

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C. 20424-0001

MEMORANDUM

DATE: March 26, 2004

TO: The Federal Labor Relations Authority

FROM: SUSAN E. JELEN
Administrative Law Judge

SUBJECT: DEPARTMENT OF VETERANS AFFAIRS
VETERANS AFFAIRS MEDICAL CENTER
JACKSON, MISSISSIPPI

Respondent

and

Case No. AT-CA-03-0661

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 589

Charging Party

Pursuant to sections 2423.27(c) and 2423.34(b) of the Rules and Regulations, 5 C.F.R. §§ 2423.27(c) and 2423.34(b), I am hereby transferring the above case to the Authority. Enclosed are copies of my Decision, the service sheet, and the transmittal form sent to the parties. Also enclosed are the Motion For Summary Judgment and other supporting documents filed by the parties.

Enclosures

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C. 20424-0001

DEPARTMENT OF VETERANS AFFAIRS VETERANS AFFAIRS MEDICAL CENTER JACKSON, MISSISSIPPI Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 589 Charging Party	Case No. AT-CA-03-0661

NOTICE OF TRANSMITTAL OF DECISION

The above-entitled case having been presented to the undersigned Administrative Law Judge pursuant to the Statute and the Rules and Regulations of the Authority, the undersigned herein serves his Decision, a copy of which is attached hereto, on all parties to the proceeding on this date and this case is hereby transferred to the Federal Labor Relations Authority pursuant to 5 C.F.R. § 2423.34(b).

PLEASE BE ADVISED that the filing of exceptions to the attached Decision is governed by 5 C.F.R. §§ 2423.40-2423.41, 2429.12, 2429.21-2429.22, 2429.24-2429.25, and 2429.27.

Any such exceptions must be filed on or before **APRIL 26, 2004**, and addressed to:

Federal Labor Relations Authority
Office of Case Control
1400 K Street, NW, 2nd Floor
Washington, DC 20424-0001

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SUSAN E. JELEN
Administrative Law Judge

Dated: March 26, 2004
Washington, DC

FEDERAL LABOR RELATIONS AUTHORITY

Office of Administrative Law Judges

WASHINGTON, D.C.

DEPARTMENT OF VETERANS AFFAIRS VETERANS AFFAIRS MEDICAL CENTER JACKSON, MISSISSIPPI Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 589 Charging Party	Case No. AT-CA-03-0661

Brent S. Hudspeth, Esq.
For the General Counsel

Before: SUSAN E. JELEN
Administrative Law Judge

DECISION ON MOTION FOR SUMMARY JUDGMENT

On January 26, 2004, the Regional Director of the Atlanta Region of the Federal Labor Relations Authority issued a Complaint and Notice of Hearing, alleging that the Department of Veterans Affairs, Veterans Affairs Medical Center, Jackson, Mississippi (the Respondent) violated section 7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute (the Statute), by unilaterally changing conditions of employment of bargaining unit employees without providing the American Federation of Government Employees, Local 589 (the Union) notice and the opportunity to negotiate to the extent required by the Statute. The complaint was served on Respondent by

certified mail and the certified mail receipt, demonstrating service upon the Respondent, was returned to the Atlanta Region. (G.C. Ex. 1(b) and 1(c)) The complaint specified that, in accordance with the Authority's Rules and Regulations, the Respondent must file an Answer to the complaint no later than February 23, 2004, and that a failure to file an answer shall constitute an admission of the allegations of the complaint. A hearing was scheduled for May 13, 2004.

The Respondent did not file an answer, either in person or by mail, within the required period or at any time thereafter.

On March 5, 2004, Counsel for the General Counsel filed a Motion for Summary Judgment, asserting that by its failure to answer the complaint, the Respondent has admitted all of the allegations therein. Since no facts are in dispute, the General Counsel submits that the record demonstrates that the Respondent violated section 7116(a)(1) and (5) of the Statute.

The Respondent has failed to file any response to the General Counsel's Motion for Summary Judgment within the time period provided by Regulations. See 5 C.F.R. § 2423.27 (b).

Discussion of Motion for Summary Judgment

Section 2423.20(b) of the Authority's Rules and Regulations, 5 C.F.R. § 2423.20(b), provides, in pertinent part:

(b) Answer. Within 20 days after the date of service of the complaint, . . . the Respondent shall file and serve, . . . an answer with the Office of Administrative Law Judges. The answer shall admit, deny, or explain each allegation of the complaint. . . . Absent a showing of good cause to the contrary, failure to file an answer

or respond to any allegation shall constitute an admission. . . .

The Rules and Regulations also explain how to calculate filing deadlines and how to request extensions of time for filing the required documents. See, e.g., sections 2429.21 through 2429.23.

In this case the Respondent has not filed an answer as required by the Regulations. In accordance with section 2423.20(b) of the Rules and Regulations, this failure constitutes an admission of each of the allegations of the Complaint. *Department of Veterans Affairs Medical Center, Asheville, North Carolina*, 51 FLRA 1572, 1594 (1996). Furthermore, the Respondent has not filed any response to the Motion for Summary Judgment. Accordingly, there are no disputed factual or legal issues in this case and it is appropriate to resolve this case by summary judgment. Based on the existing record, I make the following findings of fact, conclusions of law and recommendations.

Findings of Fact

1. The Respondent is an agency as defined by 5 U.S.C. §7103(a)(3).

2. The American Federation of Government Employees, AFL-CIO (AFGE) is the exclusive representative of a bargaining unit at the Department of Veterans Affairs, and the Union is an agent of AFGE for purposes of representing employees at the Respondent's facility in Jackson, Mississippi.

