

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY

Office of Administrative Law Judges
WASHINGTON, D.C. 20424-0001

MEMORANDUM

DATE: September 20, 2002

TO: The Federal Labor Relations Authority

FROM: RICHARD A. PEARSON
Administrative Law Judge

SUBJECT: NATIONAL ASSOCIATION OF AIR
TRAFFIC SPECIALISTS, MACON AFSS MACON,
GEORGIA

Respondent

and

Case No. AT-CO-02-0251

JENNIFER R. LEWIS
AN INDIVIDUAL

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 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

NATIONAL ASSOCIATION OF AIR TRAFFIC SPECIALISTS, MACON AFSS MACON, GEORGIA Respondent	
and JENNIFER R. LEWIS AN INDIVIDUAL Charging Party	Case No. AT-CO-02-0251

NOTICE OF TRANSMITTAL OF DECISION

The above-entitled case having been heard before 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 21, 2002**, and addressed to:

Federal Labor Relations Authority
Office of Case Control
607 14th Street, NW, 4th Floor
Washington, DC 20424-0001

RICHARD A. PEARSON

Administrative Law Judge

Dated: September 20, 2002
Washington, DC

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

NATIONAL ASSOCIATION OF AIR TRAFFIC SPECIALISTS, MACON AFSS MACON, GEORGIA <p style="text-align: center;">Respondent</p>	
<p style="text-align: center;">and</p> JENNIFER R. LEWIS AN INDIVIDUAL <p style="text-align: center;">Charging Party</p>	Case No. AT-CO-02-0251

Melissa L. Libertini, Esq.
For the General Counsel

Karey D. Hall, Facility Representative
For the Respondent

Before: RICHARD A. PEARSON
Administrative Law Judge

DECISION ON MOTION FOR SUMMARY JUDGMENT

Statement of the Case

On July 23, 2002, the Regional Director of the Atlanta Region of the Federal Labor Relations Authority issued a Complaint and Notice of Hearing, which was duly served by certified mail upon the named Respondent. The Complaint alleged that Respondent violated section 7116(b)(1) and (8) of the Federal Service Labor-Management Relations Statute (the Statute) by failing to poll all bargaining unit members in determining the watch schedule for the year. The Complaint also specified that, in accordance with the Authority's Rules and Regulations, the Respondent must file an answer to the Complaint no later than August 26, 2002, and that a failure to file an answer shall constitute an admission of the allegations of the Complaint.

On September 6, 2002, Counsel for the General Counsel filed a Motion for Summary Judgment, based on the Respondent's failure to file a timely answer. A facsimile

copy of this motion was received in the Office of Administrative Law Judges on September 6, 2002. After being made aware of the Motion for Summary Judgment, the Respondent, by its Facility Representative Karey D. Hall, submitted a response to the Motion for Summary Judgment and to the Complaint. The Respondent's pleading was dated September 6, 2002, and was received by the Office of Administrative Law Judges on September 11, 2002. Regarding the Motion for Summary Judgment, Hall stated that he was unfamiliar with unfair labor practice (ULP) cases and procedures, and that he believed his telephone discussion with an FLRA attorney concerning the ULP allegations (apparently while the charge was being investigated) fulfilled the Respondent's obligation to respond to the Complaint. The Respondent further requested permission to file its answer, which it attached to its response to the Motion for Summary Judgment. The answer, which is in narrative form, does not respond to each allegation in the Complaint; rather, it simply explains the Respondent's position that it did not commit an unfair labor practice.

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. Motions to extend the filing deadline shall be filed in accordance with § 2423.21.

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

It is undisputed here that the Respondent's answer was not timely filed. Therefore, the issue is whether the Respondent has shown "good cause" for its late submission. The Respondent, as noted above, has indicated that its Facility Representative for the Macon facility, the person who received the Complaint on behalf of the Respondent, was unfamiliar with ULP procedures and concluded that his

earlier telephone conversation with an attorney in the FLRA Regional Office constituted the required answer. In light of the Facility Representative's inexperience, Respondent asks that lenience be extended for its error.

The above-described error by the Respondent is not attributable simply to inexperience, however. In the text of the Complaint and Notice of Hearing, the Regional Director provided the Respondent with detailed instructions concerning the requirements for its answer, including the date on which the answer was due, the persons to whom it must be sent, and references to the applicable regulations. The due date listed in the Complaint, August 26, 2002, was actually 34 days after the issuance of the Complaint, and thus was itself lenient to the Respondent. The plain language of the notice leaves no doubt that Respondent was required to file a new document and that an earlier telephone conversation did not meet the requirements specified. An inexperienced official, exercising normal diligence, should have consulted with legal counsel or with more experienced union officials, if he had any questions as to what was required.

Moreover, the Authority has held, in a variety of factual and legal contexts, that parties are responsible for being aware of the statutory and regulatory requirements in proceedings under the Statute. *U.S. Environmental Protection Agency, Environmental Research Laboratory, Narragansett, Rhode Island*, 49 FLRA 33, 35-36 (1994) (answer to a complaint and an ALJ's order); *U.S. Department of Veterans Affairs, Medical Center, Waco, Texas and American Federation of Government Employees, Local 1822*, 43 FLRA 1149, 1150 (1992) (exceptions to an arbitrator's award). Inexperienced persons are expected to seek competent counsel before, not after, a deadline has passed.

In light of these factors, the Respondent has not shown good cause for its failure to file a timely answer to the Complaint. 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. I therefore make the following findings of fact, conclusions of law, and recommendations.

Findings of Fact

The National Association of Air Traffic Specialists (NAATS) 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 within the Federal Aviation Administration (FAA). The National Association of Air Traffic Specialists, Macon AFSS (the Respondent) is an agent of NAATS for purposes of representing employees in the unit described above at the FAA's Macon, Georgia facility.

