

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

DEPARTMENT OF VETERANS AFFAIRS CARL VINSON MEDICAL CENTER DUBLIN, GEORGIA Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1985 Charging Party	Case No. AT-CA-03-0391

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

RICHARD A. PEARSON
Administrative Law Judge

Dated: September 26, 2003
Washington, DC

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
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WASHINGTON, D.C. 20424-0001

MEMORANDUM

DATE: September 26, 2003

TO: The Federal Labor Relations Authority

FROM: RICHARD A. PEARSON
Administrative Law Judge

SUBJECT: DEPARTMENT OF VETERANS AFFAIRS
CARL VINSON MEDICAL CENTER
DUBLIN, GEORGIA

Respondent

and Case No. AT-
CA-03-0391

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 1985

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 AUTHORITYOffice of Administrative Law Judges
WASHINGTON, D.C.

DEPARTMENT OF VETERANS AFFAIRS CARL VINSON MEDICAL CENTER DUBLIN, GEORGIA Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1985 Charging Party	Case No. AT-CA-03-0391

Peter Hines

For the General Counsel

Before: RICHARD A. PEARSON
Administrative Law Judge**DECISION ON MOTION FOR SUMMARY JUDGMENT**

On June 30, 2003, the Regional Director of the Atlanta Region of the Federal Labor Relations Authority (FLRA), issued a Complaint and Notice of Hearing alleging that the Department of Veterans Affairs, Carl Vinson Medical Center, Dublin, Georgia (the Respondent), violated section 7116(a) (1) and (8) of the Federal Service Labor-Management Relations Statute (the Statute), by refusing to strike arbitrators for the arbitration of a grievance filed by American Federation of Government Employees, Local 1985 (the Union). The complaint was served on the Respondent by certified mail, and it specified that Respondent's answer must be filed by July 28, 2003, and that a failure to file an answer shall constitute an admission of the allegations of the complaint. A hearing was scheduled for October 7, 2003.

The Respondent has not submitted anything in response to the complaint.

On August 22, 2003, 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 (8) of the Statute.

The Respondent filed no response to the Motion for Summary Judgment. On September 24, 2003, it filed an untimely Motion to Dismiss, asserting that the underlying unfair labor practice is now moot. Based on the evidence of record, the issue is not moot, and the Motion to Dismiss is hereby denied.

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. . . .

Not only has the Respondent failed to answer the allegations of the complaint in any manner, but it has neither made any showing of good cause nor responded to the Motion for Summary Judgment. By its inaction, it has admitted the allegations of the complaint. Accordingly, there are no factual issues in dispute, 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

The Respondent is an agency as defined by 5 U.S.C. § 7103(a)(3). The American Federation of Government Employees (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 Carl Vinson Medical Center in Dublin, Georgia.

The Respondent and AFGE are parties to a collective bargaining agreement (CBA) which covers employees at the Dublin facility, among others. The CBA includes a procedure for the resolution of grievances, with unresolved grievances being subject to binding arbitration at the request of either the Respondent or the Union. In or about November of

2002, the Union filed a grievance alleging that the Respondent failed to grant annual leave according to the contractual procedure, and that the Respondent decided to eliminate compressed work tours for employees working in Nursing Home Care.

On November 23, 2002, the Union elevated the grievance to Step 3 of the negotiated grievance procedure, and thereafter the Union invoked arbitration of the grievance. On January 9, 2003, the Union and Respondent jointly requested a list of arbitrators from the Federal Mediation and Conciliation Service (FMCS) to decide the grievance, but since that date the Respondent has refused to strike arbitrators from the list received from the FMCS.

Discussion and Conclusions

The gist of the complaint against Respondent is that it refused to participate in the selection of an arbitrator on a grievance, thereby frustrating the negotiated grievance procedure. In *Department of Labor, Employment Standards Administration/Wage and Hour Division, Washington, D.C.*, 10 FLRA 316 (1982), the Authority held that because section 7121 of the Statute requires federal collective bargaining agreements to include grievance procedures culminating in binding arbitration, it is an unfair labor practice for an agency or union to refuse to arbitrate a grievance. In *American Federation of Government Employees, Local 1457, AFL-CIO*, 39 FLRA 519 (1991), the Authority held that a party's refusal to meet to select an arbitrator was equally unlawful as its outright refusal to arbitrate.

Since the Respondent has admitted that it refused to strike from a list of arbitrators in the grievance that was the subject of this case, it has admitted that it violated section 7121 of the statute, as well as section 7116(a)(1) and (8), and I so find.

In order to remedy its violation, the Respondent must follow the negotiated grievance procedure by striking names of arbitrators from the list it requested from the FMCS on January 9, 2003, and post a notice to employees concerning its conduct. 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 (the Statute), it is

hereby ordered that the Department of Veterans Affairs, Carl Vinson Medical Center, Dublin, Georgia (the Agency), shall:

1. Cease and desist from:

(a) Failing and refusing to strike arbitrators from a list jointly requested by the Agency and the American Federation of Government Employees, Local 1985 (the Union), the exclusive representative of certain of its employees.

(b) 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) Upon the request of the Union, strike arbitrators from a list jointly requested on January 9, 2003 by the Agency and the Union.

(b) Post at its facilities at the Carl Vinson Medical Center, Dublin, Georgia, where employees 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 Medical 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.

RICHARD A. PEARSON
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, Carl Vinson Medical Center, Dublin, Georgia (the Agency), 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 fail or refuse to strike arbitrators from a list jointly requested by the Agency and the American Federation of Government Employees, Local 1985 (the Union), the exclusive representative of certain of our 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, upon the request of the Union, strike arbitrators from a list jointly requested on January 9, 2003 by the Agency and the Union.

- (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 RICHARD A. PEARSON, Administrative Law Judge, in Case No. AT-CA-03-0391, were sent to the following parties:

CERTIFIED MAIL & RETURN RECEIPT

CERTIFIED NOS:

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7000 1670 0000 1175

2546

Melissa Libertini Creech, Esquire
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Bonnie J. Eareckson

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Network 7 Labor Relations Manager
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Duluth, GA 30096

REGULAR MAIL:

Bobby Harnage, President
AFGE, AFL-CIO
80 F Street, NW
Washington, DC 20001

Dated: September 26, 2003
Washington, DC