



U.S. OFFICE OF SPECIAL COUNSEL

Memorandum

U.S. Office of Special Counsel
Report of Prohibited Personnel Practices
OSC File No. MA-16-4067

This report has been changed from its original version and some details have been withheld to protect confidential information, including the identity of the parties involved. All Freedom of Information Act (FOIA) and/or Privacy Act (PA) inquiries regarding this report should be referred to OSC via email at FOIArequest@OSC.gov.

INTRODUCTION AND SUMMARY

This report contains the investigative findings of the U.S. Office of Special Counsel (“OSC”) in File Number MA-16-4067, a complaint of prohibited personnel practices. This complaint arose from the noncompetitive detail of Detailee, an employee of the Department of Veterans Affairs (“VA” or “Agency”) Facility 1, to a higher-graded position at the Facility 2. OSC expanded its investigation to include a subsequent detail of Detailee 2 under circumstances similar to those surrounding Detailee’s detail.

As described in this report, OSC has concluded that VA officials violated 5 U.S.C. §§ 2302(b)(6) and (7), which prohibit unauthorized preferences and nepotism respectively.¹

In May 2016, Detailee, a GS-9, Voluntary Specialist at the Facility 1, where she was a member of the bargaining unit, was selected—without competition—to serve a 120-day detail to the position of Acting Chief of Voluntary Services, GS-12, at Facility 2. Her detail to higher-graded duties violated mandatory provisions of the American Federation of Government Employees (“AFGE”) Collective Bargaining Agreement (“CBA”) that required competition and a temporary promotion. The detail was coordinated and executed without involvement of the human resources (“HR”) offices of Facility 2 or Facility 1. Once HR personnel became aware of the detail, however, Human Resources Officers (“HRO”) of both facilities and other HR specialists persistently opposed it as improper. A Veterans Affairs Office of Human Resources Management (“OHRM”) specialist in VA’s central office also cautioned against it. Official A, Facility 2’s union president, confirmed that the detail violated mandatory provisions of the CBA.

Despite CBA restrictions and HR’s opposition, Detailee served her detail as Acting Chief of Voluntary Services at Facility 2 from late May to early August. The VA, however, failed to execute an SF-52 Request for Personnel Action (“SF-52”), as required by the VA Handbook, to document the detail.²

At the time of the detail, Detailee’s husband, Senior Official D, was also serving on a detail at the Facility 2 as its Acting Deputy Director. Senior Official D’s permanent

¹ Veterans Integrated Service Network (“VISN”) #, which includes both the Facility 2 and Facility 1 hospitals, convened an independent fact-finding that largely exonerated the VA. Exhibit (“Exh.”) 33. OSC, however, finds that the VISN investigation failed to address many of the material issues and much of the evidence addressed in this report. As background, the VISN investigation began in August 2016, after it received a non-case referral from the VA Office of Inspector General (“OIG”) regarding an allegation of prohibited personnel practices arising from Detailee’s detail. Exh. 32. According to the referral, the complaint alleged that senior executives of the Facility 2 improperly coordinated and facilitated the detail. *Id.* After receipt, then-Acting Human Resources Officer for VISN # Official B allegedly received permission from the VA Office of Accountability Review (“OAR”) to investigate the allegations. Official C, the OAR investigator Official B said she spoke to, told OSC she had no recollection of speaking with Official B about the referral. She, however, allowed that OAR could have permitted the VISN to investigate the allegations. Exh. 57.

² For personal reasons, Detailee’s detail ended in early August 2016, short of the 120 days provided for in the authorizing detail memorandum.

position is Human Resources Officer for VISN #, which includes both the Facility 2 and Facility 1 hospitals. In contravention of statutory and regulatory prohibitions against involvement in a spouse's employment matters, he recommended and advocated for his wife's advancement through her detail to a higher-graded position.

In particular, the evidence showed that Senior Official D identified Detailee for the Acting Chief of Voluntary Services position. He conveyed her qualifications to other Facility 2 executive officers. He told them that he would personally benefit from her detail because she would then rejoin him at the same facility. After the executives approved the detail, he asked a personnelist to prepare an SF-52 (Request for Personnel Action) and explained that the document would help his wife avoid State 1 state income taxes. (Facility 2 is in State 2, which has no personal income tax.) Then, once he learned that local HR officials deemed the detail illegal, he voiced his disagreement and had a colleague seek a second opinion from an expert at OHRM in Washington, D.C. When the OHRM expert also raised concerns that the CBA likely prohibited the detail, Senior Official D contacted Official A, the Facility 2 union president, and reported to his management colleagues that she had no problem with the detail. Official A, however, testified to OSC that while Senior Official D mentioned his wife's detail to her, he never told her that Detailee was a bargaining unit employee or that CBA provisions applied to the detail. Had she learned these basic facts, she would have objected to the detail on the basis that it violated mandatory CBA provisions that required competition and a temporary increase in pay. Notwithstanding Official A's contrary testimony, senior Facility 2 officials have represented in testimony that the union approved Detailee's detail.

The other Facility 2 senior executives who approved the detail—Acting Director Senior Official E, Assistant Director Senior Official F, and Deputy Director of Patient Care Services Senior Official G—all learned of HR's concerns about the detail's validity soon after they signed a memorandum for the record documenting their approval. In particular, Official H, the Facility 2 HRO, repeatedly expressed to them her opposition to the detail, based on both the CBA and Senior Official D's involvement. Notwithstanding these concerns, these Facility 2 leaders failed to ensure that the detail complied with applicable rules or to prevent Senior Official D from advancing his wife's employment prospects. Although they asserted in testimony that Senior Official D recused himself from involvement in the detail, they never discussed such a recusal with him. Moreover, the evidence demonstrated that these three officials had knowledge that Senior Official D remained intimately involved in the process to effect his wife's detail.

Shortly after the end of Detailee's detail, the Facility 2 requested that Detailee 2, another GS-9 employee from Facility 1, be detailed to the Acting Chief of Voluntary Services position. Senior Official D and Senior Official G worked together to execute this detail. In doing so, they again committed many of the same violations that occurred in Detailee's detail, over the objections of HR personnel.

In Section I, OSC details the factual background of this case. In Section II, OSC analyzes Senior Official D's violation of the anti-nepotism provisions of 5 U.S.C. §

2302(b)(7) in his advocacy on behalf of his wife; the violations by Senior Official F, Senior Official G, and Senior Official D of 5 U.S.C. § 2302(b)(6), in granting unauthorized preferences to Detailee for her detail to the Acting Chief position; and the violations by Senior Official D and Senior Official G of 5 U.S.C. § 2302(b)(6), in granting unauthorized preferences to Detailee 2 for his detail to the Acting Chief position. In Section III, OSC recommends that the VA take appropriate corrective and disciplinary actions.³

I. FACTUAL FINDINGS AND ANALYSIS

Detailee has been a GS-9 Voluntary Specialist at the Facility 1 since April 2015. Exh. 58. Senior Official D has been the HRO for VISN # since August 2012. Exh. 41. As the VISN HRO, he oversees the personnel functions of numerous VA facilities, including the Facility 1 and Facility 2 hospitals. *Id.* From January 2016 to January 2017, Senior Official D served a one-year detail as the Acting Deputy Director of the Facility 2. *Id.* During that time, he was a member of the Facility 2's Pentad leadership—the top five executive leaders at the hospital. In addition to Senior Official D, the Pentad consisted of Acting Director Senior Official E, Assistant Director Senior Official F, Deputy Director of Patient Care Services Senior Official G, and Acting Chief of Staff Senior Official I.⁴ Senior Official F, Senior Official G, and Senior Official D all reported directly to Acting Director Senior Official E.

A. Detailee's Selection as the Acting Chief of Voluntary Services.

The Facility 2's Voluntary Services organizes and coordinates the work of approximately 1,200 volunteers at the facility and processes donations to the facility. The service chief administers, coordinates, plans, and implements a Voluntary Service Program and supervises four specialists and one administrative support specialist.⁵ The last permanent chief of that unit retired in the fall of 2015. Subsequently, the VA filled the position with various acting chiefs, all of whom held permanent GS-12 positions. In the spring of 2016, Facility 2 selected a permanent replacement through competition, but the candidate declined. Until late May 2016, Voluntary Services reported to Assistant Director Senior Official F; thereafter, a reorganization placed Voluntary Services under Senior Official G, the Deputy Director of Patient Care Services.

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⁴ OSC found no evidence that Senior Official I had any meaningful involvement in the details in question. Any reference to the "Pentad" herein excludes Senior Official I.

⁵ The position description for the Chief position provides that the Chief supervises four specialists, but at the time of the details at issue in this report, Facility 2's Voluntary Services had only two specialists.

In early May 2016, a vacancy occurred when the Acting Chief of Voluntary Services, Official J, stepped down. During daily morning report meetings, the Pentad discussed the need to fill the vacancy. Exhs. 37, 39. The only specific candidate mentioned in the meetings was Detailee. Exhs. 37, 39.

Senior Official G testified that Senior Official D identified Detailee for the Chief position. Exh. 39.

Senior Official E, on the other hand, claimed responsibility for identifying Detailee as a candidate. Exh. 40. Senior Official E explained to OSC how he identified her. He said that in 2014 he met her and her husband in the VISN # parking lot and learned that she was a Voluntary Specialist at Facility 1. *Id.* He said he specifically remembered the encounter because it occurred during his detail to the VISN office, which was from May 2014 to November 2014. *Id.* Senior Official E testified that based on the 2014 chance encounter, he suggested to Senior Official D in May 2016 that he determine whether his wife would be interested in the opportunity to become acting Chief of Voluntary Services at Facility 2. *Id.* OSC determined, however, that Detailee did not become a Voluntary Specialist at Facility 1 until April 2015, after Senior Official E's purported parking lot encounter. Exhs. 42, 58. Whatever Senior Official E's alleged reason was for allegedly approaching Senior Official D about his wife in 2016, it could not have been based, as he claimed, on his 2014 encounter with Senior Official D and Detailee.

