UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	1:96CV01285 (RCL)
	)	
	)	
GALE NORTON, Secretary of the Interior, et al.,	)	
	)	
Defendants.	)	
	)	

DEFENDANTS' MOTION TO DISCHARGE THE SEPTEMBER 17, 2002 ORDER TO SHOW CAUSE FOR CIVIL CONTEMPT AND FOR ENTRY OF AN ORDER OF FULL RELIEF

Defendants hereby move the Court for an order entering full relief and discharging the Court's September 17, 2002 order that defendants Gale Norton, Secretary of the Interior, and Neal McCaleb, Assistant Secretary of the Interior, show cause why they should not be held in civil contempt for retaliating against Mona Infield in violation of the May 21, 1999 order. A proposed Order of Full Relief is appended hereto. In support hereof, the Court is respectfully referred to the Memorandum submitted herewith and the exhibits thereto.

Dated: October 18, 2002

Respectfully submitted,

ROBERT D. MCCALLUM, JR.
Assistant Attorney General

ROSCOE C. HOWARD, JR.
United States Attorney

JENNIFER R. RIVERA (Va. Bar No. 29281)
Acting Branch Director
HENRY A. AZAR, JR. (D.C. Bar No. 417249)
Acting Assistant Director
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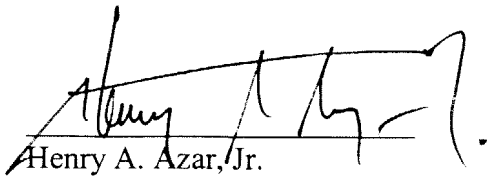
Attorneys for Defendants

CERTIFICATE OF COUNSEL PURSUANT TO LOCAL CIVIL RULE 7.1(m)

Stuart Licht and I, Henry A. Azar, Jr., both of the Civil Division, United States Department of Justice, counsel for defendants, spoke with Dennis Gingold and Mark Brown, counsel for plaintiffs, on Tuesday, October 15, 2002. I described the basis of defendants' planned motion to discharge the Court's September 17, 2002 Order to Show Cause. Mr. Gingold indicated that plaintiffs would oppose the motion.



Henry A. Azar, Jr.

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al.,	)	
Plaintiffs,	)	
v.	)	
GALE NORTON, Secretary of the Interior, et al.,	)	Civil Action No. 96-1285 (RCL)
Defendants.	)	

PROPOSED ORDER OF FULL RELIEF

Upon consideration of Defendants' Motion to Discharge the September 17, 2002 Order to Show Cause for Civil Contempt, and the consent of the defendants set forth therein, IT IS HEREBY ORDERED, that:

1. In full and final relief to Mona Infield and the class plaintiffs in connection with the alleged contumacious conduct set forth in Plaintiffs' Motion for Order to Show Cause Why Defendants and Their Employees and Counsel Should Not Be Held in Contempt and for Sanctions for Violating the Anti-Retaliation Order, filed August 15, 2000, and any other proceedings in this action in connection with Ms. Infield's allegations of retaliation, the Department of Interior shall:

(a) Assign Ms. Infield to the position of Supervisory Computer Specialist (GS-14), Division of Information Resources Management, Bureau of Indian Affairs. The Department of Interior has represented that this position is a permanent position, that the duty station for this position will be in Albuquerque, New Mexico, and that the Department of Interior has no plans to eliminate, out-source, transfer or otherwise contract to a non-federal entity the functions of that position, and that it will remain in effect at least through September 30, 2004, subject to the

availability of appropriated funds.

(b) Pay reasonable out-of-pocket costs and any overtime pay, incentive awards, and step increases to which Ms. Infield was entitled and did not receive as a result of alleged retaliation included within her complaint filed with the Office of Special Counsel, OSC File No. MA-00-1024.

(c) Pay to Ms. Infield and to class plaintiffs reasonable attorney's fees, expenses and costs incurred as a result of the alleged contumacious conduct set forth in Plaintiffs' Motion for Order to Show Cause Why Defendants and Their Employees and Counsel Should Not Be Held in Contempt and for Sanctions for Violating the Anti-Retaliation Order, filed August 15, 2000, and incurred in any other proceedings in this action in connection with Ms. Infield's allegations of retaliation.

2. The amount of payments pursuant to Paragraphs 1(b) and (c) above shall be determined by the Special Master or the Court upon a motion by Ms. Infield and the class plaintiffs, and such determination shall be binding and final and may not be appealed.

3. Defendants' motion is GRANTED. The Court's September 17, 2002 Order to Show Cause is discharged and the scheduling of the civil contempt trial, scheduled for December 18, 2002, is vacated.

SO ORDERED:

Dated: _____

_____
ROYCE C. LAMBERTH
United States District Judge

Copies to:

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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Defendants.	)	
	)	

DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION TO DISCHARGE THE SEPTEMBER 17, 2002 ORDER TO SHOW CAUSE FOR CIVIL CONTEMPT AND FOR ENTRY OF AN ORDER OF FULL RELIEF

INTRODUCTION

Defendants are moving the Court for an Order discharging the Court's September 17, 2002 order that Gale Norton, Secretary of the Interior, and Neal McCaleb, Assistant Secretary of the Interior, show cause why they should not be held in civil contempt for retaliating against Mona Infield in violation of this Court's May 21, 1999 order. Through this motion and the Proposed Order of Full Relief attached hereto, the Department of Interior (hereinafter "DOI") is requesting that the Court enter an order of full relief to Ms. Infield and her attorneys, thereby curing the two deficiencies outlined by the Court in its September 17, 2002 Memorandum and Order. The need for the order to show cause will therefore be obviated pursuant to the express provisions of this Court's September 17, 2002 decision.

