

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

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| DEPARTMENT OF VETERANS AFFAIRS<br>VETERANS AFFAIRS MEDICAL CENTER<br>JACKSON, MISSISSIPPI<br><br>Respondent |                        |
| and<br><br>AMERICAN FEDERATION OF GOVERNMENT<br>EMPLOYEES, LOCAL 589<br><br>Charging Party                  | Case No. AT-CA-03-0385 |

NOTICE OF TRANSMITTAL OF DECISION

The above-entitled case having been submitted 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 **OCTOBER 27, 2003**, 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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PAUL B. LANG  
Administrative Law Judge

Dated: September 26, 2003  
Washington, DC

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

MEMORANDUM

DATE: September 26, 2003

TO: The Federal Labor Relations Authority

FROM: PAUL B. LANG  
Administrative Law Judge

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

Respondent

and Case No. AT-  
CA-03-0385

AMERICAN FEDERATION OF GOVERNMENT  
EMPLOYEES, LOCAL 589

Charging Party

Pursuant to section 2423.34(b) of the Rules and Regulations, 5 C.F.R. § 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 is a Motion for Summary Judgment and other supporting documents filed by the parties.

Enclosures

**FEDERAL LABOR RELATIONS AUTHORITY**Office of Administrative Law Judges  
WASHINGTON, D.C.

|   |                        |
|---|------------------------|
| DEPARTMENT OF VETERANS AFFAIRS<br>VETERANS AFFAIRS MEDICAL CENTER<br>JACKSON, MISSISSIPPI<br><br>Respondent |                        |
| and<br><br>AMERICAN FEDERATION OF GOVERNMENT<br>EMPLOYEES, LOCAL 589<br><br>Charging Party                  | Case No. AT-CA-03-0385 |

Richard S. Jones  
For the General Counsel

Before: PAUL B. LANG  
Administrative Law Judge

**DECISION ON MOTION FOR SUMMARY JUDGMENT**

On June 30, 2003, pursuant to 5 C.F.R. § 2423.20(a)1, the Regional Director of the Atlanta Region, Federal Labor Relations Authority issued a Complaint and Notice of Hearing which was duly served by certified mail on the Department of Veterans Affairs, Veterans Affairs Medical Center, Jackson, Mississippi (the Respondent). The Regional Director simultaneously served a copy of the Complaint by certified mail on the Office of Administrative Law Judges. The complaint included notice to the Respondent that its Answer to the complaint had to be filed no later than July 28, 2003. It further stated that, absent a showing of good cause to the contrary, a failure to file an answer or respond to any allegation would constitute an admission of the allegations of the complaint.

On August 22, 2003, pursuant to §2423.27 of the Authority's Rules and Regulations, the General Counsel filed a Motion for Summary Judgment on the grounds that the Respondent failed to answer the complaint. The Respondent

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The Rules and Regulations of the Authority are set forth in 5 C.F.R. § 2411.1, *et seq.*

has neither replied to the motion nor requested an extension of time within which to do so.

### **Discussion and Analysis**

The Authority has stated clearly that parties appearing before it are charged with knowledge of all pertinent statutory and regulatory filing requirements. *U.S. Environmental Protection Agency, Environmental Research Laboratory, Narragansett, Rhode Island*, 49 FLRA 33, 37 (1994). § 2423.20(b) of the Rules and Regulations provides that the Respondent shall file and serve its answer to the complaint within 20 days of the date of service of the complaint, but, in any event, prior to the start of the hearing. § 2423.27(b) of the Rules and Regulations requires responses to motions for summary judgment to be filed within five (5) days after the date of service of the motion.

In view of the Respondent's failure to answer the complaint or respond to the motion for summary judgment and in accordance with §2423.20(b) of the Rules and Regulations, the Respondent is deemed to have admitted the allegations of the Complaint.

### **Findings and Conclusions**

The following findings are as set forth in the Complaint:

1. The Department of Veterans Affairs, Veterans Affairs Medical Center, Jackson, Mississippi (the Respondent) is an agency under 5 U.S.C. § 7103(a)(3).

2. The American Federation of Government Employees, AFL-CIO (AFGE) is a labor organization under 5 U.S.C. § 7103(a)(4) and is the exclusive representative of a unit of employees appropriate for collective bargaining at the Respondent.

