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Office of the Treasurer

AUG 06 2002

August 6, 2002

Ms. Tykie Tobin
Deputy Treasurer
National Gallery of Art
601 N. Pennsylvania Ave., NW
Washington, DC 20565

RE: Response of Fred Dodge to Letter of Proposed Removal Dated 7/15/02

Dear Ms. Tobin:

I have been retained by Fred Dodge to handle certain employment related matters including the response to the letter of proposed removal dated July 15, 2002, issued by Michael Giamber, Deputy Chief, Facilities Management of the National Gallery of Art. Subsequent to the issuance of the letter, and more particularly on July 30, Mr. Dodge was given until August 6 to respond, and the matter was reassigned to you as the deciding official. Mr. Dodge does, and will, contend the letter of proposed removal was issued in retaliation for his union responsibilities as well as his exercising his constitutional right to petition government for redress of grievance and his free speech rights. It is noted that both charges relate to stale complaints against Mr. Dodge.

Reasons 1 and 2 relate to a March 1, 2002, incident which was resolved within the week and, at best, was a misunderstanding that in no way compromised the security of the National Gallery of Art. Reasons 3 and 4 revolve around a discussion Mike Giamber had with Mr. Dodge on July 15, 2002, which concerns a claim made by Mr. Thomas some time before that date.

All four charges were generated by Mr. Thomas. More important, all four charges against Mr. Dodge were brought forth only after Fred Dodge wrote to Earl A. Powell, III, Director, National Gallery of Art, in which he complained that the National Gallery of Art had violated his and his son's rights under FMLA and specifically involved Mr. Thomas the instigator of the current removal action against Fred Dodge. A copy of this letter is attached as Exhibit 1. The charges also were



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subsequent to certain union complaints directed against the administration of the National Gallery. Mr. Dodge is vice president of the local union.

Copies of the letter to Mr. Powell were sent to Senators Mikulski and Sarbanes and the members of the United States House of Representatives from Maryland. In fact, Director Powell sent a letter to Senators Sarbanes dated March 27, 2002, in response to the Senator's letter of inquiry dated March 13, 2002. A copy of Mr. Powell's letter to Senator Sarbanes is attached as Exhibit 2.

It was only after receipt of the March 13 letter from Senator Sarbanes that the Gallery started to investigate the Thomas key incident. In fact, the investigation concerning Thomas' possession of the elevator key commenced on April 17, 2002, following a key audit involving Thomas on April 11 and a discussion between Louis Baquedano and Thomas the following day. Likewise, on May 21, Director Powell wrote to Senator Mikulski responding to her May 7 letter of inquiry. A letter from Mr. Powell to Senator Mikulski is attached as Exhibit 3. It was only after the receipt of the letter from Senator Mikulski that the National Gallery issued the letter of proposed removal.

Further, Mr. Dodge has also become aware of the fact that following receipt of the letter from Senator Mikulski, and more particularly on May 15, 2002, Kurt Sissons, Mike Giamber, and John Bixler met with Lloyd G. Self as a second interview of Lloyd Self for the position of electrical supervisor. At this meeting Mike Giamber reviewed the employees' roster. When Fred Dodge's name came up, Giamber stated Dodge was the union steward in the electrical shop and was "our problem child." They further stated Fred Dodge would not be around much longer. Even as of May 15 -- long before July 15 -- Lloyd Self was told "we already have something in the works for Mr. Dodge." A copy of a statement by Lloyd G. Self. A copy of a statement executed by Lloyd Self is attached as Exhibit 4. This proposed removal is clearly retaliation for protected union activity, the exercise of free speech, and the right to petition for redress of grievance.

Those involved have also, in retaliation, violated Fred Dodge's right of privacy by posting on a bulletin board which was in plain sight of National Gallery employees and contractors a "Security Alert" revealing Fred Dodge's name, birth date, social security number, and photo. A copy of this posting is attached as Exhibit 5. This unconscionable action could cause substantial harm to Dodge and should

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result in the disciplining of those responsible.

But, in any event, the proposed removal of Fred Dodge, which was issued on July 15, and the related action set forth in a July 16 letter from Giamber to Dodge barring him from Gallery premises (a copy of which is attached as Exhibit 6) only followed the congressional inquiry as to Dodge's FMLA complaint.