3. On or about July 4, 2003, the Respondent, through Johnny L. Smith, Director, Respiratory Department, implemented a practice of requiring Respiratory Department bargaining unit employees to carry pagers and respond to calls to their respective pager numbers on a daily basis.

4. This constituted a change in the conditions of employment of bargaining unit employees and it was

effectuated by the Respondent without providing the Union with notice and the opportunity to negotiate to the extent required by the Statute.

Discussion and Conclusions

Section 7116(a) (5) of the Statute provides that it shall be an unfair labor practice for an agency to refuse to negotiate in good faith with a labor organization as required by the Statute. This duty to negotiate in good faith requires that prior to implementing a change in conditions of employment of bargaining unit employees, an agency is required to provide the exclusive representative with notice and an opportunity to bargain over those aspects of the change that are within the duty to bargain. *United States Department of the Air Force, Luke Air Force Base, Arizona*, 57 FLRA 730 (2002). Respondent has admitted by its failure to file an answer that the change in working conditions in this case is one that triggers the agency's duty to negotiate in good faith with the exclusive representative. Therefore, as admitted by its failure to answer the complaint, Respondent violated section 7116(a) (1) and (5) of the Statute when it failed to provide notice to the Union and bargain with the Union over the above changes in conditions of employment.

Remedy

Counsel for the General Counsel proposed a recommended remedy requiring that the Respondent be ordered to restore the *status quo ante* by terminating the practice of requiring Respiratory Department bargaining unit employees to carry pagers and respond to calls to their respective pager numbers on a daily basis. A *status quo ante* remedy is not always appropriate when an agency has unilaterally implemented a change in conditions of employment, but by failing to respond to the Motion for Summary Judgment and by failing to offer any evidence demonstrating the inappropriateness of such a remedy, the Respondent has waived any objection to the remedy proposed by the General Counsel.

Accordingly, I recommend that the Authority grant the General Counsel's Motion for Summary Judgment and issue the following Order:

ORDER

Pursuant to section 2423.41(c) of the Authority's Rules and Regulations and section 7118 of the Federal Service Labor-Management Relations Statute, it is hereby ordered that the Department of Veterans Affairs, Veterans Affairs Medical Center, Jackson, Mississippi, shall:

1. Cease and desist from:

(a) Unilaterally changing working conditions of employees exclusively represented by the American Federation of Government Employees, Local 589, by requiring bargaining unit employees to carry pagers and respond to calls to the pagers on a daily basis without first completing bargaining with the Union over the appropriate arrangements and procedures to change such conditions of employment.

(b) In any like or related manner, interfering with, restraining or coercing its employees in the exercise of their rights assured by the Federal Service Labor-Management Relations Statute.

2. Take the following affirmative action in order to effectuate the purposes and policies of the Federal Service Labor-Management Relations Statute:

(a) Terminate the practice of requiring bargaining unit employees in the Respiratory Department to carry pagers and respond to calls to the pagers on a daily basis.

(b) Give notice to, and upon request, negotiate with the Union over the appropriate arrangement and procedures for implementing the requirement that employees in the Respiratory Department carry pagers and respond to calls to the pagers on a daily basis.

(c) Post at its Jackson, Mississippi facility, where bargaining unit employees represented by the American

Federation of Government Employees, Local 589, are located, copies of the attached Notice on forms to be furnished by the Federal Labor Relations Authority. Upon receipt of such forms, they shall be signed by the Center Director, and shall be posted and maintained for 60 consecutive days thereafter, in conspicuous places, including all bulletin boards and other places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that such Notices are not altered, defaced, or covered by any other material.

(d) Pursuant to section 2423.41(e) of the Authority's Rules and Regulations, notify the Regional Director, Atlanta Region, Federal Labor Relations Authority, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply.

Issued, Washington, DC, March 26, 2004.

SUSAN E. JELEN
Administrative Law Judge

NOTICE TO ALL EMPLOYEES

POSTED BY ORDER OF THE

FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the Department of Veterans Affairs, Veterans Affairs Medical Center, Jackson, Mississippi, violated the Federal Service Labor-Management Relations Statute, and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT unilaterally change working conditions of employees exclusively represented by the American Federation of Government Employees, Local 589, by requiring bargaining unit employees to carry pagers and respond to calls to the pagers on a daily basis without first completing bargaining with the Union over the appropriate arrangements and procedures to change such conditions of employment.

WE WILL NOT refuse to bargain with the Union over changes in working condition of unit employees.

WE WILL NOT in any like or related manner, interfere with, restrain, or coerce our employees in the exercise of their rights assured by the Federal Service Labor-Management Relations Statute.

WE WILL terminate the practice of requiring bargaining unit employees in the Respiratory Department to carry pagers and respond to calls to pagers on a daily basis.

(Activity)

Date: _____ By: _____

(Signature) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

If employees have any questions concerning this Notice or compliance with its provisions, they may communicate directly with the Regional Director, Atlanta Regional Office, Federal Labor Relations Authority, whose address is: Marquis Two Tower, 285 Peachtree Center Avenue, Suite 701, Atlanta, GA 30303, and whose telephone number is: 404-331-5380.

CERTIFICATE OF SERVICE

I hereby certify that copies of this DECISION issued by SUSAN E. JELEN, Administrative Law Judge, in Case No. AT-CA-03-0661, were sent to the following parties in the manner indicated:

CERTIFIED MAIL AND RETURN RECEIPT

CERTIFIED NOS:

Brent S. Hudspeth, Esq.

7000 1670 0000 1175

3642

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Chief Steward
AFGE, Local 589
1500 East Woodrow Wilson Blvd.
Jackson, MS 39216

REGULAR MAIL:

President

AFGE

80 F Street, NW

Washington, DC 20001

Dated: March 26, 2004

Washington, DC