First, DOI agrees under the Proposed Order to assign Ms. Infield to a position as a supervisory computer specialist, and has represented in the Declaration of the Deputy Assistant Secretary for Indian Affairs, appended hereto, that the position is a permanent position. Moreover, DOI has no

plans to eliminate, outsource, transfer or otherwise contract to a non-federal entity the functions of that position, and the position will remain in effect at least through September 30, 2004. The position is at a GS-14 grade level with the Bureau of Indian Affairs, and it is located in Albuquerque, New Mexico.

Furthermore, addressing the second issue raised in the Court's September 17, 2002 Order, the Proposed Order of Full Relief requires DOI to pay reasonable attorney's fees and expenses to both Ms. Infield and to the class plaintiffs in this action. The Proposed Order also provides that the amount of reasonable fees shall be submitted to the Special Master or the Court for a binding determination.

BACKGROUND

A. Procedural History

This matter arises out of plaintiffs' August 15, 2000 Motion for Order to Show Cause Why Defendants and Their Employees and Counsel Should Not Be Held in Contempt and for Sanctions for Violating the Anti-Retaliation Order regarding defendants' allegedly retaliatory treatment of Ms. Infield, an employee of the area office of the Bureau of Indian Affairs in Albuquerque, New Mexico. Plaintiffs contended that defendants violated the Court's May 21, 1999 order by retaliating against Ms. Infield after she executed several affidavits for plaintiffs in connection with filings in this case. Defendants opposed plaintiffs' motion, and the matter was referred to the Special Master, who issued a report and recommendation on February 21, 2001.

After additional briefing by the parties in response to the report and recommendation of the Special Master, this Court denied plaintiffs' motion without prejudice by Order of March 29, 2002, finding no basis for civil contempt since DOI had offered Ms. Infield a permanent position in

Albuquerque and agreed to pay reasonable attorney's fees.

On May 9, 2002, plaintiffs filed a motion to renew their motion for an order to show cause, arguing that two assumptions made by the Court in its March 29, 2002 Order were incorrect. The Court subsequently ordered defendants to file documents regarding the pending settlement offer to Ms. Infield. The defendants did so on June 20, 2002, filing copies of settlement offers that had been made to Ms. Infield in an effort to resolve this dispute. See Notice of Filing (June 20, 2002). Those materials included settlement offers made by defendants to Ms. Infield's attorney, as well as offers to the Office of Special Counsel to resolve the administrative complaint filed by Ms. Infield. In particular, that package included the proposed May 1, 2002 settlement offer placing Ms. Infield into the position of a Supervisory Computer Specialist in the Division of Information Resources Management in Albuquerque (Notice of Filing, Attachment (fourth page)).

On September 17, 2002, the Court granted plaintiffs' renewed motion for an order to show cause upon concluding that two assumptions underlying its March 29, 2002 Order were incorrect. First, the Court said that although the May 1, 2002 settlement offer stated that DOI would assign Ms. Infield to the permanent position of Supervisory Computer Specialist, the Department "cannot represent that it currently does not have plans to eliminate the position." Cobell v. Norton, No. 96-1285, 2002 WL 31060154, at *2 (D.D.C., Sept. 17, 2002). The Court noted that the settlement offer provided that the position offered to Ms. Infield "may be outsourced or otherwise contracted to non-Federal entities at some time in the future" and that the position "is subject to transfer of function" and "may be transferred to an office . . . outside of BIA." Id. Second, the Court stated that although defendants offered to pay Ms. Infield her expenses and attorney's fees, they "[had] not made any such offer to plaintiffs in this action." Id. at *3. The Court scheduled a civil contempt trial for December

18, 2002.

B. The Department of Interior's Proposed Order of Full Relief

The full relief proposed in this Motion cures the two deficiencies noted by the Court in its September 17, 2002 decision. First, in compliance with the language of the Court, DOI represents that it will assign Ms. Infield to a permanent position and has no plans to eliminate, outsource, transfer or otherwise contract to a non-federal entity the functions of that position. The position will remain in effect at least through September 30, 2004, subject to the availability of appropriated funds. See Declaration of James McDivitt, ¶¶ 2-3 (attached hereto).[1]

Second, the Proposed Order (¶ 2) states that DOI shall pay reasonable attorney's fees and expenses both to Ms. Infield and to the class plaintiffs. The question of whether DOI is liable for attorney's fees in the Infield matter would thus be resolved in the plaintiffs' favor by Court Order. The Proposed Order provides that the amount of fees to be paid will be resolved through a binding determination by the Special Master or the Court.

ARGUMENT

I. The Need for the September 17, 2002 Order to Show Cause Has Been Obviated

The purposes of a civil contempt action are well settled. "[A] civil contempt action is 'a remedial sanction used to obtain compliance with a court order or to compensate for damage sustained as a result of noncompliance.'" Food Lion, Inc. v. United Food & Commercial Workers Int'l Union,

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[1] Ms. Infield claimed that, on or about February 25, 2000, Dominic Nessi stated he could place her in a computer position in Albuquerque that would "likely last between three and four years." Recommendation and Report of the Special Master Concerning Plaintiffs' Motion for Order to Show Cause (Feb. 21, 2001) at 5. Assuming for purposes of this motion that Mr. Nessi made such a commitment, Ms. Infield would have been placed in a computer job in Albuquerque that would have remained in effect until, at the latest, March, 2004. Defendants are now extending that period through at least September 30, 2004.

