

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

MEMORANDUM

DATE: April 8, 2011

TO: The Federal Labor Relations Authority

FROM: SUSAN E. JELEN
Administrative Law Judge

SUBJECT: AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES,
LOCAL 3, AFL-CIO
MILWAUKEE, WISCONSIN
RESPONDENT

AND

Case No. CH-CO-11-0005

LAURIE A. VACCA, 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 on Motion for Summary Judgment, the service sheet, and the transmittal form sent to the parties. Also enclosed are 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

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 3, AFL-CIO
MILWAUKEE, WISCONSIN

RESPONDENT

AND

LAURIE A. VACCA, AN INDIVIDUAL

CHARGING PARTY

Case No. CH-CO-11-0005

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 her 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. §§2423.40-41, 2429.12, 2429.21-2429.22, 2429.24-2429.25, and 2429.27.

Any such exceptions must be filed on or before **MAY 9, 2011**, and addressed to:

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

SUSAN E. JELEN
Administrative Law Judge

Dated: April 8, 2011
Washington, D.C.

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

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 3, AFL-CIO
MILWAUKEE, WISCONSIN

RESPONDENT

AND

Case No. CH-CO-11-0005

LAURIE A. VACCA, AN INDIVIDUAL

CHARGING PARTY

John Gallagher, Esq.
For the General Counsel

Roberta Sharbutt
For the Respondent

Laurie A. Vacca
For the Charging Party

Before: SUSAN E. JELEN
Administrative Law Judge

DECISION ON MOTION FOR SUMMARY JUDGMENT

On January 31, 2011, the Regional Director of the Chicago Region of the Federal Labor Relations Authority (the Authority) issued a Complaint and Notice of Hearing, alleging that the American Federation of Government Employees, Local 3, AFL-CIO, Milwaukee, Wisconsin (the Respondent) violated section 7116(b)(1) and (8) of the Federal Service Labor-Management Relations Statute (the Statute). The complaint alleged that the Respondent failed and refused to process the SF 1188 Cancellation of Payroll Deductions for Labor Organization Dues of Laurie A. Vacca (Charging Party/Vacca) in this matter.

The complaint set forth a hearing date of March 31, 2011, and stated that the Answer to the complaint was due no later than February 28, 2011. On February 22,

2011, the Respondent filed a response to the complaint.¹

On March 10, 2011, the General Counsel (GC) filed a Motion for Summary Judgment, asserting that based on the Respondent's February 22 response to the complaint, as well as the related documents, there is no genuine dispute as to any material facts requiring a hearing before an administrative law judge. On March 16, 2011, I issued an Order Indefinitely Postponing Prehearing Disclosure and Prehearing Conference Call scheduled in this matter. The Respondent did not file a response to the GC's Motion for Summary Judgment.

DISCUSSION OF MOTION FOR SUMMARY JUDGMENT

Section 2423.20(b) of the Authority's Rules and Regulations, 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....

In its answer, the Respondent did not specifically admit, deny, or explain each allegation of the complaint, but did set forth its position with regard to the allegations of the complaint, contending that the Charging Party was not in compliance with the Master Agreement with regard to the submission of her SF 1188. The Respondent did not, however, deny the factual matters set forth in the complaint. Under these circumstances, I find that, based on the pleadings, there is no genuine issue as to any material fact and this case can be resolved by summary judgment. *United States Dep't of Transp., Fed. Aviation Admin., Houston, Tex.,*

63 FLRA 34 (2008). Based on the existing record, I make the following findings of facts, conclusions of law, and recommendations:

FINDINGS OF FACTS

1. **The American Federation of Government Employees, AFL-CIO (AFGE or Union) is a labor organization within the meaning of section 7103(a)(4) of the Statute and is the exclusive representative of a nationwide consolidated unit of employees appropriate for collective bargaining at the U.S. Department of Veterans Affairs (VA).**
2. **The Respondent is a labor organization within the meaning of section 7103(a)(4) of the Statute and is an agent of the Union for the purpose of representing bargaining unit employees at the VA's Milwaukee,**

¹ This response was filed with the Chicago Region, but was apparently not filed with the Office of

Administrative Law Judges as required by section 2423.20(b) of the Rules and Regulations of the Authority. This response was included as an exhibit (Ex. 2) with the General Counsel's Motion for Summary Judgment.

Wisconsin Regional Office (VARO Milwaukee).

3. **At all times material, Laurie A. Vacca (Charging Party/(Vacca) has been an employee of the VARO Milwaukee and has been included in the bargaining unit described above.**

4. **At all times material, the following individuals held the positions set forth opposite their respective names and have been agents of Respondent acting upon its behalf:**

Roberta Sharbutt	President
Julie Kohlhepp	Treasurer
David Bump	Steward

5. **At all times material, the Union and the VA have been parties to a national collective bargaining agreement (CBA) covering employees in the bargaining unit described above.**

6. **Article 41 of the CBA concerns dues withholding and provides in section 6 that bargaining unit employees wishing to terminate their dues withholding must first submit an SF 1188 to the Union’s designated representatives for processing. To be timely, the SF 1188 has to be submitted to the Union between the anniversary date of the effective date of the dues withholding and 21 calendar days prior to the anniversary date.²**

² Section 6 – Revocation

Employees may revoke their dues withholding only once a year, on the anniversary date of their original allotment, by submitting a timely SF 1188 to the union representatives designated for such purposes. In order for the SF 1188 to be timely, it must be submitted to the Union between the anniversary date of the effective date of the dues withholding and twenty-one (21) days prior to the anniversary date. The union representative must certify by date and signature the date the SF 1188 is given to the union representative or by some other appropriate date stamping device.