If, in fact, security was compromised, as claimed, the National Gallery had a duty to take action long before it did. It could have taken such action on or before the first part of March, 2002, at least four months earlier. This is proof that the proposed removal action is pretextual, and the actual bases for the proposed action are Dodge's complaints to members of Congress that the Gallery violated Dodge's FMLA rights as well as other protected activity.

In fact, the proposed letter of removal contains in a single paragraph statements which are patently inconsistent. It is stated that Dodge, when interviewed by Pinor on May 9, 2002, stated he was "unaware of any Gallery issued keys, such as elevator keys, missing from key rings." Yet, in the same paragraph, he states that Dodge had told Pinor on May 9 that "in April, 2002, Daniel Smith, Electrician Leader, told . . . [Dodge] something about Mr. Thomas being set up with regard to some missing keys."

There is no explanation as to why Brown's statements were believed and Dodge was not and how Brown's statements could constitute "clear proof" that Dodge had "detached [the] elevator key."

The proposed letter also states that Lowry "overheard" Dodge say he was "going to have Mr. Thomas' keys checked" even though it was clear that Lowry only "overheard an individual he believed to be" Dodge. No doubt, this is another example of clear proof on Mr. Giamber's part.

The letter of proposed removal is completely silent as to when the ID badge was returned or if it was secreted away. No doubt, it was because Dodge never hid the fact he had the badge but, instead, showed it freely around to his coworkers including Mr. Thomas, his supervisor. Mr. Dodge believed and still believes that he had permission to take the defective badge which never left the premises. Mr. Dodge categorically denies he had been given clear instruction from Mr. Reilly that he could

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not take the badge. In fact he returned the badge as soon as it was requested. This is hardly the fabric of a security concern. And this, again, demonstrates that the proposed removal is a pretextual.

With regard to the allegation that Fred Dodge went to Luis Baquedano informing him that he was thinking of resigning after being questioned by Thomas on March 5 about the ID badge. What actually occurred is that Dodge had already become concerned about his job status because of a prior reprimand by Thomas, and when Thomas questioned him about the ID badge Dodge concluded that Thomas was attempting to have him terminated and considered obtaining a job in the State Department. Dodge went to Baquedano and told him about his concerns and his belief that Thomas was using this to trump up a false theft charge against him.

In his conversation with Baquedano, in fact, Fred Dodge told him, "you know I'm no thief." Dodge told Baquedano that he was afraid the managers would put false information in his (Dodge's) file after he left. Dodge asked Baquedano for a letter stating his file was clear. Baquedano replied that he would offer him such a guarantee if Dodge would sign a waiver as "to the letter upstairs" referring to Dodge's FMLA claim as set forth in Dodge's letter to Powell regarding the FMLA violations.

What is of particular relevance with reference to the proposed punishment to be imposed on Dodge is that Thomas, who admittedly had a detached key and was in a supervisory capacity, only received a suspension. If there were a major breach of security, as claimed against Dodge, it would have also been true of Thomas.

Even if it could be concluded that there were some legitimate basis for disciplining Mr. Dodge, the proposed punishment far exceeds the penalty from the Standard Table. Based upon Sissons' and Giamber's statements to Self as long ago as May 15, 2002, it is apparent that the punishment was designed to get rid of a union official whom the Gallery found to cause embarrassment to its administration for its failures. This is underscored by the extent of the discipline administered to a supervisor, Mr. Thomas.

Finally, with regard to a 1997 letter of warning, the statement contained in the proposed removal letter is at best gratuitous and is designed only to prejudice the case since, admittedly, the instant action must be considered the first offense. See footnote

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2 contained in letter of proposed removal.

In truth, the timing as shown and other points made above demonstrate that the basis of the proposed termination is pretextual and is retaliation for Fred Dodge's union activities and expressing his constitutional rights of seeking a redress of grievance and free speech.

The First Amendment to the United Constitution protects the right of employees to speak freely and to petition openly for redress of their grievances. The First Amendment also protects employees from retaliation for doing so. *See Smith v. Arkansas State Highway Employees, Local 1315*, 441 U.S. 463 (1979); *Eaton v. Newport Bd. of Educ.*, 975 F.2d 292 (6th Cir. 1992); *Franco v. Kelly*, 854 F.2d 584 (2d Cir. 1988).