In any event, within days after the initial identification of Detailee as a candidate, Senior Official F drafted a memorandum requesting that the Facility 1 permit Detailee to serve as the Acting Chief of Voluntary Services at Facility 2. Exh. 1. On May 16, 2016, the executive leaders from both facilities—Senior Official F, Senior Official G, Senior Official K, the Deputy Director at Facility 1, and Official L, the Chief of Voluntary Services at the Facility 1—signed the memorandum detailing Detailee to the Acting Chief position, with an effective date of May 22, 2016.⁶ *Id.* Prior to the signing of the memorandum, no one from HR at either facility had been involved in or informed of the detail. Exhs. 2, 9. While the authorizing memorandum is silent on Detailee's pay, witnesses testified that she was to remain at her GS-9 pay level without a temporary promotion to GS-12. Exhs. 37, 39. This fact is material because the CBA required that bargaining unit employees detailed to higher-graded positions for more than 10 days be compensated through temporary promotions. Exh. 62.

Senior Official E, Senior Official F, and Senior Official G acknowledged knowing that Senior Official D was married to Detailee when they considered and approved her detail. Exhs. 37, 39, 40. They also testified that they understood it would have been improper for Senior Official D to be involved in his wife's detail to the higher-graded position. Exhs. 37, 39, 40. For his part, Senior Official D claimed he recused himself to avoid the appearance of impropriety, and Senior Official E, Senior Official F, and Senior Official G represented the same in their testimony. Exhs. 37, 39, 40, 41.

⁶ The memorandum provided that the detail was to be for 120 days, but incorrectly noted that the detail would run from May 22, 2016, to October 1, 2016, a slightly longer time frame. Exh. 1.

The evidence showed, however, that Pentad members did not take any measures to ensure Senior Official D's alleged recusal from actions and decisions to implement the detail. Exhs. 37, 39, 40, 41. Moreover, the claim of recusal was inconsistent with strong contradictory evidence that he was present, as a Pentad member, for the group's discussions and that he played a material role in the detail's implementation.

For example, at one of the Pentad meetings when the subject of the vacancy in the Chief position arose, Senior Official G testified that Senior Official D described for the group his wife's qualifications, including her experience and her ability to make decisions. Exh. 39. Only Senior Official D could have addressed these subjects, since no other Pentad member had relevant knowledge of her qualifications or experience. Further, according to Senior Official G, Senior Official D told the Pentad that it would be "a good thing for his personal life" to have his wife in Facility 2 and that the Facility 1 could afford to allow one of its employees to work in Facility 2. *Id.*

The Pentad thus relied exclusively on Senior Official D's representations in considering his wife's candidacy. This conclusion is buttressed by the absence of any credible evidence that the Pentad attempted to vet Detailee's qualifications before selecting her, apart from hearing Senior Official D's description of his wife's qualifications. Senior Official G, who was the new supervisor over the position, admitted that Detailee was "simply treated as qualified" by the Pentad members. *Id.* The evidence supported Senior Official G's representation. Detailee was never asked to apply for the position or to submit a resume or other materials to demonstrate her qualifications for the Acting Chief position. Exh. 42. OSC found no evidence that anyone interviewed Detailee. Nor did OSC find evidence of draft interview questions, candidate answers, or documents that demonstrate a qualitative evaluation of the candidate's qualifications. Furthermore, the candidate's supervisor at the Facility 1 said he was neither asked for nor provided information about her qualifications in the selection process. Exh. 48.

At most, Senior Official F and Senior Official G, according to their own testimony to OSC, spoke to Detailee around the time the Pentad selected her. Exh. 37. Senior Official F characterized her conversation with Detailee as a vetting of the candidate. OSC, however, could not corroborate her testimony. Senior Official F could provide no specific details of her so-called "vetting" conversation with Detailee. Exh. 37. Detailee affirmatively denied she ever discussed her qualifications for the chief position with Senior Official F. Exh. 42. Rather, Detailee told OSC that she spoke to Senior Official F only about the dates of her upcoming detail. *Id.* And Senior Official G explicitly said he did not vet the candidate's qualifications because he accepted that Detailee was qualified based on the discussions among the Pentad members. Exh. 39.

Detailee's selection by Facility 2 was communicated to the Facility 1 during an Executive Leadership Council meeting that occurred before her detail. Senior Official K, the Deputy Director of the Facility 1, testified that Senior Official G informed her that Detailee had been "selected" to serve as the Acting Chief of Voluntary Services. Exh. 47. Based on this conversation, Senior Official K believed that Detailee had been selected competitively, although no one represented that to her. *Id.* She then relayed to

Official L, Detailee's supervisor and the Chief of Voluntary Services at the Facility 1, that Facility 2 requested Detailee as its Acting Chief. *Id.* Official L understood that the decision was final and the only remaining issue was to determine the exact dates of the detail. Exh. 48. Senior Official K clarified to OSC that, at the time of the detail, she did not know that Detailee was a bargaining unit employee. After OSC informed her of that fact, she said that the CBA prohibited the detail to a higher-graded position without competition. Exh. 47.

B. CBA Provisions Applicable to Detailee's Detail.

OSC's investigation revealed that various CBA provisions applied to Detailee's detail. First, Article 23, Section 6.C required "[c]ompetitive procedures" for "any selection for details of more than 60 days to a higher-graded position." Detailee's detail to a higher-graded position was for 120 days, so competitive procedures applied.

Article 23, Section 8 spelled out the competitive procedure requirements. That section read, "All positions to be competitively filled in the bargaining unit by actions covered by this article shall be posted." More specifically, competitive procedures mandated posting of positions in the bargaining unit and giving employees at the facility priority consideration. Only after considering its own employees could the Facility 2 consider candidates from another facility. And even when it considered non-facility candidates, consideration must be based on a posting of the position, not handpicking. Exh. 62. As discussed above, Detailee was handpicked for her detail without any competition.

Second, Article 12, Section 2.A required, "Employees detailed to a higher graded position for a period of more than 10 consecutive days must be temporarily promoted." Because Detailee was detailed for 120 days, she should have received a temporary promotion. But she could not have been legally promoted under this section, even if Facility 2 had followed competitive procedures. By regulation, employees cannot be promoted unless they meet all qualification requirements, including any time-in-grade requirements. Exhs. 10, 62. As a GS-9 Specialist, Detailee had not served at least one year at the next lowest grade level (GS-11) for promotion eligibility to GS-12.

Third, Article 12, Section 2.B imposed a competition requirement as well: "[T]emporary promotions in excess of 60 calendar days shall be filled through competitive procedure under Article 23." As noted, such procedures were not implemented.

Senior Official E and Senior Official F asserted that the process of filling the Chief position accelerated in May 2016 because Facility 2 had an urgent need for a new Chief to organize an important Volunteer Banquet at the hospital. Exhs. 37, 39. The evidence did not support the stated rationale. Using competitive procedures would have caused minimal delay to the goal of organizing a banquet. To fulfill the competition requirement, Facility 2 only had to announce the opportunity internally, qualify

applicants, and make a selection. Because of competitive rules, however, it could not have selected Detailee for the position.

Moreover, the selection of Detailee casts doubt on the purported rationale. When the Pentad selected her, it knew she had scheduled a month's leave to start within a few weeks. Exh. 37. Indeed, she left on vacation shortly after she began her detail as Acting Chief. In addition, while Senior Official F and Senior Official E stressed to OSC the urgency of having the Acting Chief on board to organize the banquet, Detailee testified that she never considered the task a priority during her tenure as Acting Chief, a position supported by her supervisor, Senior Official G. Exhs. 39, 42. Further, Detailee's predecessor, Official J, testified that management had already decided to postpone the banquet until Facility 2 selected a permanent chief. Exh. 52. Finally, the evidence showed that nobody attempted to organize a banquet for the volunteers during Detailee's detail. Exh. 42. Even Detailee's successor, Detailee 2, did not attempt to do so.

Facility 2 leaders also suggested to OSC that they met the competition requirement because they inquired with two Voluntary Specialists at Facility 1 about their interest in the Acting Chief position and neither was interested. Exh. 5. OSC found two problems with this explanation. First, as discussed, Article 23 of the CBA required formal competition for details to higher-graded positions in excess of 60 days, including a posting. Informally asking two individuals if they were interested would not satisfy these mandatory competition requirements. Second, one of the two specialists, Official M, told OSC that he was never asked to serve in the Acting Chief role and that he would have remembered if someone had. Exh. 51. Official J testified that she personally asked Official M and Official N, the other Specialist, to accept the Acting Chief position, and they both declined. Exh. 52. OSC found no evidence that documented the declinations.

C. Senior Official D's Role in Implementing the Detail.

Senior Official D asserted to OSC that he recused himself from his wife's detail. The evidence, however, showed that his involvement continued, even after he provided the Pentad with positive information supporting his wife's selection. For example, on May 16, 2016, Detailee—who testified that Senior Official D never told her that he had to recuse himself from her detail—emailed her husband and asked who could submit the SF-52 for her detail. Exh. 14. Senior Official D forwarded the email to Facility 2 HR specialist Official O and asked her to “submit” it. *Id.* The next day, on May 17, 2017, Senior Official F emailed Senior Official D to ask whether an SF-52 was required for the

detail;⁷ Senior Official D responded, “[T]he detail will allow for here [sic] to change duty stations which will stop State 1 state income tax.”⁸ Exh. 4.