3. The American Federation of Government Employees, Local 589, AFL-CIO (Local 589 or Charging Party), is an agent of AFGE for the purpose of representing employees at the Respondent within the unit described in paragraph 2.

4. The charge in Case No. AT-CA-03-0385 was filed by Local 589 with the Atlanta Regional Director on March 7, 2003.

5. A copy of the charge described in paragraph 4 was served on the Respondent.

6. During the time period covered by this complaint, the following persons occupied the positions opposite their names:

|                 |                                    |
|-----------------|------------------------------------|
| Johnny L. Smith | Director, Respiratory Department   |
| Mike Humphries  | Supervisor, Respiratory Department |
| Linda Bridges   | Supervisor, Respiratory Department |

7. During the time period covered by this complaint, the persons named in paragraph 6 were either supervisors or management officials under 5 U.S.C. § 7103(a)(10) and (11).

8. During the time period covered by this complaint, the persons named in paragraph 6 were acting on behalf of Respondent.

9. In January, 2003, the Respondent, through Smith, Humphries, and Bridges, discontinued the practice of requiring Respiratory Department supervisors to carry pager 656 and respond to calls to that pager number and instead began requiring employees in the bargaining unit described in paragraph 2 to carry pager 656 and respond to calls to that pager number on a daily basis.

10. The Respondent, through Smith, Humphries, and Bridges, implemented the changes described in paragraph 9 without providing the Union notice and the opportunity to negotiate to the extent required by the Statute.

11. By the conduct described in paragraphs 9 and 10, the Respondent committed an unfair labor practice in violation of 5 U.S.C. § 7116(a)(1) and (5).

In view of the foregoing findings and conclusions, the General Counsel's Motion for Summary Judgment is hereby Granted.

I further find that, by requiring certain bargaining unit employees to carry pager 656 and respond to calls to the pager on a daily basis, all without notice to the Charging Party and an opportunity to bargain, the Respondent

has committed an unfair labor practice in violation of § 7116(a)(1) and (5) of the Statute.

Accordingly, I recommend that the Authority adopt 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 (the Union), by requiring bargaining unit employees to carry pager 656 without first completing bargaining with the Union over the decision to change such conditions of employment.

(b) Refusing to bargain with the Union over the changes in working conditions of unit employees.

(c) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of rights assured them by the Statute.

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

(a) Bargain on request with the Union regarding any proposed requirement that bargaining unit employees carry pager 656.

(b) Post at its facilities at the Department of Veterans Affairs, Veterans Affairs Medical Center, Jackson, Mississippi, where bargaining unit members represented by the Union 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.

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

Issued, Washington, DC, September 26, 2003.

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PAUL B. LANG  
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 (the Union), by requiring bargaining unit employees to carry pager 656 without first completing bargaining with the Union over the decision to change such conditions of employment.

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

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

**WE WILL** bargain on request with the Union regarding any proposed requirement that bargaining unit employees carry pager 656.

\_\_\_\_\_  
- (Respondent)

Dated: \_\_\_\_\_ 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 any of 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 30303-1270, and whose telephone number is: 404-331-5212.





**CERTIFICATE OF SERVICE**

I hereby certify that copies of the **DECISION** issued by PAUL B. LANG, Administrative Law Judge, in Case No. AT-CA-03-0385, were sent to the following parties:

**CERTIFIED MAIL & RETURN RECEIPT**

**CERTIFIED NOS:**

Richard S. Jones, Esquire

7000 1670 0000 1175

**2584**

Federal Labor Relations Authority

Marquis Two Tower, Suite 701

285 Peachtree Center Avenue

Atlanta, GA 30303-1270

Alan M. Hathorne, Esquire

7000 1670 0000 1175

**2591**

Department of Veterans Affairs

Office of Regional Counsel

1500 E. Woodrow Wilson Blvd.

Jackson, MS 39216

Charles Jenkins, Chief Steward

7000 1670 0000 1175

**2607**

AFGE, Local 589

1500 East Woodrow Wilson Blvd.

Jackson, MS 39216

**REGULAR MAIL:**

Bobby Harnage, President

AFGE, AFL-CIO

80 F Street, NW

Washington, DC 20001

Dated: September 26, 2003  
Washington, DC