103 F.3d 1007, 1017 (D.C. Cir. 1997) (citing National Labor Relations Board v. Blevins Popcorn Co., 659 F.2d 1173, 1184 (D.C. Cir. 1981)); see also In Re Magwood, 785 F.2d 1077, 1081 (D.C. Cir. 1986) (same); Feltner v. Title Search Co., 283 F.3d 838, 841 (7th Cir. 2002) (contempt order compensates an aggrieved party for losses sustained for past disobedience of a court's order and obtains compliance). A district court has broad discretion in deciding whether to issue an order to show cause for contempt, and in determining whether a party has acted in defiance of a prior order. See In Re Crystal Palace Gambling Hall, 817 F.2d 1361, 1364 (9th Cir. 1987).

The Proposed Order of Full Relief satisfies the remedial purposes of a civil contempt action. Addressing the concerns identified in the Court's September 17, 2002 opinion, DOI will assign Ms. Infield to a permanent supervisory computer specialist position in the Albuquerque area office. Declaration of James McDivitt, ¶¶ 2-3. Furthermore, DOI has no plans to eliminate, outsource, transfer or otherwise contract that position to a non-federal entity, and the position will remain in effect at least through September 30, 2004. Id. at ¶ 3. The position description attached to the declaration specifies in detail the responsibilities of the Supervisory Computer Specialist position. Significantly, not only would Ms. Infield receive complete relief that fully remedies any alleged violation of the May 21, 1999 order, but this relief is based on representations made in a formal declaration under penalty of perjury that sets forth the terms and nature of the relief.

Second, the Proposed Order (¶ 1(c)) includes a requirement that DOI pay reasonable attorney's fees for both class plaintiffs and Ms. Infield. As the Court observed in its September 17, 2002, Order, "[t]o obviate the need for an order to show cause, the defendants clearly must compensate both Infield and the class plaintiffs for the expenses incurred as a result of the alleged contumacious conduct." Cobell v. Norton, 2002 WL 31060154, at *3. As with the assignment to a permanent position, this

condition has also been met. The Proposed Order would confer on Ms. Infield and the class plaintiffs a right to reasonable attorney's fees, and a binding commitment by DOI to pay those fees. This comprises the full compensation for fees to which plaintiffs could have a right even if the matter of fee liability were directly adjudicated in their favor. Hence, the relief to Ms. Infield and the class plaintiffs provided by this motion "obviate[s] the need for an order to show cause." In addition, the Proposed Order provides that the amount of reasonable fees be submitted to a binding determination by the Special Master or the Court.[2]

A civil contempt action is a tool designed to obtain compliance with a court order and compensate for damages sustained as a result of noncompliance. Both of these conditions are now satisfied. Through this motion, defendants have complied with the Court's May 21, 1999 order and cured any damages flowing from the alleged noncompliance by offering complete relief. By analogy, in the context of a retaliation claim under Title VII, the remedies of lost pay, benefits, and reinstatement serve to make the employee whole by placing the employee in the same position she would have been in absent discrimination. See generally Ford Motor Co. v. EEOC, 458 U.S. 219, 230 (1982) (the purpose of equitable relief under Title VII is "'to make the victims of unlawful discrimination whole' by restoring them, 'so far as possible . . . to a position where they would have been were it not for the unlawful discrimination.'" (quoting Albemarle Paper Co. v. Moody, 422 U.S. 405, 421 (1975)). That goal of make-whole relief has been accomplished here. Accordingly, further contempt proceedings would not serve the underlying purposes of such proceedings, and would be

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[2] The proposed Order provides for a binding determination of fees because the May 1, 2002 settlement offer included a provision for fee arbitration (albeit limited to Ms. Infield's fees). See Cobell, 2002 WL 31060154, at *2. All other things being equal, Ms. Infield and plaintiffs will receive their reasonable fees more quickly if the parties forego appeal rights, but defendants are amenable to retaining the right to an appeal of the attorney's fee determination if plaintiffs so desire.

contrary to the interests of judicial economy and efficiency.

Furthermore, the relief provided with this motion, which completely satisfies Ms. Infield's request for relief as described by the Court, leaves no case or controversy to litigate. See Rand v. Monsanto Co., 926 F.2d 596, 597-98 (7th Cir. 1991) ("Once the defendant offers to satisfy the plaintiff's entire demand, there is no dispute over which to litigate . . . and a plaintiff who refuses to acknowledge this loses outright, under Fed. R. Civ. P. 12(b)(1), because he has no remaining stake.") (citations omitted). When "there is no subject-matter on which the judgment of the court can operate," a case becomes moot. Ex parte Baez, 177 U.S. 378, 390 (1900). Because defendants' commitment to provide plaintiffs with full relief has effectively mooted the order to show cause, defendants are obligated to bring this fact to the immediate attention of the court. See Arizonans for Official English v. Arizona, 520 U.S. 43, 68 n.23 (1997) ("It is the duty of counsel to bring to the federal tribunal's attention, '*without delay*,' facts that may raise a question of mootness." (emphasis in original)). In turn, the Court should grant defendants' motion and discharge the order to show cause.

CONCLUSION

For the foregoing reasons, defendants request that the Court enter the Proposed Order and concurrently discharge the order to show cause and vacate the contempt proceedings on the grounds that the remedial purposes of a contempt sanction have been effectuated.