Senior Official F forwarded Senior Official D’s response to Official P, an HR Staffing Specialist at Facility 2, and to Official Q, Senior Official F’s assistant, telling them to “touch base on this.” *Id.* Official Q and Official P met to discuss Detailee’s detail on May 25, 2016. Exhs. 43, 44. Official P informed Official Q that HR had concerns regarding the lack of competition and the absence of documents showing Detailee’s qualifications to serve as the Acting Chief. Exh. 44. Immediately after the meeting, Official P sent an anxious email to Official R, her immediate supervisor, and to Official H. Exh. 5. She wrote in pertinent part:

Official Q spoke with Senior Official F, and wanted to clear up what Senior Official D wanted to do. He wants to detail the employee Detailee from Facility 1, no money just move her over as a GS-9, and have her act in the GS-12 position. I advised we cannot do that; you cannot be a GS-9 doing the work of a GS-12. Senior Official F told Official Q if we can’t do it we need to talk to Senior Official D.

...

Official Q told me to talk to Senior Official D. She reminded me this is his wife, and we have to get this position taken care of. (Emphasis added.)

Exh. 5. In their OSC testimony, Official P and Official Q confirmed the accuracy of this email. Exhs. 43, 44. Official Q further elaborated that Senior Official F had told her, “[E]verything is in Senior Official D’s court,” “Senior Official D knows what’s going on,” and “Senior Official D is handling it.” (Emphasis added). Exh. 43. Official Q confirmed that Official P was to talk to Senior Official D, if there were any issues. *Id.* Official P testified that throughout the process she was reminded multiple times that Detailee was Senior Official D’s wife. Exh. 44. Official P did not process the SF-52 as requested, because she had concerns about the detail’s legality.

⁷ Both Senior Official F and Senior Official D downplayed the significance of his email instruction to Official O. They denied that an SF-52 was needed to effect a detail, although both sought to have one prepared for Detailee’s detail. VA rules unambiguously required an SF-52 to document Detailee’s detail. Section 13(c) of VA Handbook 5005 provides that “formal details will be initiated by an SF 52, Request for Personnel Action, and forwarded to the Human Resources Management office for action.” Chapter 2, Section 13(b) defines a “formal detail” as a detail within VA of 30 days or longer. All HR officials interviewed testified that an SF-52 was necessary to document the detail. Indeed, contrary to Senior Official F’s testimony that SF-52s are rarely processed in inter-facility details, in all 21 inter-facility details where a Facility 2 employee was detailed to a different facility, the Facility 2 processed SF-52s according to agency records. Exh. 17. By giving instruction for the submission of an SF-52, Senior Official D attempted to fulfill an essential requirement to implement Detailee’s detail.

⁸ The state of State 2 has no income tax, whereas State 1 does. Detailee testified that it was common knowledge that Facility 1 employees who are detailed to a State 2 facility can avoid paying the State 1 state income tax for the duration of the detail. Exh. 42. OSC obtained an email where she asked HR about avoiding the State 1 state income tax after she returned to Facility 1. Exh. 21.

D. HR Offices from Both Facilities Raise Concerns.

Around the time of the Official Q-Official P meeting on May 25, HR specialists in the Facility 1 also learned of the detail. Official L, Detailee's supervisor, asked Official S, an HR specialist in Facility 1, to process an SF-52 for Detailee's detail to Facility 2. Exh. 7. Official S resisted. She told Official L, Senior Official F, and Facility 1 HRO Official T by email that "without having knowledge of the position and recruitment details, I don't feel comfortable processing this action." *Id.* Official T asked Official H, her counterpart at Facility 2, about the action. Exh. 2. But Official H had no helpful information to offer either, nor did anyone else in the Facility 2 or Facility 1 HR departments. *Id.* Because the HR staff normally processed inter-facility details, the absence of HR participation and merit competition alarmed Official T. Exh. 2.

Facility 1's HR office asked Official L to produce supporting documents, including documents from the selection process. These were necessary for HR to determine whether the detail complied with applicable procedures, including merit competition and minimum qualification requirements. Because she received no response, Official T declined to process the SF-52. She told OSC she "did not feel comfortable signing off" without "the necessary documents." Exh. 36. She then checked with Senior Official U, the Director of the Facility 1. *Id.* Senior Official U advised her to wait to see what documents would be forthcoming. *Id.* Facility 1's HR received no documents and performed no more work on the detail. *Id.*

Meanwhile, Facility 2 HRO Official H continued to press Senior Official E and Senior Official F for more information to support Detailee's detail. When Official H received Official P's May 25 email, she became alarmed by Senior Official D's role in facilitating his wife's detail. She also noted that the detail deviated from normal agency practice and tried to intervene to stop the action. Exhs. 3, 7.

On May 25, 2016, Official H emailed Senior Official E, her Acting Director, informing him of the Official Q-Official P meeting and attaching Official P's email describing Senior Official D's role in the detail. Exh. 5. Official H followed up by phone with Senior Official E the same day to urge immediate action to address possible prohibited personnel practices. *Id.* Also the same day, Official H informed Senior Official F that the detail needed to "go through the Competitive process to allow for open competition." Exh. 3. She said in her email, "Facility 2 needs to determine if the employee is qualified." *Id.* This was important because of serious doubts about whether Detailee, a GS-9, could qualify for the GS-12 position. This could only be addressed after evaluating her qualifications.

As the HR staff learned more about the detail, three concerns became paramount: (1) Detailee was being detailed to a higher-graded position without competition, potentially in violation of the CBA; (2) HR was not consulted; and (3) Detailee's husband appeared to be involved in her detail.

The first concern over the lack of competition centered on Detailee's bargaining unit status, which, as discussed above, required that the detail be competed to comply with CBA. Exhs. 7, 9. HR's second concern about lack of consultation became manifest when it learned the selection process deviated from Official Y practice. Exhs. 4, 7, 9. HR specialists at both Facility 1 and Facility 2 testified that they were normally involved in inter-facility details because of the coordination necessary to prepare the SF-52 and resolve responsibility for the detailee's salary and travel expenses. Because this particular action could only be taken after internal competition, HR also would have had to oversee an internal announcement and a merit selection. Finally, Senior Official D's involvement amplified HR's concerns. As HR specialists, they knew that the anti-nepotism statute and other agency rules prohibited his involvement.

Notwithstanding HR's objections and the absence of documentary support to process the detail, Detailee began her detail as Acting Chief of Voluntary Services on or around May 22, 2016, thereby joining her husband at Facility 2. Exh. 6.

One issue left undecided by the ad hoc process to detail Detailee to the Acting Chief position was who would pay her salary and travel expenses. The leadership of Facility 1 and Facility 2 had different understandings. Senior Official F believed that Facility 1 would continue paying Detailee's salary, but that Facility 2 would pay her travel expenses. Exh. 37. Senior Official K and Official L, who had Facility 1 perspectives, believed that Facility 2 would pay both her salary and expenses, as it was the hospital benefitting from the detail. Exhs. 47, 48. No one, however, recalled discussing financial responsibility with their counterparts. Ultimately, Facility 1 continued to pay Detailee's salary without reimbursement from Facility 2 and Facility 2 reimbursed her travel and per diem expenses.⁹ Exh. 53.

E. Potential Problems with the Detail Continue to Surface.

Although Facility 2 leaders became aware of HR's substantive concerns, they took no corrective measures. During at least one Pentad meeting, Official H's objections, in particular, were discussed. Senior Official I testified that she recalled Senior Official E and Senior Official D expressing surprise over those objections. Exh. 55. Senior Official E, who had acknowledged receiving Official H's email questioning the propriety of Senior Official D's participation in his wife's detail, testified that he never asked Senior Official D about his role, even after reading Official H's email. Exh. 40. When OSC asked why he did not, he simply said, "That's a good question," adding that he "should have talked to Senior Official D." *Id.*

In addition to the Pentad discussion of Official H's concerns, Senior Official F met with Senior Official D to discuss HR's opposition to the detail, another act inconsistent with her assertion that Senior Official D had recused himself. According to Senior Official F, Senior Official D disagreed with Official H, stating, in effect, "Why is

⁹ Detailee's per diem payment, according to Official V, then-Chief Financial Officer of the Facility 1, should have been reduced to 55% of the full rate because she was effectively on a long-term detail. Exh. 53. For reasons unknown, no reduction occurred. Exh. 22.

there an issue?” She said he told her, “This shouldn’t be an issue.” Exh. 38. He recommended instead that Senior Official F get another opinion from Official W, an HR Specialist at VA’s OHRM. Exh. 37. Accordingly, Senior Official F worked with Official X—who reported to Senior Official D and Senior Official G—to draft questions for Official W. Exh. 8. On June 3, 2016, Official X emailed Official W, asking for her professional opinion about detailing Detailee, a GS-9 candidate, to a GS-12 position for 120 days without a temporary promotion or competition. Exh. 9. While emails indicate that Official X and Senior Official F worked together to draft the email to Official W, Official X represented in his email that he was asking on Senior Official G’s behalf. Exh. 9.

