston both testified that they were both present in the office when Mr. Goodspeed arrived.<sup>10</sup> Mr. Goodspeed thought Mr. Lenear-Liston arrived after the Union steward left.

20 In any event, according to Mr. Goodspeed, Mr. Lenear-Liston initiated the meeting stating, "We want to talk with you about the things that are going on. This is not a disciplinary thing . . . we just want to get you on the phones as soon as possible because . . . they really need you up there." By "get you on the phones," Mr. Lenear-Liston was referring to completion  
25 of training so that Mr. Goodspeed could begin working as a bilingual customer service representative. Next Mr. Lenear-Liston told Mr. Goodspeed that all complaints should come to Ms. Hollins and he told Mr. Goodspeed that he was a probationary employee and could be terminated at any time. Mr. Lenear-Liston agreed that he told Mr. Goodspeed he was a  
30 probationary employee during the course of the meeting. He denied that he said Mr. Goodspeed could be terminated at any time. Mr. Lenear-Liston could not recall why he mentioned Mr. Goodspeed's probationary status. He thought it was in connection with something that came up during the meeting but could not recall anything more specific. Based upon Respondent's disciplinary process which requires consensus up and down the management personnel involved, I credit Mr. Lenear-Liston's denial. It would have been impossible to discharge any  
35 employee on the spot and saying that an employee could be discharged at any time appears to be in contradiction to this practice.

40 At this point, Mr. Goodspeed requested a union representative. Mr. Lenear-Liston said, "No, this is not investigatory or anything like that. You don't need a union rep." Mr. Goodspeed persisted that he would like to have a union representative. According to Mr. Goodspeed, Mr. Lenear-Liston said, "Listen to me, Arthur, you're not going to get union representation here." Mr. Goodspeed estimated that during the course of the meeting, he asked for a union representative about six times and each time, Mr. Lenear-Liston denied the request. Mr.

45 <sup>9</sup> Mr. Goodspeed's testimony was that it was the same union steward as was present when he received the one-day suspension. He agreed, when reminded of the name, that the union steward was Ms. Wesson.

50 <sup>10</sup> In both his statement to the NLRB and to the Union, Mr. Goodspeed wrote that Mr. Lenear-Liston was in Ms. Hollins office when he arrived for the meeting. He testified that he was confused when he made the written statements and realized later that Mr. Lenear-Liston came in after the Union steward left.

Goodspeed also testified that Mr. Lenear-Liston denied his request to consult with a union steward to verify that he was not entitled to representation. According to Mr. Goodspeed, Mr. Lenear-Liston's voice was loud and this caused Mr. Goodspeed to begin experiencing a panic attack. Although a full blown panic attack may cause confusion, Mr. Goodspeed testified that he  
5 was not confused during this meeting because the symptoms were not full blown.

After Mr. Goodspeed explained that he needed this job in order to qualify for a home loan modification, Mr. Lenear-Liston told Mr. Goodspeed to give him his badge and follow him. When they arrived at the training room, Mr. Goodspeed was instructed to remain in the hall. Mr.  
10 Lenear-Liston entered the training room, retrieved Mr. Goodspeed's jacket and lunch bag, came back to the hall, handed the jacket to Mr. Goodspeed and the lunch bag fell on the floor. At this point, Mr. Goodspeed's panic attack became full blown. Mr. Lenear-Liston told Mr. Goodspeed to follow him. They proceeded to security and Mr. Goodspeed left the building.