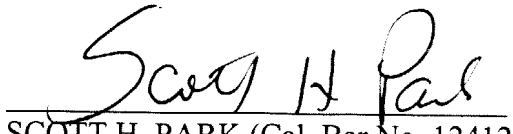
Respectfully submitted,

Dated: October 18, 2002

ROBERT D. MCCALLUM, JR.
Assistant Attorney General

ROSCOE C. HOWARD, JR.
United States Attorney

JENNIFER R. RIVERA (Va. Bar No. 29281)
Acting Branch Director
HENRY A. AZAR, JR. (D.C. Bar No. 417249)
Acting Assistant Director
Federal Programs Branch



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Attorneys for Defendants

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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	)	
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	)	
Defendants.	)	
	)	

DECLARATION OF JAMES MCDIVITT

1. I, James McDivitt, Deputy Assistant Secretary for Indian Affairs, U.S. Department of the Interior, 1849 C Street, N.W., Washington, D.C., 20240, affirm and declare that I have personal knowledge of the following facts:

2. I am authorized to state that, upon the entry of the Proposed Order of Full Relief as attached to Defendants' Motion to Discharge the September 17, 2002 Order to Show Cause, the Department of Interior will immediately assign Ms. Infield to the position of Supervisory Computer Specialist (GS-14), Division of Information Resources Management, located in the Albuquerque, New Mexico Office of the Bureau of Indian Affairs. In that regard, upon entry of the order, the Department of Interior will promptly issue a Standard Form 50 (Notification of Personnel Action) effectuating this assignment. A copy of the position description for this position is attached hereto.

3. The Supervisory Computer Specialist position is a permanent position and the Department of Interior does not have plans to eliminate, outsource or otherwise contract to non-federal sources, or transfer the functions of that position. Furthermore, this position will remain in effect at least through September 30, 2004, subject to the availability of appropriated funds.

I declare under penalty of perjury that the foregoing is true and correct.

James H. McDivitt

James McDivitt
Deputy Assistant Secretary for Indian Affairs
U.S. Department of the Interior

Executed this 18th day of October, 2002.

POSITION DESCRIPTION *(Please Read Instructions on the Back)*

1. Agency Position No.: 2310050A

2. Reason for Submission: [ ] Redescription [ ] Reestablishment [✓] New [ ] Other
Explanation *(Show any position replaced)*

3. Service: [X] Hdqtrs. [ ] Field

4. Employing Office Location: Washington, DC

5. Duty Station: Albuquerque, NM

6. OPM Certification No.:

7. Fair Labor Standards Act: [✓] Exempt [ ] Nonexempt

8. Financial Statements Required: [ ] Executive Personnel Financial Disclosure [ ] Employment and Financial Interests

9. Subject to IA Action: [ ] Yes [✓] No

10. Position Status: [✓] Competitive [ ] Excepted *(Specify in Remarks)* [ ] SES (Gen.) [ ] SES (CR)

11. Position is: [✓] Supervisory [ ] Managerial [ ] Neither

12. Sensitivity: [ ] 1-Non Sensitive [ ] 2-Noncritical Sensitive [ ] 3-Critical Sensitive [ ] 4-Special Sensitive

13. Competitive Level Code:

14. Agency Use:

15. Classified/Graded by	Official Title of Position	Pay Plan	Occupational Code	Grade	Initials	Date
a. U.S. Office of Personnel Management						
b. Department, Agency or Establishment						
c. Second Level Review						
d. First Level Review	Supv IT Specialist (Policy and Planning)	GS	2210	14		SEP 26 2002
e. Recommended by Supervisor or Initiating Office						

16. Organizational Title of Position *(if different from official title)*
Chief, Disaster Recovery Branch

17. Name of Employee *(If vacant, specify)*

18. Department, Agency, or Establishment
Department of the Interior, Bureau of Indian Affairs

a. First Subdivision
Office of Management and Administration

b. Second Subdivision
Office of Information Resources Management

c. Third Subdivision
Disaster Recovery Branch

d. Fourth Subdivision

e. Fifth Subdivision

19. Employee Review—This is an accurate description of the major duties and responsibilities of my position.
Signature of Employee *(optional)*

20. **Supervisory Certification.** *I certify that this is an accurate statement of the major duties and responsibilities of this position and its organizational relationships, and that the position is necessary to carry out Government functions for which I am responsible. This certification is made with the knowledge that this information is to be used for statutory purposes relating to appointment and payment of public funds, and that false or misleading statements may constitute violations of such statutes or their implementing regulations.*

a. Typed Name and Title of Immediate Supervisor
Lonnie Dixon, Director, Office of Info Resources Management

Signature: [signature] Date: 9-25-02

b. Typed Name and Title of Higher-Level Supervisor or Manager *(optional)*

Signature: Date:

21. **Classification/Job Grading Certification.** *I certify that this position has been classified/graded as required by Title 5, U.S. Code, in conformance with standards published by the U.S. Office of Personnel Management or, if no published standards apply directly, consistently with the most applicable published standards.*

Typed Name and Title of Official Taking Action
Allison S. Beard
Human Resources Specialist (Staffing & Classification)

Signature: Allison S Beard Date: SEP 26 2002

22. Position Classification Standards Used in Classifying/Grading Position
Job Family Position Classification Standard for Administrative Work in the Information Technology Group, GS-2210, 05-2001; GSSG – HRCD-5, 06-98

Information for Employees. The standards, and information on their application, are available in the personnel office. The classification of the position may be reviewed and corrected by the agency or the U.S. Office of Personnel Management. Information on classification/job grading appeals, and complaints on exemption from FLSA, is available from the personnel office or the U.S. Office of Personnel Management.

23. Position Review	Initials	Date	Initials	Date	Initials	Date	Initials	Date	Initials	Date
a. Employee *(optional)*										
b. Supervisor										
c. Classifier										

24. Remarks

*Positions in the Bureau of Indian Affairs are in the competitive service unless occupied under Schedule A 213.3112(a)(7). In such case the position is in the excepted service during the tenure of the excepted employee.