On June 7, 2016, Official W responded, making three points:

- First, according to the VA Handbook, an employee may be detailed to a higher-graded position for less than 120 days without meeting qualifications requirements.
- However, if the employee is in a bargaining unit, the detail must comply with the CBA, which requires that a bargaining unit employee be temporarily promoted when detailed to a higher-graded position for more than 10 days. And, in that case, all qualifications requirements for promotions would apply in implementing the detail/promotion.¹⁰ Official W specifically noted that because Detailee was a bargaining unit employee, “she may not be eligible for the position.”
- Lastly, Official W noted that Detailee shared the same last name as the VISN # HRO and underscored the importance of handling the case “in a manner that is consistent with Merit Systems Principle to avoid the mere appearance of committing a Prohibited Personnel Practice.” *Id.*

In addition to making these three points, Official W emphasized multiple times in her email that “it is extremely important that the designated HR office is involved” in coordinating the detail. *Id.* Even though Official X had not included Facility 2 HRO Official H in routing his initial email to Official W, Official W added Official H as a recipient in her response email to Official X. *Id.*

After receiving Official W’s response, Senior Official E testified that he then asked Senior Official D whether he had been involved in facilitating the detail. Exh. 40. According to Senior Official E, Senior Official D “assured Senior Official E that he was not involved,” which satisfied Senior Official E, who took no further action. OSC gives Senior Official E’s testimony on this issue little weight. The evidence showed that more likely than not he knew of Senior Official D’s involvement and participation based on Senior Official D’s comments about his wife’s qualifications during the Pentad meetings. He had also read an email from Official H evidencing Senior Official D’s continued involvement. Exh. 5. Moreover, Senior Official D himself recalled no such questioning by Senior Official E. Exh. 41. In any event, neither Senior Official E nor anyone else

¹⁰ Many informed witnesses, including Facility 2 union president Official A, Facility 1 Deputy Director Senior Official K, various local HR staff, and OHRM Specialist Official Y, understood that the CBA prohibited Detailee’s detail. Exhs. 10, 45, 47.

took any action to ensure that Senior Official D did not advance his wife's prospects for the detail.

With new support from Official W—who confirmed that the CBA prohibited Detailee's noncompetitive detail to a higher-graded position—Official H continued to press Facility 2 to cancel the detail. On June 10, 2016, she reported to other HR specialists that she had provided “several recommendations that included ending the detail assignment to the Acting Chief of Voluntary Services. This detail/reassignment should not have taken place in this matter,” she wrote. Exh. 7. In particular, she told Senior Official F the same day, “In light of the concerns I reviewed with you, in addition to the guidance provided on May 26, 2016 and the following VA-Office of Human Resources Management guidance [from Official W] . . . , please advise if senior leadership is going to end the detail assignment for Detailee.” Exh. 11. Senior Official F responded that she would speak with Senior Official G and Senior Official E. *Id.*

On June 13, 2016, over three weeks after Detailee's detail had already commenced, Senior Official F finally emailed Senior Official G to inform him that the detail to Acting Chief could not continue. She wrote:

I . . . spoke with Senior Official E regarding Detailee. . . . Basically, since she is bargaining [sic], we cannot have her acting as chief without competition. Option A is to send her back to Facility 1. Option B is to detail her to a GS-9 Voluntary Service Specialist position.

Exh. 16. The next day, according to Official H's contemporaneous report of contact, Senior Official F acknowledged to Official H that she did not execute the detail correctly and had merely followed “her bosses' instructions.” Exh. 12. She then informed Official H that Detailee would be detailed as a Voluntary Specialist (rather than as the Acting Chief). *Id.*

No evidence indicates, however, that Detailee served as a Specialist in her detail. The record shows that despite Senior Official F's representations to Official H, Detailee served as the Acting Chief of Voluntary Services throughout her detail to Facility 2. For example, Detailee signed her emails as “Acting Chief” throughout her detail. She updated her resume—submitted as part of a job application—to show a 120-day detail to Acting Chief of Voluntary Services.¹¹ Exhs. 58, 59. Moreover, on July 18, 2016, Facility 2 sent a facility-wide email announcing Detailee's role as Acting Chief. Exh. 13. Lastly, the Facility 2 Voluntary Specialists understood that Detailee served as their Acting Chief throughout her tenure there. Exh. 61.

¹¹ Contrary to what she wrote in her resume, Detailee did not serve 120 days as the Acting Chief. Shortly after her detail started, she began her extended leave. And a few weeks after returning from her leave, she had to return to Facility 1 for personal reasons. Exh. 42. Her actual tenure in Facility 2 thus barely exceeded one month. But because no SF-52 documented the beginning and end dates of her detail, her exact dates of detail were never reduced to writing.

F. Agency Officials Claim AFGE Agreed to the Detail.

The only explanation for why Detailee continued in the Acting Chief position is the Pentad's assertion that the union approved her detail to the Acting Chief position at some unidentified time. Because the technical barriers to the detail were CBA requirements, management asserted that if the union consented, Detailee could legally serve in the Acting Chief position, notwithstanding the CBA's prohibitions.

Various agency officials asserted to OSC that the union consented to Detailee's detail at some point. This assertion, however, was undermined by internal inconsistencies, improbabilities, and contradictions. For example, Senior Official E claimed that Senior Official F spoke with the union president, Official A, who supposedly had no objection to the noncompetitive detail of Detailee. Exh. 40. Senior Official F, however, testified that it was Senior Official G who spoke to the union president and learned she had no issue with the detail. Exh. 37. Senior Official F buttressed her testimony with an email she sent that stated, "Senior Official G finished the detail process by speaking to AFGE about the detail. They concurred with the assignment." Exh. 18.¹² Senior Official G, however, testified unequivocally that he never spoke with Official A about Detailee's detail and that he believed Senior Official F may have been the one who talked to the union. Exh. 39. These inconsistencies and contradictions presented insurmountable problems for OSC in trying to credit the Agency's claim that it received a union waiver.

In an attempt to untangle the inconsistent and conflicting assertions, OSC interviewed Official A, the local union president. At her first OSC interview, Official A said the only person she spoke to about Detailee's detail was Senior Official D. Exh. 45. She testified that Senior Official D approached her in the parking lot one day in May or June of 2016 and told her that his wife was being detailed to the Acting Chief position because of a desperate need to fill a position no one in Facility 2 wanted. *Id.* Furthermore, in that first OSC interview, Official A specifically denied she ever spoke with Senior Official F, Senior Official G, Senior Official E, or anyone other than Senior Official D about Detailee's detail. *Id.* Likewise, Senior Official E, Senior Official G, and Senior Official F each admitted to OSC that they did not talk to the union, corroborating Official A's testimony. Exhs. 37, 39, 40. OSC therefore could only conclude from the cumulative testimony of Senior Official E, Senior Official F, Senior

¹² The timing of Senior Official F's email raises questions regarding her motives for sending it. She wrote this email to Senior Official E, Senior Official G and Senior Official D on September 28, 2016, over a month after Detailee had already returned to Facility 1. By inference, a plausible explanation for the peculiar timing of the email was recently filed complaints with OIG and OSC that challenged the legality of Detailee's detail. As provided above in fn. 1, the VA OIG issued a non-case referral in response to allegations of prohibited personnel practices surrounding Detailee's detail on August 24, 2016. The referral summarized the nepotism complaint and was distributed to the VA Facility 2 OIG Action Group, which included Senior Official E, Senior Official G, Senior Official D, and Senior Official F. Exh. 32. Only when seen as a reaction to these complaints does the timing of Senior Official F's email make sense. She could not explain the purpose of the email, except to allow that it may have been in response to a fact-finding investigation regarding Detailee's detail. Importantly, Senior Official D's inclusion in Senior Official F's September 2016 email also further undermines her assertion of his recusal. If he had recused himself, there would have been little reason to include him on the email.

Official G, and Official A that Senior Official D was the only person to talk to Official A about Detailee's detail.

When OSC questioned Senior Official D about the union's alleged consent, he acknowledged talking to Official A about the Acting Chief. He claimed, however, that he discussed only the later detail of Detailee 2, who was selected to succeed his wife as Acting Chief at Facility 2. Senior Official D denied talking to Official A substantively about his wife's detail, except as background information. Official A's first OSC interview supported Senior Official D regarding the fact of their meeting, but she contradicted his assertion that the two discussed the Detailee 2 detail.

Second, the union never gave any approval of the detail as the Facility 2 leaders asserted. Leaving aside the contradictions among agency witnesses regarding who supposedly spoke to the union, no agency witness affirmatively testified to having personal knowledge of a discussion on the legality of Detailee's detail with Official A or with any other union official. Consistent with that evidence, Official A denied opining that the detail complied with the CBA. Nor could she have, inasmuch as she did not learn about the basis for the controversy until her first OSC interview long after the event. Exhs. 45, 46. According to Official A, neither Senior Official D nor anyone else mentioned the important fact that Detailee was a bargaining unit employee or that she was a GS-9 trying to fill a GS-12 position. *Id.* Likewise, she unambiguously denied that her conversation with Senior Official D included a discussion of the CBA. *Id.* She testified that if she had been given the pertinent facts, she would have opposed the detail because (1) the CBA required a bargaining unit employee to receive a temporary promotion if detailed to a higher-graded position for more than ten consecutive days; (2) Detailee was a GS-9 employee and thus lacked time-in-grade to qualify for a temporary promotion to GS-12; (3) pursuant to the CBA, the Agency needed to post the announcement for the detail opportunity and select a candidate through competitive procedures; and (4) the Facility 2 failed to comply with its obligation to notify the union of the detail properly. *Id.*¹³

For these reasons, OSC did not find that any agency official obtained the union's approval of the detail or a waiver of any violation of the CBA after-the-fact. On the contrary, the evidence showed that it is more likely than not that Senior Official D was the sole official who spoke with Official A and that his conversation became the basis for the false claim that the union approved his wife's detail. Senior Official D either deliberately withheld pertinent information from Official A in their conversation as a

¹³ That Official A had a discussion with a management official about Detailee's detail is corroborated by her June 28, 2016 email to Official H, wherein Official A stated that she was "questioned regarding the acting chief of Volunteer services and was just wanting to ensure that all the correct processes were followed and that it was posted[,] announced correctly[,] and for how long." Exh. 19. Based on this email, an HR official wrote that "no ARPA [was] submitted to begin the recruitment process for the Chief of Voluntary Services," and that "HR has not posted an announcement for the position in question." *Id.* This email confirms that Official A spoke with someone regarding Detailee's detail. The issues Official A posed in the email also demonstrate that Official A lacked the information necessary to waive any violations of the CBA in connection with Detailee's detail.

basis to obtain a waiver or used an informal conversation, which did not address the waiver issue, as a basis for falsely claiming that the union concurred with the detail.¹⁴

G. Senior Official D Attempts to Reclassify the Chief of Voluntary Services Position.

In August 2016, while Detailee was still serving as the Acting Chief, her husband's conduct again drew HR's attention. As documents showed, Senior Official D attempted to reclassify the Chief of Voluntary Services position as a multi-grade position at the GS-9/11/12 level. Exh. 15. Senior Official D's actions raised alarms because, had his attempt succeeded, Facility 2 could arguably claim that his wife's detail was actually a lateral detail, not one to a higher-graded position, and therefore did not have to comply with the competitive requirements of the CBA. The issue was never pursued, however, because Senior Official D abandoned the reclassification idea. Senior Official D later acknowledged to OSC that it would have been inappropriate to reclassify the position at the GS-9/11/12 level because a GS-9 would not have had enough experience to do the job. Exh. 41. No other hospital classified its Chief of Voluntary Services as a career ladder GS-9/11/12 position.

