

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 DECATUR, GEORGIA Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 2778 Charging Party	Case No. AT-CA-04-0327

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 **NOVEMBER 22, 2004**, and addressed to:

Office of Case Control
Federal Labor Relations Authority
1400 K Street, NW, 2nd Floor
Washington, DC 20005

RICHARD A. PEARSON
Administrative Law Judge

Dated: October 21, 2004
Washington, DC

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

MEMORANDUM

DATE: October 21, 2004

TO: The Federal Labor Relations Authority

FROM: RICHARD A. PEARSON
Administrative Law Judge

SUBJECT: DEPARTMENT OF VETERANS AFFAIRS
VETERANS AFFAIRS MEDICAL CENTER
DECATUR, GEORGIA

Respondent

Case No. AT-CA-04-0327

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 2778

Charging Party

Pursuant to section 2423.27(c) of the Final Rules and Regulations, 5 C.F.R. § 2423.27(c), 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 VETERANS AFFAIRS MEDICAL CENTER DECATUR, GEORGIA <p style="text-align: center;">Respondent</p>	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 2778 <p style="text-align: center;">Charging Party</p>	Case No. AT-CA-04-0327

Peter Hines
For the General Counsel

Before: RICHARD A. PEARSON
Administrative Law Judge

DECISION ON MOTION FOR SUMMARY JUDGMENT

On June 30, 2004, the Regional Director of the Atlanta Region of the Federal Labor Relations Authority (the Authority), issued a Complaint and Notice of Hearing alleging that the Department of Veterans Affairs, Veterans Affairs Medical Center, Decatur, Georgia (the Respondent), violated section 7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute (the Statute), by repudiating Article 42, Section 7, Note 4 of the parties' collective bargaining agreement when the Respondent, by Robert Wike, answered two separate grievances at each step of the grievance process. The grievances were filed by the American Federation of Government Employees, Local 2778 (the Union).

The complaint was served on the Respondent by certified mail; it specified that Respondent's answer must be filed by July 26, 2004, and that a failure to file an answer shall constitute an admission of the allegations of the complaint. A hearing was scheduled for October 27, 2004.

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

On September 30, 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 as alleged.

The Respondent has filed no response to the 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. . . .

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 facility in Decatur, Georgia. The Respondent and the Union are parties to a collective bargaining agreement (CBA) covering employees at this facility.

Article 42, Section 7, Note 4 of the CBA contains the following provision:

At any step of the negotiated grievance procedure, when any management deciding official designates someone to act on their behalf, that designee will

have the complete authority to render a decision at that step and will render the decision. The designee will never be someone who decided the issue at any previous step.

On October 10, 2003, the Union filed a grievance regarding office space pursuant to the CBA's grievance procedure, and on November 26, 2003, the Union filed a grievance regarding compressed work schedules. When neither of the grievances was resolved satisfactorily at the first step of the negotiated grievance procedure, the Union appealed each grievance to the second step and then the third step of the procedure. At each of these steps, Robert Wike, Respondent's Labor Relations Specialist, acted on behalf of the Respondent to decide each grievance for the Respondent.

Discussion and Conclusions

It is clear that the Respondent violated Article 42, Section 7, Note 4 of the CBA when the same official rendered the Respondent's decision at the first, second and third steps of the grievance procedure in these two grievances. When determining whether the breach of an agreement amounts to a repudiation (thereby violating Section 7116(a)(1) and (5) of the Statute), the Authority will find a repudiation when the breach was clear and patent, and when the provision breached goes to the heart of the parties' agreement. *Department of the Air Force, 375th Mission Support Squadron, Scott Air Force Base, Illinois*, 51 FLRA 858 (1996).

The Respondent has not answered the General Counsel's allegation that the Respondent's actions constituted a repudiation of the cited portion of the CBA, and thus it has admitted it. Respondent has offered no explanation or justification for the same official deciding the two grievances at each step of the grievance procedure, and I conclude that the Respondent committed a clear and patent breach of Article 42, Section 7, Note 4. I further conclude that this provision goes to the heart of the parties' negotiated grievance procedure.

Accordingly, I conclude that the Respondent repudiated the CBA and committed an unfair labor practice, in violation of section 7116(a)(1) and (5) of the Statute.

As a remedy for the Respondent's violations, the General Counsel requests, and I find it is appropriate, that a cease and desist order be issued and that the Respondent post a notice of its violation to employees.

I therefore 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, Veterans Affairs Medical Center, Decatur, Georgia (the Agency), shall:

1. Cease and desist from:

(a) Repudiating Article 42, Section 7, Note 4 of the Agency's collective bargaining agreement with American Federation of Government Employees, Local 2778 (the Union), by having the same management official answer more than one step of a grievance.

(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) Post at its facilities at the Veterans Affairs Medical Center, Decatur, 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.

(b) 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, October 21, 2004.

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, Veterans Affairs Medical Center, Decatur, 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 repudiate Article 42, Section 7, Note 4 of the Agency's collective bargaining agreement with American Federation of Government Employees, Local 2778 (the Union), by having the same management official answer more than one step of a grievance.

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.

-
(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, and whose telephone number is: 404-331-5212.

CERTIFICATE OF SERVICE

I hereby certify that copies of this DECISION, issued by RICHARD A. PEARSON, Administrative Law Judge, in Case No. AT-CA-04-0327, were sent to the following parties:

CERTIFIED MAIL AND RETURN RECEIPT

CERTIFIED NOS:

Peter Hines

7000 1670 0000 1175

4564

Federal Labor Relations Authority
Suite 701, Marquis Two Tower
285 Peachtree Center Avenue
Atlanta, GA 30303-1270

Send Respondent, Charging Party and President AFGE by regular mail.

Dated: October 21, 2004
Washington, DC