Full Performance Level: GS-14 ~~Sensitivity: 6 High Risk Public Trust~~

25. Description of Major Duties and Responsibilities *(See Attached)*

OFFICE OF INFORMATION RESOURCES MANAGEMENT
Supervisory IT Specialist (Policy and Planning)
GS-2210-14

INTRODUCTION

The Bureau of Indian Affairs' mission is to enhance the quality of life, promote economic opportunity, and to carry out the responsibility to protect the trust assets of American Indians, Indian tribes and the Alaska Natives. We will accomplish this through the delivery of quality services, maintaining government-to-government relationships within the spirit of Indian Self-Determination.

The mission of the Office of Information Resource Management (OIRM) is to provide leadership and technical direction to all Bureau locations regarding Information Technology (IT) operations, controls, acquisition standards, architecture and platforms, local and wide area network communications, configuration, systems, software maintenance, customer support, applications design, documentation, application programming, acceptance testing and support of the Bureau missions.

This position contributes to the mission of OIRM by serving as the Chief of the Disaster Recovery Branch. The Disaster Recovery Branch, located at 500 Gold Street, Albuquerque, New Mexico, is primarily responsible for Change Management for Bureau of Indian Affairs (BIA) computer systems, Disaster Recovery for BIA computer systems in Reston, Virginia, and supporting BIA Continuity of Operations Planning. This position is supervised by the Director of OIRM.

MAJOR DUTIES

Exercises delegated managerial, supervisory and technical authority to manage the functions of Disaster Recovery Branch.

Develops, plans, directs reviews, evaluates and coordinates the IT functions associated with Change Management (CM) for BIA computer systems, Disaster Recovery (DR) for BIA computer systems in Reston, Virginia, and OIRM Continuity of Operations Planning (COO), including quarterly testing of DR capabilities and supporting maintenance of computer applications associated with the BIA's Unisys NX platform. This supporting maintenance includes detailed systems analysis; preparation of complete documentation of BIA computer systems, including manuals for operation; preparation and maintenance of all documentation necessary to support change management for BIA computer systems; documentation of Continuity of Operations Plan for the BIA's OIRM; and computer program coding. Delivers tested system modifications according to time schedules developed with the requesting users. Implements and maintains configuration management processes, procedures, and system level support for applications residing on the Unisys NX platform.

Sets goals for the Branch to effectively fulfill the objectives of OIRM and BIA. Develops long- and short- range plans of action including time frames, determines resource needs and allocates resources to staff, equipment and materials, establishes policies and procedures to accomplish

program functions and objectives. Responsible for continually evaluating effectiveness and efficiency of program, and determines trends to identify problem areas and resolve them.

Serves as key consultant and authority to higher-level management and executive level on the computer application support program for the Unisys NX platform, policy and procedures. The incumbent is relied on for substantive advice, new and innovative ideas, approaches and solutions to complex problems that effect major changes or improvements, typically requiring deep technical involvement in studies, development, implementation and coordination issues.

Provides oversight of the IT support for the Central Office West located in Albuquerque, NM.

Supervises ADP professionals and administrative staff within the Disaster Recovery Branch, whose full performance levels range from GS-5 through GS-13.

Makes decisions on work problems presented by other team leaders within OIRM; develops operating procedures; and communicates information to higher and lower levels within the organization.

Initiates personnel action requests for staffing such as promotions, reassignments, appointments, etc., position classifications, bonuses and awards for the Branch; makes and approves selections for positions within the Branch; hears and resolves formal individual or group grievances and serious employee complaints; effects disciplinary actions; identifies developmental needs and develops training plans to respond to needs; and approves or denies training requests.

Implements other provisions of personnel management programs such as affirmative action and equal opportunity action plans; career development plans; and safety practices.

Ensures that employees supervised adhere to Bureau and government-wide regulations covering pay, travel, sick and annual leave. Approves leave requests for subordinate employees. Establishes performance standards and conducts appropriate employee evaluations of performance and recommends awards or bonuses for Branch staff.

Finds and implements ways to eliminate or reduce significant bottlenecks and barriers to production, promote team building, and improve business practices.

Plans and recommends administrative actions associated with the Branch such as procurement, budget, and travel.

Evaluates changing technological tools and system development concepts and approaches, and acquires and implements those that will improve the efficiency and effectiveness of the Branch staff.

Responsible for the development and maintenance of system documentation for applications associated with the Unisys NX platform. Documentation includes detailed system schematics such as process and program flow charts, record layouts, an audit trail of system changes, run descriptions, and programming requirements consistent with the BIA's System Life Cycle

Handbook and maintaining system program libraries to assure standard naming conventions, to optimize space utilization and to maintain efficient disk availability while assuring that all Trust and other sensitive and mission critical data remain readily available on tape if not on disk.

Determines whether contractor performed work meets standards necessary for authorization of payment.

Serves as an expert advisor on Disaster Recovery.

Prepares briefings, memoranda, and technical reports for presentation on topics and activities related to the Branch's functions.

FACTORS

1. Knowledge Required

Managerial, technical knowledge and skills sufficient to plan, organize, direct, staff, carry out, and evaluate for the Bureau a comprehensive computer applications system program. This knowledge and these skills include:

Mastery of advanced concepts, principles, procedures, methods and practices of computer applications systems in order to interact with the program users and to guide the analysis, development, testing, implementation, evaluation and maintenance of long- and short-range plans and objectives for computer applications support activities for the BIA.

Comprehensive knowledge in the area of Configuration Management, Disaster Recovery, and Continuity of Operations methods and standards or industry best practices in these areas.

A broad knowledge of automated data processing methods, equipment types, analytical methods and procedures, systems applications, and management principles used in the IT field and how to apply them.