H. The Facility 2 Improperly Selected Detailee 2 to Serve as the Acting Chief of Voluntary Services.

In September 2016, after Detailee's return to Facility 1, the Facility 2 still had not posted the job opening for the Chief of Voluntary Services position. Facility 2 therefore asked to have Detailee 2, another Voluntary Specialist from the Facility 1, detailed to serve as the Acting Chief. Exh. 23. Despite all the information it learned in connection with Detailee's detail, the Facility 2 leadership detailed Detailee 2 without asking any internal employees about their interest in the position or considering any other candidate. On September 13, 2016, Senior Official Z, the Acting Deputy Director of the Facility 1, Official L, and Official AA, who was the Acting Deputy Director of Patient Care Services for Facility 2 while Senior Official G was on leave, signed the memorandum authorizing the second detail. Exh. 24. Senior Official D acknowledged that he provided advice and support to Senior Official G for the Detailee 2 detail and he drafted Detailee 2's detail memorandum. Exh. 41.

Senior Official D asked Official H to reach out to her counterparts in Facility 2 to coordinate the detail. Exh. 25. HR from both Facility 2 and Facility 1 objected to the

¹⁴ The above discussion of the evidence is predicated on testimony from Official A's first OSC interview. Subsequent to an Agency proposal to suspend Senior Official D for his role in detailing his wife, Official A prepared and provided an affidavit [REDACTED] —retracting her prior OSC testimony. Exh. 20. The affidavit contained the following material retractions: (1) she met with Senior Official D, not to discuss Detailee's detail, but the detail of Detailee 2, who succeeded Detailee as the Acting Chief; (2) she actually met with Senior Official F to discuss Detailee's detail; and (3) she met with Official H, then-HRO of Facility 2, and relayed to Official H that she had no objection to the detail. *Id.* For reasons summarized in the Appendix to this report, OSC gives Official A's retractions no weight.

noncompetitive selection of Detailee 2; the CBA prohibited his detail for the same reason it prohibited Detailee's. The Facility 2 HR informed Senior Official G immediately that the detail needed to comply with applicable CBA provisions. Exh. 23. HRO Official H gave Senior Official G options, including "announcing the position as a temp promotion to allow for open competition since the detail is greater than 60 days." Exh. 28. Official H wrote in her email that Article 12 of the CBA required temporary promotions in excess of 60 calendar days to be filled through the competitive procedures of Article 23. Exh. 25. Similarly, the Facility 1 HR objected to the detail's legality, explaining to Senior Official G and to other management officials that the Acting Chief position should be "announced as a temporary promotion," as it would be considered "a promotion opportunity for many," and that it must comply with the CBA. Exhs. 25, 27. The message was forwarded to Senior Official D. Exh. 28.

Senior Official D again intervened to support the proposed detail, insisting to Senior Official G and to HR officials that there was no issue with Detailee 2's detail. Exh. 26. On September 29, 2016, he wrote to Senior Official Z, "Our HR Offices do well with what they are familiar with but struggle with regulation interpretation." *Id.* He added that Facility 2 leadership had "notified [their] union partners and they have concurred with detail [sic] as they are aware we followed Article [sic] of the master agreement." *Id.* Senior Official D dismissed HR's concerns, writing to Senior Official F, "[T]his is too funny!" Exh. 28. Senior Official D's assertion that the union concurred in Detailee 2's detail is without support. As noted earlier, Official A, in her first OSC interview, denied discussing Detailee 2's detail with anyone. Official A consistently maintained to OSC, including in her second interview, that she had no discussion with Senior Official D about the CBA's impact on any detail and contradicted his claim that the union had agreed that the Detailee 2 detail complied with the CBA. Exh. 46. Moreover, OSC found no documentation of any waiver by the union, documentation that would likely have been presented by Senior Official D to HR to corroborate his assertions.

Despite Senior Official D's continued insistence on the detail's propriety, Facility 1's HR remained opposed. Official BB, Facility 1's then-Acting HRO, cited the CBA provisions to question why the VA was "even considering this detail if the employee in question does not meet the prerequisite for the detail, much less for a higher responsibility of the position." Exh. 26. As Official BB noted, Detailee 2, a GS-9, "d[id] not have TIG (time-in-grade) for the next higher grade." Official BB also raised the concern that "for transparency the SF 52 needs all the information documented for accuracy of this detail." *Id.*

The Facility 1 ultimately followed Official BB's advice. On September 30, 2016, Senior Official Z informed the Facility 2 that he was "rescinding [his] approval of this detail for Detailee 2," adding, "I don't feel it is appropriate to detail a GS-9 into an Acting Chief's position." Exhs. 29, 30. Senior Official Z also separately emailed Senior Official D, writing, "I don't feel it is appropriate to place a GS-9 into an Acting Chief role. We can definitely provide [] assistance on a short term basis but the leadership aspect should be covered by someone more senior." Exh. 30. Senior Official Z also

spoke with Senior Official D over the phone to explain his reasons for the rescission. Exh. 30. Thereafter, Senior Official D amended the detail memorandum to reflect that Detailee 2 was being detailed to Facility 2 to support its Voluntary Service by deleting the words “as Acting Chief.” Exhs. 24, 41. Senior Official G then signed the amended memorandum as the supervisor of the position.

On this basis the detail proceeded, but striking the words “as Acting Chief” did not change reality. Detailee 2 served as Acting Chief with the full authority of that position. Detailee 2 signed his email communications as the Acting Chief of Voluntary Services at Facility 2 and performed all the Chief’s functions. Exh. 31. Senior Official G and Senior Official D conceded that Detailee 2 served as Acting Chief. Exhs. 39, 41. Detailee 2 also confirmed that he understood that he served as Acting Chief. He explained to OSC that he accepted the assignment specifically for the promotional opportunity and out of a desire to include managerial experience as Acting Chief in his resume. Exh. 54.

When interviewed, Senior Official D dismissed the discrepancy between the memorandum and the facts, stating that Facility 2 did what it could to assuage Facility 1’s concerns. Exh. 41. He dismissed the amended memorandum as “just play on words” and asserted that it was a “moot point.” Senior Official G, for his part, offered no defense for the discrepancy. Exh. 39.

The alteration of the memorandum, however, had legal consequences. According to OHRM specialists, the detail memorandum is the document that governs the action. The VA cannot detail an employee to a position other than the one specified in the detail memorandum, which, in the absence of the required SF-52, becomes the only written record of the action. Exh. 10. And at the time of OSC’s investigation, no SF-52 had been issued to request Detailee 2’s detail to Facility 2, either as the Acting Chief of Voluntary Services or as a specialist.¹⁵ Exh. 17.

II. AGENCY OFFICIALS COMMITTED PROHIBITED PERSONNEL PRACTICES

A. Senior Official D Advanced and Advocated for His Wife’s Detail in Violation of 5 U.S.C. § 2302(b)(7).

Title 5 U.S.C. § 2302(b)(7) provides,

Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority . . . appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position any individual who is a relative (as defined in section 3110(a)(3) of this title) of such employee if such position is in the agency in which such employee is serving as a public official (as defined in section 3110(a)(2) of this title) or

¹⁵ An SF-52 requesting Detailee 2’s detail to Facility 2 as a specialist was prepared, but it was not processed by the completion of OSC’s investigation.

over which such employee exercises jurisdiction or control as such an official.

To prove a violation of section 2302(b)(7), OSC must show four elements: (1) that a public official (2) appointed, employed, advanced, promoted, or advocated for appointment, employment or advancement (3) in or to a civil position in his own agency (4) an individual who meets the definition of a “relative” in 5 U.S.C. § 3110.

Showing that elements (1), (3), and (4) are satisfied requires little discussion. As to the first element, Senior Official D, as the Acting Deputy Director of Facility 2, was a “public official” as defined in 5 U.S.C. § 3110(a)(2). That section states a “public official” is:

an employee and any other individual, in whom is vested the authority by law, rule, or regulation, or to whom the authority has been delegated, to appoint, employ, promote, or advance individuals, or to recommend individuals for appointment, employment, promotion, or advancement, in connection with employment in an agency.

The Board has interpreted “public official” broadly, finding section 2302(b)(7) violated even in cases where the employee who approved the appointment of the relative had been higher in the chain-of-command than the official charged with nepotism. *See Welch v. Dep’t of Agri.*, 37 M.S.P.R. 18, 22 (1988) (official engaged in prohibited advocacy despite fact that employee who approved appointment of official’s son was higher in chain-of-command than official); *Roberts v. U.S. Postal Serv.*, 12 M.S.P.R. 471, 475 (1982), *aff’d*, 776 F.2d 1063 (Fed. Cir. 1985) (Table).