Respectfully,


Lee Boothby

Attachments

I, Fred Dodge, have retained Lee Boothby, attorney, to represent me in the proposed removal proceeding, and I have authorized him to prepare this written response to the proposed removal letter dated July 15, 2002. And this letter and attachment represent my written response to the proposed removal letter.

Dated: August 6, 2002


FRED DODGE

March 8, 2002

Mr. Fred Dodge
706 Latham Drive
Crownsville, MD 21032

Mr. Earl A. Powell III
Director National Gallery of Art
and Constitution Avenue, NW,
Washington, D.C. 20565

Dear Mr. Powell :

I have been employed as an electrician at the National Gallery of Art for over 9 years and I am the acting Vice President of AFGE Local 1831. In December of 2001 I applied for and was granted family medical leave under FMLA for purposes pertaining to my son's health. I have recently encountered a situation concerning the National Gallery of Art Personnel Department's use of FMLA medical records that not only concerns me but also disturbs me greatly.

I recently asked for and was denied use of FMLA leave from my manager. In the discussions I had with the National Gallery of Art Personnel Department over this issue it became known to me that my son's confidential medical certifications would be made available to any manger upon request. I advised Personnel that I found it absolutely absurd that my son's most sensitive and private medical information would be disclosed. I asked Personnel to act as a representative on my behalf and discuss with my manger what accommodations would apply in my son's case. Personnel argued that they could show my son's entire medical information to any manger. I subsequently advised Personnel I disagreed and that I was granting NO permission for the medically confidential information in that file to be revealed to anyone. Their lack of understanding concerned me so much I even contacted them a second time to reiterate that I was not allowing anyone to review my son's medical file.

Unfortunately, within a week of these conversations, I was called out of town due to the sudden death of my brother and was not able to further pursue the issue. Within a week of my return I was made aware that Personnel had given my son's file to my manger. In fact my manager was very intent on telling me he had reviewed my son's medical information, and this would include my son's diagnosis, the names of medications he took and any other medical notes the doctor had provided for purpose of applying for FMLA. My manager even said to me "Don't worry, I wouldn't say anything to anyone", acting as if he had some right to tell other employees this information but he was choosing not to. He initiated this conversation right in a common hallway near the lunchroom where other employees could and may have overheard.

This indicates to me that there has been no instruction as to the sensitivity and confidentiality of what was exposed in that file. The FMLA provides for these records to be treated with the utmost confidentiality, and I would have thought the National Gallery of Art would be most careful particularly when it involves a minor child. I would think that managers could be informed of the accommodations I have been granted for FMLA but not be able to access confidential medical information and particularly with no cause to do so.

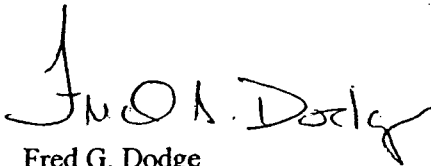
I am so deeply concerned that the NGA Personnel Department gave access of this confidential information to someone who is neither a doctor nor health care provider and therefore could not possibly provide any valid medical interpretation of the information. Especially when I had advised them on two occasions not to do so. I am further outraged that this manger would discuss this private and confidential information in an open area of the workplace.

I had never dreamed that by applying for FMLA I was also giving up my son's right to privacy or that I would be made to feel my son's medical information may be the next office gossip. Needless to say I will not be taking my son to work with me one day or attend any National Gallery of Art functions for I will never be sure of who will judge him unfairly. How could such a sincere law implemented for families, be used to violate the very one's it was intended to help.

Please contact the National Gallery of Art Personnel department on the behalf of our family and so many others that may have their children's most confidential medical certification information exposed and have them adhere to the stringent confidentiality requirements we should be provided through FMLA.

Thank you for your time and consideration.

Sincerely,



Fred G. Dodge
706 Latham Drive
Crownsville, MD 21032
Tel-410-923-2963

Similar letters are being sent to the following

Cc: The Honorable Barbara A. Mikulski
The Honorable Paul Sarbanes
Congressman Steny H. Hoyer
Congressman Robert L. Ehrlich
Congressman Wayne Gilchrest
Congressman Benjamin L. Cardin
Congresswoman Constance A. Morella
Congressman Albert R. Wynn
Congressman Elijah E. Cummings