Comprehensive knowledge of Federal IT policies, standards and procedures; characteristics of current IT system hardware and software; and computer techniques, requirements, methods and procedures promulgated by Congress, the Department of Interior and the BIA to include familiarity with approaches used by IT organizations in other Federal agencies and/or the private sector in order to evaluate and advise executive and mid-level managers on assigned programs and activities.

Extensive knowledge of technological advancements in the IT field, and the ability to relate that knowledge to the needs of the Bureau and OIRM.

Extensive knowledge of sophisticated project planning and organization, scheduling, and control techniques (such as reporting requirements, budgeting, accounting, personnel management, property and supply) is required in order to assure successful integration of program efforts within the Branch and with other projects to meet the objectives of OIRM, thereby providing quality and effective support for the Bureau to satisfy its mission.

Knowledge of theories, concepts, principles and techniques of management and supervision sufficient to enable the incumbent to develop and implement management strategies and action to develop and maintain productivity and harmonious working relations among employees to attain program objectives.

Skill in negotiating, problem solving and conflict resolution.

Demonstrated skill in oral and written communications in order to write and present meaningful and coherent reports, documentation, and a variety of publications; and skills to effectively interact with a cross section of Bureau employees including program users and mid-level and executive-level management.

2. Supervisory Controls

The Director of OIRM provides administrative direction with assignments in terms of broadly defined programs goals and objectives to be achieved with program resources.

Within broad direction, the incumbent independently plans and organizes the programs, plans, actions, and controls of the Branch's functions, determines the general approaches and methods to use, monitors progress, and evaluates program accomplishments.

Results of work are considered technically authoritative and are normally accepted without change. Review concerns such matters as fulfillment of program objectives and program effectiveness.

3. Guidelines

Guidelines include laws; Executive Orders; Federal, Department and Bureau regulations, policies and instructions, manuals, and technical literature. Guidelines are often broadly stated and may not adequately deal with basic program development or technical problems to meet new policy goals and objectives. Precedents are lacking. The incumbent uses initiative and resourcefulness in extending or redefining guidelines, or deviating from traditional principles, practices and precedents to solve unique program and/or technical problems and develops local program instructions and guidance. The incumbent is intimately involved in the interpretation of Bureau and Department guidelines. The incumbent is recognized throughout the Bureau as an expert on computer applications systems area.

4. Complexity

Plans, evaluates and administers the CM, DR, and COO program for the BIA, complicated by broad program and technical problems, advising on changes to specific policies or practices, and developing and monitoring plans and actions to deal with these problems. Work entails long- and short-term program planning, directing day-to-day operations, in-depth systematic evaluation of progress, and recommending level of resources and overall organization of the program. Management of work relating to CM, DR, and COO, and changes to applications residing on the Unisys NX platform, is complex due to: 1) the fact that the work involves several stages of an

automated project, such as program development, program testing, system documentation, and system change control; and 2) may include the requirement to develop unique major changes to applications residing on the Unisys NX platform. In addition, extensive coordination and support of other experts both inside and outside the Branch is required.

Decisions regarding what needs to be done include major areas of uncertainty in approach, methodology or interpretation and process evaluation resulting from changes in program emphasis and direction, organizational changes, program conflicts with established policies/practices, etc.

Work requires a high degree of judgment in setting program priorities, recommending changes in program direction, recommending decisions with broad impact, and recommending actions to correct conditions underlying problems. The work requires continuing efforts to analyze a wide variety of interrelated complex problems and to advise on the best course of action to eliminate barriers to program goals and objectives.

5. Scope and Effect

The purpose of the position is to plan, direct, evaluate and carry out CM, DR, and COO operations, as well as applications changes residing on the Unisys A-Series platform, for the Bureau. The managerial work includes planning and organizing program resources, setting goals and evaluating results. The work involves a variety of unusual problems and requirements, and the formulation of alternative solutions in making studies, reports for management, and providing technical support. The work affects the entire BIA mission accomplishment.

6. Personal Contacts

Internal contacts are with management, other branch chiefs, and co- workers in OIRM. External contacts range from a cross section of program users within BIA to IT professionals inside and outside the government, including other Government agencies.

7. Purpose of Contacts

The purpose of contacts is to identify and clarify automation needs and to consult on, justify, defend, negotiate, or settle highly significant problems and issues ranging from administrative to highly technical matters. These problems affect Bureau policy, set precedent, and involve large expenditures of resources. A considerable amount of tact and judgment is required of the incumbent in the communication, conferences, consultations, discussion, and negotiations resulting from the contacts.

8. Physical Demands

No unusual physical effort is involved. The work is mostly sedentary. Travel is required to effectively support and consult with Bureau IT installation managers, to attend meetings, symposia, standardization committees, seminars, etc., as well as to other field locations throughout the Bureau.

9. Work Environment

The work area is adequately lighted, heated, and ventilated. The work environment involves everyday risks or discomforts that require normal safety precautions. Some employees may occasionally be exposed to uncomfortable conditions in such places as research and production facilities.

OTHER

The incumbent is required to operate a government owned or leased motor vehicle in performance of work, therefore, is expected to qualify for government driver's license.

Incumbent may be required to work irregular tour of duty with occasional overtime.