As to the third element, Detailee’s Acting Chief position is a civil service position in the same agency where Senior Official D is employed.

As to the fourth element, Senior Official D and Detailee, as husband and wife, are relatives as defined by statute. 5 U.S.C. § 3110(3).

The remaining element of nepotism, element (2), as discussed below, is also satisfied; Senior Official D advanced and advocated for his wife’s detail to a higher-graded position in several distinct ways.

1. Senior Official D Actively Supported His Wife’s Selection for Detail to a Position Three Grades Higher and Advocated for Her Selection.

Senior Official D testified under oath that he recused himself from any involvement in his wife’s detail. The weight of the evidence, however, showed differently. Senior Official G testified that Senior Official D mentioned his wife as a potential candidate for the detail at issue. Exh. 39. Senior Official G further testified that, during discussions regarding the detail, Senior Official D described to the Pentad her qualifications, experience, and ability to make decisions. *Id.* Senior Official G said Senior Official D

even said that it would be a “good thing for his personal life” to have her detailed to Facility 2, where he was already serving a geographical detail. *Id.* All of these actions establish that Senior Official D advanced and advocated for his wife’s detail. The evidence further established circumstantially that Senior Official D’s advocacy materially influenced the Pentad’s decision to approve her detail. Aside from Senior Official D, the Pentad’s other members lacked personal knowledge of her qualifications or experience for the position, made no effort to inquire of her qualifications independent from Senior Official D’s representation, and considered no other candidates for the position in violation of the agency’s own mandatory policy and against subsequent expert advice from its human resource professionals.

On the other hand, Senior Official E furnished testimony contrary to the inference that Senior Official D advocated for his wife. He claimed that he, not Senior Official D, suggested Detailee for the detail and further claimed that Senior Official D recused himself from the action. Exh. 40. OSC did not find Senior Official E’s testimony sufficiently credible to disprove the affirmative evidence of Senior Official D’s conduct. First, Senior Official E’s explanation of how he came to identify Detailee for the Acting Chief lacked credibility. He said he had a chance encounter with her in 2014, during which he learned that she was a Voluntary Specialist. *Id.* It is unlikely that this limited contact would cause a reasonable manager to advance Detailee as a candidate for a detail to a much higher-graded supervisory position two years later. Moreover, Senior Official E’s account is inconsistent with a known fact. At the time of the alleged conversation in 2014, Detailee had not yet begun her tenure as a Voluntary Specialist. Exh. 42. Finally, Senior Official E’s claim that Senior Official D had recused himself from his wife’s detail is undercut by the evidence Senior Official E had received that Senior Official D was intimately involved in instructing others to process the detail.

Regardless, even if Senior Official E first suggested Detailee for the detail to the chief position, that would not excuse or immunize Senior Official D from violations of the anti-nepotism prohibition. As Senior Official G—who signed the detail memorandum and supervised Detailee’s position—testified, Detailee was “treated as qualified” for the GS-12 position based solely on the Pentad discussions. Exh. 39. And Senior Official D was the only possible source of the Pentad’s substantive information on the candidate’s qualifications. As the investigation showed, none of the Pentad members had independent knowledge of Detailee’s qualifications or work experience. No one from the Facility 1 provided information to the Facility 2 about her qualifications. And Detailee did not submit an application, resume, or any other materials to demonstrate her qualifications. Senior Official D thus materially influenced the Pentad’s decision to select her as the Acting Chief.¹⁶

¹⁶ It might be suggested that the Pentad may have identified—without Senior Official D’s input—Detailee as a candidate for the detail without concerning themselves with her qualifications since she was married to Senior Official D. That, in itself, would have been unlawful. *See* 5 U.S.C. § 2302(b)(6). In any event, no Pentad member claimed that Detailee was selected for the detail because she was Senior Official D’s wife or without examining her qualifications. Rather, various witnesses attempted to buttress a claim that Detailee’s qualifications were vetted independent of Senior Official D’s advocacy. As analyzed in our discussion of the facts, OSC found that claim lacked credibility. *See supra* Section I.A.

In any event, OSC credited Senior Official G's testimony describing Senior Official D's advocacy for his wife to the Pentad. Senior Official G had no reason to attribute statements to Senior Official D falsely. His description was consistent with other subsequent actions Senior Official D took to advance the detail, as confirmed by contemporaneous emails and testimony. It was also consistent with testimony that Senior Official D expressed surprise during a Pentad meeting at learning of Official H's substantive objections to the detail. Moreover, none of the Pentad members discussed the need for Senior Official D to remain silent or recuse himself from the selection process. Exhs. 37, 39, 40. Senior Official D likewise never told his wife that he would have to recuse himself from matters affecting her selection for the detail. Exh. 42. The anti-nepotism statute exists in large part because of these foreseeable conflicts of interests.

Moreover, the evidence showed Senior Official D had financial interests in his wife's detail. First, he knew her detail to State 2, a state without income tax, would allow her to avoid paying State 1's state tax while on detail, as he revealed in an email to HR (described in more detail below). Second, the paid-for detail allowed him and his wife to receive separate per diem allowances for the length of the detail. Even if the anti-nepotism statute did not exist to prohibit his conduct, the government's ethics regulations would have.¹⁷

2. Senior Official D Was the Driving Force Behind His Wife's Detail.

Senior Official D's efforts on behalf of his wife did not stop at his advocacy before the Pentad. By email, he asked an HR Specialist (Official O) to "submit" the SF-52 to request the detail for his wife. Exh. 14. The SF-52 is the Senior Official Form that contains a request for personnel action and is required for official VA details. He provided further that "the detail will allow her[] to change duty stations which will stop State 1 state income tax." Exh. 4. Senior Official D thereby took a direct role in the implementation of his wife's detail.¹⁸

Indeed, as contemporaneous emails between Official P, the HR specialist at Facility 2, and Official Q, Senior Official F's assistant, make clear, agency officials never doubted that Senior Official D was the driving force behind his wife's detail. According to those emails, Senior Official F explained to Official Q that Senior Official D was involved in the detail, knew what was going on, and wanted the detail for his wife implemented. Exh. 5. Official Q relayed this information to specialist Official P and further explained that HR would have to talk to Senior Official D regarding any issues

¹⁷ Title 5 C.F.R. § 2635.502 prohibits a federal employee's participation in matters that would have "a direct and predictable effect on the financial interest of a member of his household . . . and where the employee determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter." Detailee's detail to Facility 2 had "a direct and predictable effect" on her financial interest, in the form of per diem payments and tax savings—the latter was acknowledged by Senior Official D in an email. As a trained HR professional, he should have known that his involvement would raise a question of his impartiality.

¹⁸ The only reason that the Agency never executed the SF-52 Senior Official D requested was that HR personnel refused to process it given the improprieties they recognized. Exhs. 3, 7. The detail thus occurred without official documentation.

that might come up with his wife's detail. *Id.* Witness testimony confirms these facts, refuting the notion advanced by Senior Official D and Senior Official F that Senior Official D had recused himself from the personnel action involving his wife. *See* Exhs. 43, 44. OSC found this body of testimony and documentary evidence credible and persuasive of Senior Official D's advocacy role in his wife's detail.

3. Senior Official D Sought to Circumvent Local HR's Objections to His Wife's Detail.

Senior Official D increased his effort to advance his wife's detail after numerous HR officials urged abandoning it. Once they became aware, both the Facility 2 and Facility 1 HR offices advised Senior Official F that the detail violated the CBA because Detailee had been handpicked without competition for detail to a higher-graded position for which she was likely unqualified. Exh. 3. HRO Official H went so far as to specifically ask Senior Official F to end it because of the detail's many legal problems. Exhs. 11, 14.

Rather than follow her staff's advice, Senior Official F consulted Senior Official D about HR's objections. Exh. 37. Far from recusing himself from such a consultation that would affect his wife's detail, Senior Official D expressed strong disagreement with HR's position and suggested that Senior Official F contact Official W at OHRM for a second opinion. *Id.* Senior Official F followed his advice and even worked with Senior Official D's assistant, Official X, to prepare an email to Official W. Exhs. 8, 9. Without Senior Official D's involvement, Senior Official F would have had no reason to reject her own HR staff's recommendation.

Official W, however, agreed with HRO Official H and the Facility 2 and Facility 1 HR staffs. She wrote that Detailee's bargaining unit status and the appearance of nepotism cautioned against a noncompetitive detail for the VISN HRO's wife. Exh. 9. Official W's support for the local HR's position prompted Senior Official F to tell Senior Official G that the detail could no longer proceed. Exh. 16. Senior Official F confirmed her decision to Official H, Exh. 12, and her decision was further conveyed to the Facility 1. Exh. 47. These corrective measures should have put an end to the detail, despite Senior Official D's best efforts. They did not.

4. Senior Official D Continued to Explore Ways to Legitimize His Wife's Promotion.

Although OSC was unable to determine who made the decision to allow the detail to continue despite Official W's views, it clearly was not cancelled. Instead, the evidence showed that Senior Official D attempted to make the detail appear lawful through two independent strategies: position reclassification and union consent. In the first instance, Senior Official D affirmatively attempted to have the chief position reclassified as a multi-graded position, GS-9/11/12. If he had succeeded, his wife could theoretically have qualified at the GS-9 or GS-11 grade level under a competitive announcement. This attempt, however, was dropped. OSC determined that no other VA hospital classified the

chief position below GS-12, and certainly not as a multi-graded supervisory position, suggesting that HR would not likely have agreed to such a plan. The second strategy, obtaining union consent, was the one that Facility 2 subsequently adopted in defending the hospital's actions. But, as OSC's investigation showed, the evidence did not support management's assertion that the union consented to Detailee's noncompetitive detail to a higher-graded position. Although the witnesses' testimony was inconsistent and conflicting regarding the manager who supposedly spoke to the union to obtain that consent, OSC found no evidence that anyone ever disclosed to the union that Facility 2 intended to use the noncompetitive detail to promote a GS-9 bargaining unit employee to a GS-12 chief position. Indeed, the record demonstrates a total absence of any contemporaneous documentation concerning such consent. At most, OSC confirmed that Senior Official D told the union president that his wife would be filling the chief position on detail, but that occurred in a passing conversation in the hospital parking lot.