Mr. Lenear-Liston agreed that he told Mr. Goodspeed that the meeting was for the purpose of investigating the concerns he brought up that morning. Mr. Lenear-Liston testified that Mr. Goodspeed interrupted and spoke over him about his treatment being unfair, about an Obama plan dealing with refinancing his house, and several different things. Mr. Lenear-Liston recalled that about mid-meeting Mr. Goodspeed twice requested a Union Steward and Mr.  
15 Lenear-Liston replied, "This is not a disciplinary meeting. We were just talking about the concerns you were trying to bring up." Mr. Goodspeed said, "You guys are stressing me out and I'm just going to have to resign." Mr. Lenear-Liston questioned, "Arthur, are you going to resign?" and he responded that he was. Mr. Lenear-Liston asked, "Are you sure?" and Mr. Goodspeed replied that he was sure. Mr. Lenear-Liston asked for his badge, walked him to  
20 training to get his personal possessions, and escorted him from the building. According to Mr. Lenear-Liston, during the time they were in transit, Mr. Goodspeed said he was not going to go quietly. "He wanted to talk to the president of the company, he was going to go to the NLRB, he was going to go to the union, [and] the PUCN [Public Utilities Commission]...." An Employee Turnaround Document dated April 13 states that the reason for turnaround is  
25 "Termination/Voluntary," "Personal Reasons."

Mr. Lenear-Liston recalled that when he handed Mr. Goodspeed his jacket and lunch bag, the lunch bag fell to the floor. Mr. Lenear-Liston apologized. He testified that he did not intentionally throw anything on the floor.  
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Ms. Hollins recalled that when Mr. Goodspeed came to her office, Mr. Lenear-Liston was already seated in the office. Mr. Lenear-Liston told Mr. Goodspeed that the purpose of the meeting was to investigate the earlier complaints of the three trainees. Mr. Goodspeed asked for a union steward and Mr. Lenear-Liston told him there was no discipline, he was merely performing his "due diligence" investigation of the employees' complaints. Mr. Goodspeed reiterated his request for a union steward and Mr. Lenear-Liston again denied the request stating that this was not disciplinary. Mr. Goodspeed then spoke about a stimulus bill that affected his house. He needed to be employed in order to receive stimulus package money for his house. Mr. Goodspeed asked to speak to the president of the union. Mr. Goodspeed was quite agitated. Mr. Lenear-Liston again stated the purpose of the meeting was to investigate claims made by Mr. Goodspeed about his training instructor. Mr. Goodspeed said, "I'm out of here." Mr. Lenear-Liston said, "Art, are you resigning." Mr. Goodspeed replied, "Yes." Mr. Lenear-Liston said, "Well, I'll take your badge and we'll go and get your things." Ms. Hollins described Mr. Lenear-Liston's demeanor as calm.  
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Following Mr. Goodspeed's meeting with Mr. Lenear-Liston, Doris Barela met with him. They went over the complaints Ms. Barela and the group had regarding Ms. Penrod's training.

According to Ms. Barela, Mr. Lenear-Liston told Ms. Barela that he wanted her to know that Mr. Goodspeed had left of his own accord – he was not fired. Mr. Lenear-Liston agreed that he told Ms. Barela that Mr. Goodspeed had resigned of his own accord.

5 Mr. Lenear-Liston investigated a prior complaint about training. In March, employee  
Raenell Kruessen complained about the treatment her trainer, Madeline Anzinger, provided. Mr.  
Lenear-Liston interviewed the entire class. One of the employees interviewed was Mr.  
Goodspeed. After concluding the investigation, Ms. Hollins conducted a coaching for trainer  
Anzinger.

10 Mr. Lenear-Liston testified that as an HR Partner, he had no authority to fire or discipline  
employees. His job, rather, is to look over the discipline that a supervisor recommends to  
ensure “we are doing things in compliance.” Lenear-Liston testified that he did not discipline or  
fire Mr. Goodspeed on April 9 but he did ask him to leave the premises.

15 Later that day, Mr. Goodspeed visited the union and left an account of the events  
immediately above. Early the following morning, around 1 or 2 a.m., Mr. Goodspeed called the  
Respondent’s ethics line and spoke with a man for about two hours. The man said someone  
would get back to Mr. Goodspeed. Vil Southasarn called back on the following Monday, April  
20 13, and made an appointment for Mr. Goodspeed. The Union filed a grievance on behalf of Mr.  
Goodspeed regarding the events of April 9.<sup>11</sup>

25 On Friday, April 10, Mr. Goodspeed requested his termination papers from human  
resources. He did not receive these papers. Rather, he was told by a representative of human  
resources that he had resigned.