POSITION EVALUATION SUMMARY

Position Title/Series/Grade:	Supervisory Information Technology Specialist (Policy and Planning), GS-2210-14
Organization:	BIA, Central Office, Office of Information Resources Management, Disaster Recovery Branch
Position Number:	

Evaluation Factors	Factor Level Used (FL#, etc.)	Points Assigned	Comments
1. Knowledge Required by the Position	1-8	1550	Mastery of advanced concepts, principles, procedures, methods and practices of computer applications systems; comprehensive knowledge in the area of configuration management, disaster recovery and continuity of operations; extensive knowledge of sophisticated project planning and organization, scheduling and control techniques.
2. Supervisory Controls	2-5	650	Director of OIRM provides administrative direction with assignments in terms of broadly defined program goals and objectives. Results of work are considered technically authoritative and are normally accepted without change.
3. Guidelines	3-5	650	Guidelines include laws; Executive Orders, Federal, Departmental and Bureau regulations. Incumbent must use initiative and resourcefulness in extending or redefining guidelines where they are lacking.
4. Complexity	4-5	325	Plans, evaluates and administers the Disaster Recovery, Continuity of Operations programs for BIA, complicated by broad program and technical problems, advising on changes to specific policies or practices, and developing and monitoring plans and actions. Work entails long- and short-term program planning.
5. Scope and Effect	5-5	325	Work involves a variety of unusual problems and

			requirements, and the formulation of alternative solutions in making studies, reports for management, and providing technical support.
6/7. Personal Contacts and Purpose of Contacts	Level 3/C	180	Contacts include management, other branch chiefs, and co-workers in OIRM, program users within BIA, IT professionals inside and outside government. Purpose of contacts is to identify and clarify automation needs and to consult on, justify, defend, negotiate, or settle significant problems and issues ranging from administrative to highly technical matters.
8. Physical Demands	8-1	5	Work is primarily sedentary
9. Work Environment	9-1	5	Work is performed in an office setting.
Summary:	Total Points	3690	Point Range for GS-14: 3605 - 4050
	Grade Conversion	GS-14	

Additional Remarks:

This position description was submitted to establish a new position in the Disaster Recovery Branch that is currently being established in Albuquerque, New Mexico to be responsible for Change Management in the Bureau of Indian Affairs computer systems, Disaster Recovery for BIA computer systems in Reston, Virginia and to support the BIA Continuity of Operations Planning. This position will serve as the lead of the branch and in this capacity is expected to supervise a group of IT professionals and administrative support personnel whose full performance levels range from GS-05 through GS-13. Since this is a new organization, it is difficult to determine the number of staff this position will supervise and we must use the organization chart dated June 13, 2002, which indicates one GS-2210-13; three GS-2210-12s and one GS-318-07 position.

The Job Family Position Classification Standard for Administrative Work in the Information Technology Group, GS-2200, dated May 2001, will be used to determine the type of technical work performed by this position. The General Schedule Supervisory Guide will be used to evaluate the proposed supervisory work of the position, however, the technical work of the position will clearly be grade controlling for classification purposes. The GS-2210 Information Technology Specialist series covers two-grade interval administrative positions that mange, supervise, lead, administer, develop, deliver and support information technology systems and services. This series covers only those positions for which the paramount requirement is knowledge of IT principles, concepts, and methods, e.g., data storage, software applications, networking.

The basic title for this occupation is "Information Technology Specialist" or "IT Specialist". Use of the parenthetical specialty titles with the basic title further identifies the duties and responsibilities performed and the special knowledge and skills needed by the position. This position will utilize the parenthetical title of Policy and Planning, which is defined as "...develop, implement, and ensure compliance with plans, policies, standards, infrastructures, and architectures that establish the framework for the management of all IT programs."

The following evaluation is provided to classify the supervisory duties of the position. Since this position is being established as part of a developing branch within the Office of Information Resources Management, the supervisory duties and the types and grades of positions supervised are projected for this classification only and will be subject to review once the Disaster Recovery Branch is fully staffed.

General Schedule Supervisory Guide

The General Schedule Supervisory Guide provides evaluation criteria for determining the General Schedule grade level of supervisory positions in grades GS-05 through GS-15. It also contains criteria for evaluating managerial responsibilities that may accompany supervisory responsibilities in this range of grades. Positions graded by this guide will continue to be classified in the most appropriate occupational series. Position titles will be determined through reference to the classification standard, classification guide, and/or series guidance used to determine the occupational series of the position.

Factors	Factor Level	Points	Comments
1. Program Scope and Effect	1-3	550	
2. Organizational Setting	2-2	250	
3. Supervisory and Managerial Authority Exercised	3-3a	775	
4. Personal Contacts –			
Subfactor 4A – Nature of Contacts	4A-2	50	
Subfactor 4B – Purpose of Contacts	4B-3	100	
5. Difficulty of Typical Work Directed.	5-6	800	
6. Other Conditions	6-4	1120	
	Total Points	3645	
	Grade Conversion	GS-14	

Title, Series, and Grade Assigned: This position is properly classified as a Supervisory Information Technology Specialist (Policy and Planning), GS-2210-14.

Allison S. Beard

SEP 26 2002

Allison S. Beard
Human Resources Specialist (Staffing & Classification)

Date

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10/17/02          ** FEDERAL PERSONNEL/PAYROLL SYSTEM **          PA912M2
12:20:14                    * LIST POSITIONS *                    PA912P2
COMMAND: ____ <=========================================================<<<<<<<
START LIST FROM:  DEPT: IN  BUR: 06  SUBBUREAU: KK  ORG CODE: K00281_____
                  POSITION NUMBER: _______
TYPE 'X' TO SELECT POSITIONS AND PRESS ENTER.