The weight of the evidence therefore showed that Senior Official D materially influenced the Pentad's decision to select Detailee for the detail and continued to support the detail, in violation of the anti-nepotism statute.¹⁹

¹⁹ Agency officials violated VA Handbook 5025, Part VII, Employment of Relatives. That rule references 5 U.S.C. § 2302(b)(7), among other statutes, and provides additional guidelines on employment of relatives. In particular, it provides, in pertinent part:

Extreme care must be taken to avoid any possibility or likelihood that the nepotism law may be violated in an employment action. . . . Management officials will take appropriate actions to avoid situations which have the potential for, or appearance of, being in violation of nepotism requirements. As a minimum, management officials and HRM Officers will identify and document those instances in which relatives are employed, or are being considered for employment, in the same organizational element or in positions within the same chain of command. These officials will review all proposed personnel actions affecting relatives of employees to assure that there is no violation of merit principles and that the requirements contained in 5 U.S.C. 2302 and 5 U.S.C. 3110 have been met.

As described above, VA management acted in a manner that fell far short of the "extreme care" required under this rule and did not conduct the needed review to assure that Detailee's detail did not violate merit systems principles. When local HR officers explicitly raised concerns about the appearance that Detailee was the beneficiary of nepotism in connection with her detail, VA management, in concert with Senior Official D, sought to exclude HR from its normal role in implementing personnel actions. This included dispensing with required documentation of Detailee's detail, refusing to accept HR's objections to the details, and informing HRO Official H that the detail would be rescinded but proceeding with it anyway. The only review by management of whether Detailee's detail conformed with merit systems principles consisted, at most, of securing a denial from Senior Official D that he was involved in his wife's detail. Facts that indicated his continuing role in the detail were disregarded.

- B. Senior Official D, Senior Official F, and Senior Official G Granted Detailee a Preference or Advantage Not Authorized by Law, in Violation of 5 U.S.C. § 2302(b)(6).

Title 5 U.S.C. § 2302(b)(6) provides,

Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority . . . grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment.²⁰

As described in detail below, Senior Official G and Senior Official F participated in the Pentad's decision to select Detailee as the Acting Chief, knowing that the detail occurred without mandatory competition. Exhs. 37, 49. Although Senior Official D denied any involvement in advancing his wife's prospects for the detail, the evidence showed he played a material role in it.

To prove that these officials violated section 2302(b)(6), OSC must show (1) that they gave an unauthorized preference, and (2) that they did so for the purpose of improving or injuring the employment prospects of a particular person. *Special Counsel v. Byrd*, 59 M.S.P.R. 561, 569-70 (1993) *aff'd*, 39 F.3d 1196, 1994 WL 541593 (Fed. Cir. 1994) (Table). It is the preference itself that is prohibited and not the type of action used in granting the preference. *Id.* In other words, it is possible to violate section 2302(b)(6) using hiring authority and recruitment vehicles that would be acceptable under other circumstances.

1. Detailee's Preference or Advantage Was Not Authorized by Law, Rule or Regulation.

Senior Official D, Senior Official F and Senior Official G granted Detailee a preference or advantage by approving their details to higher-graded positions without competition. The mere selection of a candidate is the most basic form of preference. Selections (preferences), however, are normally authorized based on a selection process that complies with lawful procedures and that seeks to hire candidates based on merit. In this case, lawful procedures were not followed. Various HR officials, most prominently Facility 2 HRO Official H, informed Senior Official D, Senior Official F and Senior Official G that handpicking a GS-9 bargaining unit employee for a 120-day details to a GS-12 supervisory position without competition was prohibited by mandatory agency rules. Exhs. 3, 7.

²⁰ Although the statute only explicitly lists "employment," the Board has held that granting an unauthorized preference regarding a lateral assignment violated 5 U.S.C. § 2302(b)(6) and (12). See *McDonnell v. Dep't of Agri.*, No. DE-1221-07-0427-2-1, 2008 WL 887882 (M.S.P.B. Mar. 17, 2008).

Official H was correct. First, Article 23, Section 6.C of the CBA requires “[c]ompetitive procedures” for “any selection for details of more than 60 days to a higher-graded position.”²¹ As discussed above, Detailee was handpicked for her detail in violation of the requirement of competition. Second, Article 12, Section 2 specifies that the agency must provide temporary promotions to bargaining-unit employees who are detailed to higher-graded positions for more than 10 days. Because of her lack of qualifications, Detailee was not eligible for a temporary promotion to GS-12 and thus could not be detailed to the position beyond 10 days.²² Official A and OHRM specialist Official Y confirmed that the CBA prohibited her detail. Exhs. 10, 45, 46.

OSC considered whether VA Handbook 5005 would permit a detail to a higher-graded position for 120 days or less, notwithstanding the CBA’s requirements. The VA Handbook, however, does not override the CBA. To the contrary, Article 2 of the CBA, Governing Law and Regulations, states that “[w]here any Department regulation conflicts with [the CBA] and or a Supplemental [CBA], the [CBA] will govern.” For the subset of VA employees who are members of a bargaining unit, CBA provisions, not the Handbook, govern details to higher-graded positions.

2. Detailee’s Preference Was for Non-merit Reasons.

In addition, Detailee’s preference was unauthorized because it was given for non-merit reasons. Senior Official D’s actions are attributable to his personal desire to advance his wife’s prospects for the chief position, a non-merit reason. As described above, Senior Official F and Senior Official G also acted for the same purpose. They knew of the relationship of the Detailee and Senior Official D and, in particular, of Senior Official D’s desire to have his wife detailed to Facility 2. Their knowledge provides the most likely explanation for their conduct to promote Detailee through the detail. In particular, it is the only plausible explanation for Senior Official F and Senior Official G’s decisions to approve and defend the detail, despite (1) the agency’s mandatory requirements that applied to and prohibited the detail; (2) their failure to consider any other potential applicants; (3) their failure to vet Detailee’s qualifications beyond her husband’s recommendation; and (4) the consensus advice of trained human resource professions against the detail. So strong was Senior Official D’s influence over their actions that Senior Official F told her subordinate that if Detailee’s detail were not implemented, Senior Official D would have to be answered to. Exhs. 5, 43, 44. By detailing Detailee for non-merit reasons, Senior Official F and Senior Official G granted her a preference not authorized by law, rule, or regulation.

3. The Preference Was for the Purpose of Improving Detailee’s Employment Prospects.

²¹ Similarly, Article 12, Section 2.B provides, “[T]emporary promotions in excess of 60 calendar days shall be filled through competitive procedure under Article 23.”

²² Senior Official D, faced with the explicit terms of the CBA, simply denied that this provision applied, rationalizing that Detailee was not detailed to a higher-graded position because she was only serving in an acting capacity. Exh. 41. Under this interpretation, these CBA provisions would be superfluous because details are, by their nature, to acting positions. OSC found no authority to support his argument.

Management claimed that the hasty detail of Detailee grew out of a need to organize a banquet for the hospital's volunteers. OSC found no credible evidence to support this justification. Detailee did not make any substantial efforts to organize the banquet and did not in fact organize one. Likewise, Detailee's successor did not do so either. By contrast, the overwhelming weight of the evidence shows that the actions taken by Senior Official D, Senior Official F, and Senior Official G to approve and then defend Detailee's detail were to improve her prospects for the position. OSC found no other legitimate reason that could explain their actions.

C. Senior Official D and Senior Official G Granted Detailee 2 a Preference or Advantage Not Authorized by Law, in Violation of 5 U.S.C. § 2302(b)(6).

As in the case of Detailee's detail, Detailee 2 received an unauthorized preference that improved his prospects for employment when he was detailed to succeed Detailee as Acting Chief of Voluntary Services, GS-12. His detail violated the CBA in the same way as Detailee's detail. He was handpicked as a GS-9 bargaining unit employee for a 120-day detail to a GS-12 supervisory position without competition. As was the case in Detailee's detail, human resource experts objected to Detailee 2's detail, citing the same CBA provisions as in Detailee's case. Exhs. 23, 25, 26, 27.

Senior Official D and Senior Official G were the officials most responsible for Detailee 2's detail. Senior Official D admitted drafting the detail memorandum that was required to process the detail for Senior Official G's signature. Senior Official G signed a memorandum approving Detailee 2's detail.²³ When the Acting Deputy Director of Facility 1, Senior Official Z, rescinded the detail memorandum, writing that he "[didn't] feel it is appropriate to detail a GS-9 into an Acting Chief's position," Exh. 29, neither Senior Official D nor Senior Official G were deterred. Senior Official D amended the original authorizing memorandum to falsely show that Detailee 2 would be detailed to a volunteer support position without higher-graded duties and Senior Official G signed the amended document as the approving official. Notwithstanding these sham actions, Senior Official G assigned Detailee 2, with Senior Official D's knowledge, the duties and title of Acting Chief of Volunteer Services. They merely kept this information from Senior Official Z. Senior Official D admitted to OSC that the amended memorandum he drafted for Senior Official G was "just [a] play on words" written to mollify Facility 1. Exh. 41. Based on undisputed facts, Senior Official D and Senior Official G granted Detailee 2 a preference for the Acting Chief position that was not authorized by law, rule, or regulation.