The union official will, by reference to the remittance listing, determine the anniversary date of

the allotment. The ending date of the pay period in which the anniversary date occurs will be entered in Item 6 on the SF 1188. The entry will be initiated by the union official who will then deliver the form to the Fiscal Office prior to the close of business of the Friday following the date entered in Item 6. If, through error of the Union, an SF 1188 is received in the Fiscal Office later than the agreed-to-date, the Fiscal Office will process the form at the earliest possible time, but no later than the first pay period following receipt. Union representatives may be in a duty status while receiving and processing the SF 1188 and will be released from normal duties to carry out these duties under local release procedures.

7. **On July 13, 2010, Charging Party Vacca completed an SF 1188 and submitted the form to the Respondent for processing.**
8. **The Charging Party's SF 1188 was submitted to the Respondent between the anniversary date of the effective date of her dues withholding and 21 calendar days prior to her anniversary date.**
9. **Since on or about July 13, 2010, the Respondent has failed and refused to process the Charging Party's SF 1188.**

ANALYSIS

Section 7115 of the Statute guarantees employees the right to revoke their dues withholding authorizations at annual intervals.³ *Nat'l Treasury Employees Union and U.S. Dep't of the Treasury, Internal Revenue Serv.*, 64 FLRA 833, 838 (2010). Section 7115 itself provides no particular means for initiating or revoking an employee's dues withholding authorization. The Authority has recognized that "parties may define through negotiations the procedures for implementing section 7115" of the Statute, as long as those procedures do not infringe on employees' rights. *AFGE, AFL-CIO*, 51 FLRA 1427, 1433 (1996)(*AFGE*) (citing *Fed. Employees Metal Trades Council, AFL-CIO, Mare Island Naval Shipyard*, 47 FLRA 1289, 1294 (1993)). Accordingly, any procedures negotiated by the parties for the processing of dues revocation requests must conform to the guarantee in section 7115 that employees remain free to revoke their authorization at annual intervals. *AFGE*, 51 FLRA

³ **Section 7115(a) provides in relevant part:**

If an agency has received from an employee in an appropriate unit a written assignment which authorizes the agency to deduct from the pay of the employee amounts for the payment of regular and periodic dues to the exclusive representative of the unit, the agency shall honor the assignment and make an appropriate allotment pursuant to the assignment. Any such allotment shall be made at no cost to the exclusive representative or the employee. Except as provided under subsection (b) of this section, any such assignment may not be revoked for a period of 1 year.

at 1433⁴; *see also United Power Trades Org.*, 62 FLRA 493, 495 (2008).

The evidence establishes that the Charging Party's anniversary date for Union membership is July 19, 2009. The evidence also establishes that the Charging Party submitted an SF 1188 to the Respondent on July 13, 2010. The Respondent asserts that the

Charging Party was not in compliance with the CBA by not submitting the SF 1188 at least twenty-one days prior to her anniversary date for removal from the rolls of membership in the union for the year 2010. The Respondent asserts that the SF 1188 was received on July 13, 2010, which was only six days prior to her anniversary date and not the twenty-one days specified in the CBA. The Respondent asserts that in order to be in compliance with the CBA, the Charging Party would have had to submit the SF 1188 to the representative designated no later than June 28, 2010, which would have been twenty-one calendar days prior to her anniversary date of membership with the Union.

The GC asserts that the Charging Party's SF 1188 was submitted to the Respondent on July 13, 2010, which was between the anniversary date of the effective date of her dues withholding and twenty-one calendar days prior to her anniversary date. The GC asserts that the Respondent's reading of Article 41, Section 6A is selective and ignores the express language of the provision. The provision states that to be timely the SF 1188 has to be submitted to the Union "between the anniversary date of the effective date of the dues withholding and 21 calendar days prior to the anniversary date[]" (emphasis added). The GC argues that this expressly and plainly establishes a window of twenty-one days to submit a SF 1188 that begins twenty-one days before the employee's anniversary date and ends on the employee's anniversary date. As it is clear that the Charging Party's SF 1188 was submitted during this twenty-one day period, it follows that the Respondent violated section 7116(b)(1) and (8) of the Statute by refusing to process her SF 1188.