   PSN NUMBER  ORG IDENTIFIER     STAT PPLN OCC GRD PSN TITLE OPM
_  0015200 001 IN 06 KK K00281      1   GS  2210 13 IT AUDITOR
_  2810006 001 IN 06 KK K00281      1   GS  0334 11 COMPUTER SPECIALIST
_  2810014 001 IN 06 KK K00281      1   GS  0334 12 COMPUTER SPECIALIST
_  2810020 001 IN 06 KK K00281      1   GS  0334 12 COMPUTER SPECIALIST
_  2810023 001 IN 06 KK K00281      1   GS  0334 13 COMPUTER SPECIALIST
_  2810028 001 IN 06 KK K00281      1   GS  1101 14 INFO RESOUR CONTRAC_OFFICER
_  2810029 001 IN 06 KK K00281      1   GS  0334 07 COMPUTER SPECIALIST
_  2810036 001 IN 06 KK K00281      1   GS  0343 12 PROGRAM ANALYST
_  2810038 001 IN 06 KK K00281      1   GS  0318 06 SECRETARY (OFFICE AUTOMATIO
_  2810039 001 IN 06 KK K00281      1   GS  0318 07 SECRETARY (OFFICE AUTOMATIO
_  2810048 001 IN 06 KK K00281      1   GS  0334 12 COMPUTER SPECIALIST
_  2810050 001 IN 06 KK K00281      1   GS  2210 14 SUPV. IT SPEC (PLCYPLAN)
MORE
Enter-PF1---PF2---PF3---PF4---PF5---PF6---PF7---PF8---PF9---PF10--PF11--PF12---
NEXT  HELP        ESC   MAIN                    DOWN                    EXIT
```

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10/17/02          ** FEDERAL PERSONNEL/PAYROLL SYSTEM **          PA912M7
12:20:35             * POSITION CLASSIFICATION DATA *             PA912P7
COMMAND: ____ <==========================================<<<<<<<<
                                                    ORG CODE: K00281
DEPT/BUREAU: IN06 SUBBUREAU: KK     POI: 1672 SPO: KK  PSN NUM: 2810050 /  001
********************************************************************************
REVIEW DATA AND PRESS ENTER.
CLASSIFICATION CERTIFICATION DATE  : 09 / 26 / 02
CLASSIFICATION CERTIFICATION INIT  : ASB
CLASSIFICATION FOLLOWUP CODE       :   /
CLASSIFICATION FOLLOWUP DATE       :
CLASSIFICATION RECOMMENDED BY DATE :
CLASSIFICATION RECOMMENDED BY INIT :
CLASSIFICATION REVIEW DATE         :
CLASSIFICATION REVIEW INITIALS     :
CLASSIFICATION REVIEW TYPE         :   /

CLASSIFIED BY CODE                 : D / FIRST LEVEL REVIEW

CLASSIFIED BY DATE                 : 09 / 26 / 02
MORE
Enter-PF1---PF2---PF3---PF4---PF5---PF6---PF7---PF8---PF9---PF10--PF11--PF12---
NEXT  HELP        ESC   MAIN                                          EXIT
```

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10/17/02          ** FEDERAL PERSONNEL/PAYROLL SYSTEM **                PA912M8
12:20:45             * POSITION CLASSIFICATION DATA *                   PA912P8
COMMAND: ____ <=========================================================<<<<<<<<
                                                        ORG CODE: K00281
DEPT/BUREAU: IN06 SUBBUREAU: KK     POI: 1672 SPO: KK  PSN NUM: 2810050 /  001
*****************************************************************************
REVIEW DATA AND PRESS ENTER.
CLASSIFIED BY INITIALS                : ASB
DATE POSITION LAST AUDITED            :
SUPV POSITION CERT LEVEL A DATE       : 09 / 25 / 02
SUPV POSITION CERT LEVEL A INITIAL    : LD
SUPV POSITION CERT LEVEL B DATE       :
SUPV POSITION CERT LEVEL B INITIAL    :



 END
Enter-PF1---PF2---PF3---PF4---PF5---PF6---PF7---PF8---PF9---PF10--PF11--PF12---
NEXT  HELP        ESC   MAIN                                  BACK        EXIT
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10/17/02          ** FEDERAL PERSONNEL/PAYROLL SYSTEM **                PA912M9
12:17:57          * POSITION SF50 AND MISCELLANEOUS DATA *               PA912P9
COMMAND: ____ <=========================================================<<<<<<<<
                                                        ORG CODE: K00281
DEPT/BUREAU: IN06 SUBBUREAU: KK     POI: 1672 SPO: KK  PSN NUM: 2810050 /  001
*****************************************************************************
REVIEW DATA AND PRESS ENTER.
POSITION SENSITIVITY        : 6  / HIGH RISK
POSITION STATUS             : 1  / ACTIVE VACANT POSITION
POSITION TENURE             : P  / IDENTIFIES A 'PERMANENT' POSITION
                                   ESTABLISHED WITHOUT TIME LIMITATION OR
                                   ESTABLISHED FOR A LIMITED PERIOD OF ONE
                                   YEAR OR MORE OR POSITION THAT HAS BEEN
                                   OCCUPIED FOR A YEAR OR MORE (NOT
                                   NECESSARILY CONTINUOUSLY BY THE SAME
                                   EMPLOYEE), REGARDLESS OF THE INTENT WHEN
POSITION TITLE CODE         : AA
POSITION TITLE OPM          : SUPV. IT SPEC (PLCYPLAN)
POSITION TITLE ORGANIZATION:
PREMIUM CLASS               : 01
MORE
Enter-PF1---PF2---PF3---PF4---PF5---PF6---PF7---PF8---PF9---PF10--PF11--PF12---
NEXT  HELP        ESC   MAIN                                  BACK        EXIT
```

CERTIFICATE OF SERVICE

I hereby certify that on October 18, 2002, I caused a copy of the foregoing Defendants' Motion to Discharge the September 17, 2002 Order to Show Cause for Civil Contempt and to Request Entry of an Order of Full Relief, the Memorandum in Support Thereof, and the Proposed Order of Full Relief, to be served on the following counsel:

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