For reasons similar to the case of Detailee, Senior Official D and Senior Official G granted Detailee 2 a preference or advantage to Detailee 2 for the purpose of advancing his prospects for employment. The evidence showed that in the absence of the improper preference or advantage, Detailee 2 would not have legally qualified for the GS-12 position because he lacked the requisite experience at the GS-11 grade level. Detailee 2

²³ Senior Official F was not involved in Detailee 2's detail.

admitted to OSC that obtaining GS-12 supervisor experience was a significant factor in his desire to serve in the detail.

III. CORRECTIVE AND DISCIPLINARY ACTIONS

OSC's investigation found that Detailee's detail constituted prohibited personnel practices in violation of 5 U.S.C. §§ 2302(b)(6) and (7). Similarly, Detailee 2's detail constituted a PPP in violation of 5 U.S.C. § 2302(b)(6). OSC recommends that the Agency take appropriate corrective action to ensure that the violations not recur, and take disciplinary actions against Senior Official D, Senior Official F, and Senior Official G that are consistent with the seriousness of the offenses in light of the totality of circumstances.²⁴ Senior Official D's actions were particularly serious in light of his vast professional experience in and management responsibility over personnel matters and his responsibilities as the VISN Human Resource Officer. OSC made no affirmative finding that Senior Official E committed a prohibited personnel practice. OSC, however, recommends that the Agency consider corrective and disciplinary action for acts of misjudgment or misconduct as it deems appropriate.

²⁴ On September 12, 2017, VISN # Director Senior Official CC issued a memorandum to Facility 2's HR, Supervisors, and Managers, emphasizing the restrictions on the use of detail and temporary promotions, the applicable CBA provisions, and possible prohibited personnel practices that may arise from improper personnel actions. Exh. 34. [REDACTED]

Appendix: Credibility of Official A, the Facility 2 Union President

As noted in footnote 14, Official A, in an affidavit, retracted her first OSC testimony. Exh. 20. The affidavit contained the following material retractions: (1) she met with Senior Official D not to discuss Detailee's detail, but the detail of Detailee 2, who succeeded Detailee as the Acting Chief; (2) she actually met with Senior Official F to discuss Detailee's detail; and (3) she met with Official H, then-HRO of Facility 2, and relayed to Official H that she had no objection to the detail. *Id.* For reasons summarized below, OSC gives Official A's retractions no weight.

First, when OSC learned of her new affidavit, OSC re-interviewed Official A. She could not explain what had caused her to realize that she had previously testified mistakenly about her parking lot conversation with Senior Official D. Exh. 46. She simply reiterated repeatedly that she did not remember what had refreshed her recollection regarding their alleged discussion of the Detailee 2 detail. *Id.* She said that if OSC had specifically asked her about the Detailee 2 detail, she would have remembered her conversation with Senior Official D about that detail in her first interview. *Id.* OSC, however, asked Official A directly in her first interview about Detailee 2's detail and she replied unequivocally that she did not talk to anyone about it. Exh. 45. Additionally, she had initially testified that she spoke with Senior Official D in May or June of 2016, a timeframe consistent with Detailee's detail, which she said was the subject of her conversation. *Id.* But Senior Official G and Senior Official D did not discuss Detailee 2 as a potential successor to Detailee until late August. Exhs. 23, 39, 41. Thus, it is highly improbable that their chance encounter involved a discussion of Detailee 2. Official A was unable to explain the temporal inconsistencies arising from her revised testimony.

Second, she could not explain in her re-interview what prompted her to realize later that she had spoken with Senior Official F, rather than with Senior Official D, about his wife's detail. Exh. 46. She stated repeatedly that she did not remember what refreshed her recollection. *Id.* Yet, at her first interview, OSC asked Official A specifically whether she had talked to anyone else—other than Senior Official D—about Detailee's detail, and she firmly stated that she had not. Exh. 45.

Third, while Official A claimed to have recovered her memory of the Senior Official F conversation, her memory now conflicts with Senior Official F's testimony, as the latter has no recollection of discussing Detailee's detail with Official A. Exhs. 37, 38. Senior Official F's testimony on this point is consistent with her September 28, 2016 email, which she wrote closer in time to the conversation Official A claims to recall. In that email, Senior Official F identifies Senior Official G as the official who allegedly met with Official A to discuss Detailee's detail, a fact that Senior Official G has consistently denied, as noted earlier. Exhs. 18, 39. Senior Official F—according to Senior Official G—was wrong about Senior Official G's contact with the union, but the email makes it even less likely she had contacted the union. Senior Official F also told Senior Official E and Senior Official G on June 13, 2016, that Detailee's detail to the Acting Chief position

could not go forward because of the CBA. She therefore could not have gotten Official A's approval of the detail before then.

Fourth, after denying in her first OSC interview that she spoke to anyone other than Senior Official D about his wife's detail, Official A's new affidavit asserted she spoke to Official H as well; Official A said she told Official H that she had no issue with the detail. Official H told OSC unequivocally that she did not talk to Official A about the Detailee detail. Oddly, Official A also represented in her recently-recalled discussion with Official H that the latter never mentioned the problem of Detailee's bargaining unit status and the CBA, the twin facts that caused Official H's concern. Exh. 46. Official H would have had no reason to discuss Detailee's detail with the union president without mentioning applicable CBA provisions. The key new facts in Official A's affidavit therefore conflict with her prior sworn statement and the unequivocal testimony of *both* Senior Official F and Official H.

Fifth, the circumstances surrounding the creation of the new affidavit raise suspicions as to its reliability. During her re-interview, Official A testified to OSC that she could not remember how she came to prepare the affidavit, even though she signed the affidavit for Senior Official D a month before her re-interview by OSC. About her motivation for the affidavit, which she drafted only after learning about the proposed disciplinary action against Senior Official D, she only admitted that she did not want Senior Official D to "get in trouble" for something she had said. Exh. 46. She also testified that she could not remember the circumstances surrounding her drafting of the affidavit. *Id.* Subsequent to the interview, she sent an email to OSC representing that she remembered drafting the affidavit in Senior Official D's office. Exh. 60.

In any event, setting aside Official A's credibility issues, Official A conceded in her second OSC interview that in her now-recalled conversations about Detailee's detail with two different VA officials, neither mentioned that Detailee was a bargaining unit employee, raised an issue with any CBA provisions, or explained why they wanted to talk to her about the detail. Exh. 46. Thus, she said she did not believe that the detail implicated the union at all. In these circumstances, she could not have given informed consent to the detail. *Id.* Even after her recantation regarding meetings with Facility 2 officials, she maintained that the CBA prohibited Detailee's detail because Detailee was a GS-9 bargaining-unit employee who had been detailed to a GS-12 position without competition. *Id.*

Exhibits List

<u>Exhibit No.</u>	<u>Description</u>
1	Detail Memorandum of Detailee, dated May 12, 2016
2	Email Communication, dated May 25, 2016
3	Email Communication, dated May 12 to May 25, 2016
4	Email Communication, dated May 17 to May 25, 2016
5	Email Communication, dated May 25, 2016
6	Email Communication, dated May 24, 2016
7	Email Communication, Dated June 10, 2016
8	Email Communication, dated June 2, 2016
9	Email Communication, dated June 3 to June 7, 2016
10	Email Communication with VACO OHRM
11	Email Communication, dated June 10, 2016
12	Report of Contact by Official H, dated June 14, 2016
13	Email Communication, dated July 18, 2016
14	Email Communication, dated May 16 to May 17, 2016
15	Communication Regarding Reclassifying Chief of Voluntary Services Position
16	Email Communication, dated June 13, 2016
17	Table of Inter-facility Details
18	Email Communication, dated Sept. 28, 2016
19	Email Communication, dated June 29, 2016
20	Affidavit of Official A, dated July 13, 2017
21	Email Communication, dated Sept. 22 to Oct. 1, 2016
22	Communication Regarding Per Diem Payment

- 23 Email Communication, dated Aug. 29 to Sept. 22, 2016
- 24 Detail Memoranda of Detailee 2
- 25 Email Communication, dated Aug. 29 to Sept. 28, 2016
- 26 Email Communication, dated Sept. 29 to Sept. 30, 2016
- 27 Email Communication, dated Sept. 28, 2016
- 28 Email Communication, dated Aug. 29 to Sept. 13, 2016
- 29 Email Communication, dated Aug. 28 to Sept. 30 2016
- 30 Email Communication, dated Sept. 30, 2016
- 31 Email Communication, Dated Oct. 24, 2016
- 32 VAOIG Hotline-Non-Case Referral, dated Aug. 24, 2016
- 33 VISN 23 Fact-Finding Summary Report, dated Nov. 22, 2016
- 34 VISN # Memoranda
- 35 Proposed Suspension of Senior Official D
- 36 Summary of Official T Interview
- 37 Testimony of Senior Official F
- 38 Second Testimony of Senior Official F
- 39 Testimony of Senior Official G
- 40 Testimony of Senior Official E
- 41 Testimony of Senior Official D
- 42 Testimony of Detailee
- 43 Testimony of Official Q
- 44 Testimony of Official P
- 45 Testimony of Official A
- 46 Second Testimony of Official A
- 47 Testimony of Senior Official K

- 48 Testimony of Official L
- 49 Testimony of Official DD
- 50 Testimony of Official N
- 51 Testimony of Official M
- 52 Testimony of Stephanie Official J
- 53 Testimony of Official V
- 54 Testimony of Detailee 2
- 55 Testimony of Senior Official I
- 56 Testimony of Official B
- 57 Testimony of Official C
- 58 Resume of Detailee
- 59 Email Communication, dated May 31, 2016
- 60 Email Communication, dated Aug. 18, 2017
- 61 Email Communication, dated Aug. 3, 2016
- 62 American Federation of Government Employees Collective Bargaining Agreement