30 Jesse Newman, who served as a union steward at Respondent’s facility from roughly  
1999 through 2004 and then became a business agent for the union, testified that the decision  
to terminate an employee at Respondent’s facility was not, in his experience, made on the spot.  
He had never experienced such a termination either when he was union steward or business  
manager. Newman described Respondent’s disciplinary process as follows:

35 The person would be put on suspension pending investigation and the  
investigation would start. The company would do their fact-finding and at that  
time they would do a concurrence thing depending on which particular group it is.  
It could go all the way up to the Executive VP all the way back down, basically  
stating the fact, the reason to terminate and the decision behind that. And it  
would go all the way down through a chain of supervisors concurring or not  
40 concurring. If there was a concurrence, then everything would continue on. If  
there wasn’t then they would reschedule a meeting and figure out why they  
weren’t on the same page until they made a decision whether it was best to  
terminate or not terminate.

45 HR Partner Lenear-Liston characterized the disciplinary process as a review process  
going “through the supervisor to the manager and to the HR manager an on up to get approval.”  
He explained that all managers have to be in concurrence to terminate an employee. Lenear-  
Liston was unaware of any employee being terminated “on the spot” during his eighteen months  
in human resources. Manager of Training and Performance, Evelyn Hollins, agreed. A

50 <sup>11</sup> Following the filing of the grievance, the Union conducted an investigation of the  
allegations of the grievance. Resolution of the grievance is outside the scope of this proceeding.

termination of a training employee would go through her to higher levels before it could be approved.

### Analysis

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Based upon the record as a whole, I find that Mr. Goodspeed resigned his employment with Respondent. Having thoroughly reviewed the testimony of Mr. Goodspeed, Ms. Hollins, and Mr. Lenear-Liston, their relative demeanors, and the inherent probability of each of their testimony, I find the testimony of Ms. Hollins and Mr. Lenear-Liston genuine and credible. Their testimony provided context and a coherent scenario for the April 9 meeting with Mr. Goodspeed. Moreover, many of their assertions were corroborated by the disinterested testimony of the union steward and the senior business manager.

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On the other hand, although I was impressed with Mr. Goodspeed's effort to recount the facts, I found his testimony about the April 9 meeting somewhat confusing, lacking in context, and improbable. Mr. Goodspeed provided confusing and often nonresponsive answers to questions he was asked. His assertion that he was discharged on April 9 is belied by the uniform testimony of Respondent's witnesses, including two union officials, that a corporate decision to discharge is multi-level. Not one instance of an immediately effected discharge is contained in the record. Moreover, the record is replete with evidence of Respondent's generally positive attitude toward Mr. Goodspeed's future with Respondent. Finally, it is undisputed that Mr. Goodspeed had previously complained to human resources about his instructor during his first training course. All witnesses agree that Mr. Goodspeed was questioned in human resources about that instructor and that no action was taken against him for making these complaints or for requesting a union steward during that session. In fact, his instructor was coached about the offending behavior.

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Upon entering a second training course with a new instructor, Mr. Goodspeed and others complained about the new instructor. On the same day the group made these complaints, Mr. Goodspeed was asked to come to human resources to provide information about the complaints. Mr. Goodspeed's account of this session is difficult to believe given the corporate investment in providing training to Mr. Goodspeed including the coaching program for instructors, Respondent's expressed need for his help on the phones, and the fact that another employee was questioned on the same day in human resources regarding the same instructor and was not disciplined or discharged. Thus, I find that Mr. Goodspeed resigned his employment with Respondent on April 9.

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Conclusions of Law

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1. Respondent NV Energy, Inc., Las Vegas, Nevada, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
  2. Respondent did not violate the Act as alleged in the complaint and, accordingly, the complaint is dismissed.

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Dated, Washington, D.C., November 5, 2009.

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Mary Miller Cracraft  
Administrative Law Judge

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