During all times pertinent to this complaint, Jennifer R. Lewis (Lewis or the Charging Party) was an employee under 5 U.S.C. § 7103(a)(2) and was in the bargaining unit described above at the FAA's Macon, Georgia facility. Lewis is not a dues-paying member of the Respondent.

The original and amended charges in Case No. AT-CO-02-0251 were filed by Lewis with the Atlanta Regional Director of the FLRA on February 27, 2002 and June 4, 2002, respectively. Copies of the original and amended charges were served on the Respondent.

The Respondent and the FAA are parties to a collective bargaining agreement, dated July 16, 1993, which remains in effect. Article 34, Section 34-01, of the collective bargaining agreement provides that basic watch schedules shall be developed by the parties at the local level.

During the time period covered by the Complaint, Karey Hall was an employee under 5 U.S.C. § 7103(a)(2), was in the bargaining unit described above, and was the Facility Representative at the Macon AFSS for the Respondent. During this time period, Hall was acting on behalf of the Respondent. In or about January of 2002, the Respondent, by Hall, did not poll all of the bargaining unit employees at the Macon AFSS, in determining the watch schedule for the year.

Conclusions

As noted above, Article 34, Section 34-01 of the parties' collective bargaining (attached to the Counsel for the General Counsel's Brief in Support of Its Motion for Summary Judgment) provides for the union and the agency to develop basic watch schedules for employees at the local level. The General Counsel alleges in the Complaint that when the basic watch schedule for the year 2002 was being developed, the Respondent took a poll of employees but did not include all employees in the poll. As indicated in the charge and the first amended charge (Exhibits 1(a) and 1(b) of the Counsel for the General Counsel's Brief in Support of Its Motion for Summary Judgment), the Charging Party, who is not a union member, was excluded from the poll, and the Respondent admits that the Charging Party was not polled.

The poll of employees was undertaken by the Respondent in its role as exclusive representative of unit employees, as it was part of the union's role in developing the basic watch schedule for employees at the Macon facility, a role that arose directly from the collective bargaining agreement. Therefore, the Respondent was required to carry out this function without regard to union membership. *National Federation of Federal Employees, Local 1827*, 49 FLRA 738, 746-48 (1994). By excluding the Charging Party from the poll, the Respondent has violated section 7116(b) (1) and (8) of the Statute.

Accordingly, I recommend that the Authority grant the General Counsel's motion for summary judgment and issue the following:

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 (Statute), it is hereby ordered that the National Association of Air Traffic Specialists, Macon AFSS, Macon, Georgia (Respondent), shall:

1. Cease and desist from:

(a) Denying unit employees who are employed in the Macon Automated Flight Service Station, Middle Georgia Regional Airport, Macon, Georgia (Macon AFSS), and who are not members of the National Association of Air Traffic Specialists (Union), the opportunity to participate in a poll concerning the adoption of the watch schedules for the year.

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

2. Take the following affirmative action in order to effectuate the purposes and policies of the Statute:

(a) In the event the Respondent conducts a poll among unit employees of the Macon AFSS concerning yearly watch schedules, the Respondent will grant to all unit employees the opportunity to participate in the poll.

(b) Post at its business offices, and in all places where notices to bargaining unit employees in the Macon AFSS are customarily posted, copies of the attached Notice on forms to be furnished by the Federal Labor Relations Authority. Upon receipt of such forms, the forms shall be signed by the President of the Respondent and shall be posted and maintained for 60 consecutive days thereafter. Reasonable steps shall be taken to ensure that such Notices are not altered, defaced, or covered by any other material.

(c) Submit appropriate signed copies of the Notice to the Chief of the Macon AFSS for posting in conspicuous places where unit employees represented by the Respondent are located. Copies of the Notice should be maintained for a period of 60 days from the date of the posting.

(d) Pursuant to section 2423.41(e) of the Authority's Rules and Regulations, notify the Regional Director of the Atlanta Regional Office, Federal Labor Relations Authority, Marquis Two Tower, Suite 701, 285 Peachtree Center Avenue, Atlanta, GA 30303, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply.

Issued, Washington, DC, September 20, 2002.

RICHARD A. PEARSON
Administrative Law Judge

NOTICE TO OUR MEMBERS AND OTHER EMPLOYEES
AS ORDERED BY THE FEDERAL LABOR RELATIONS AUTHORITY
AND TO EFFECTUATE THE POLICIES OF THE
FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS STATUTE

WE HEREBY NOTIFY OUR MEMBERS AND OTHER EMPLOYEES THAT:

WE WILL NOT discriminate against the bargaining unit employees who are not members of the National Association of Air Traffic Specialists, Macon AFSS, by denying them the opportunity to participate in a poll concerning the watch schedule for the year.

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

WE WILL grant to all unit employees in the Macon Automated Flight Service Station, Middle Georgia Regional Airport, Macon, Georgia, the opportunity to participate in a poll concerning the selection of the watch schedule for the year, in the event that such a poll is conducted.

(Labor Organization)

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 any of its provisions, they may communicate directly with the Regional Director of the Federal Labor Relations Authority, Atlanta Regional Office, whose address is: Marquis Two Tower - Suite 701, 285 Peachtree Center Avenue, Atlanta, Georgia 30303-1270 and whose phone 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-CO-02-0251, were sent to the following parties in the manner indicated:

CERTIFIED MAIL AND RETURN RECEIPT

CERTIFIED NOS:

Melissa L. Libertini, Esq.
Counsel for the General Counsel
Federal Labor Relations Authority
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Atlanta, GA 30303-1270

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Jennifer Lewis
Air Traffic Control Specialist
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Macon, GA 31206-4013

7000 1670 0000 1174 9898

Dated: September 20, 2002
Washington, DC