In agreement with the General Counsel, I find that the Charging Party's SF 1188

⁴ In AFGE the Authority found that the provision in the VA-AFGE 1982 CBA that required employees to submit their SF 1188 to the Union for processing was not a per se violation of the Statute; the local union was found to have violated the Statute by failing to timely process SF 1188s that were submitted in conformance with the CBA's 30 days window for dues revocations. The 1982 VA-AFGE CBA provided, in relevant part, as follows: "Employees may revoke their dues withholding only once a year, on the anniversary date of their original allotment, by submitting a timely SF 1188 to the union representatives designated for such purpose. The union representative must certify by date and signature the date the 1188 is given to the union representative or by some other appropriate date stamping device. In order for the SF 1188 to be timely, it must be submitted to the Union between the anniversary date of the effective date of the dues withholding and 30 calendar days prior to the anniversary date." AFGE, 51 FLRA at 1429, n.2. The Union acknowledged in AFGE that this section created a 30-day window for an employee to submit their SF 1188 to the Union. Id at 1428-29. The only difference between the 1982 CBA and the current CBA is the window period is now 21 days. (Ex. 3).

was submitted to the Respondent on July 13, 2010, which was between the anniversary date of July 19 and twenty-one calendar days prior to her anniversary. Thus, her SF 1188 was submitted in a timely manner and the Respondent refusal to process her SF 1188 was a violation of section 7116(b)(1) and (8) of the Statute. I find that the Respondent's reading of the CBA to require the SF 1188 to be submitted no later than June 28, 2010, is not in conformance with the language of the CBA and I specifically reject this defense. Therefore, I find that the Respondent violated section 7116(b)(1) and (8) of the Statute, as alleged.

REMEDY

The General Counsel proposed a recommended remedy requiring the Respondent to recognize its obligations under the Statute, to cease and desist from certain activities and to take affirmative action in order to effectuate the purposes and policies of the Statute.⁵ Further, the Respondent would be required to post the notice at its business offices and normal meeting places, signed by the Local President, for 60 consecutive days. The Respondent would also be required to submit signed copies of the notices to the Department

of Veterans Affairs, Regional Office, Milwaukee, Wisconsin facility, for posting in conspicuous places where unit employees involved herein are located for a period of 60 consecutive days from the date of posting.

Since I have found that the Respondent violated the Statute as alleged in the complaint, I find that the General Counsel's recommended remedy is appropriate.

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 American Federation of Government Employees, Local 3, AFL-CIO, shall:

1. Cease and desist from:

(a) **Failing or refusing to promptly process any SF 1188 Cancellation of Payroll Deductions for Labor Organization Dues received from a member of the American Federation of Government Employees, Local 3, AFL-CIO (Local 3), in conformance with Article 41, Section 6, of the VA-AFGE master agreement.**

(b) **Interfering with, restraining, or coercing bargaining unit employees in the**

⁵ On March 17, 2011, Counsel for the General Counsel filed a Motion requesting that the proposed remedial order it submitted on March 10, 2011, be replaced with a corrected version. Having no objection to the motion, it is hereby granted.

exercise of their rights to revoke their dues withholding authorizations at intervals of one year.

(c) In any like or related manner, interfering with, restraining, or coercing bargaining unit 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) **Within five days from the date of this Order, complete and deliver Laurie Vacca's SF 1188 to the Veterans Affairs's Fiscal Officer for processing.**

(b) **Make Laurie Vacca (Vacca) whole for all dues monies which were wrongfully withheld from her paycheck because Local 3 did not timely process the SF 1188 Vacca submitted on July 19, 2010.**

(c) **Post at Local 3's business offices and normal meeting places where bargaining unit employees 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 Local 3's President, 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) **Submit signed copies of the Notices to the Department of Veterans Affairs, Regional Office, Milwaukee, Wisconsin facility for posting.**

(e) **Pursuant to section 2423.41(e) of the Authority's Rules and Regulations, notify the Regional Director, Chicago 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, D.C., April 8, 2011.

SUSAN E. JELEN
Administrative Law Judge

NOTICE TO OUR MEMBERS
POSTED BY ORDER OF THE
FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that Local 3 of the American Federation of Government Employees, AFL-CIO, violated the Federal Service Labor-Management Relations Statute (the Statute), and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY ALL LOCAL 3 MEMBERS THAT:

WE WILL NOT refuse to promptly process any SF 1188 Cancellation of Payroll Deductions for Labor Organization Dues received from a member of the American Federation of Government Employees, Local 3, AFL-CIO (Local 3), in conformance with Article 41, Section 6, of the VA-AFGE master agreement.

WE WILL NOT interfere with, restrain, or coerce bargaining unit employees in the exercise of their rights to revoke their dues withholding authorizations at intervals of one year.

WE WILL NOT in any like or related manner, interfere with, restrain, or coerce bargaining unit employees in the exercise of their rights assured by the Statute.

WE WILL, within five days from the date of this Order, complete and deliver Laurie Vacca's SF 1188 to the Veterans Affairs Fiscal Officer for processing.

WE WILL make Laurie Vacca (Vacca) whole for all dues monies which were wrongfully withheld from her paycheck because Local 3 did not timely process the SF 1188 Vacca submitted on July 19, 2010.

(AFGE, Local 3)

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, Chicago Region, Federal Labor Relations Authority, and whose address is: 55 W. Monroe, Suite 1150, Chicago, Illinois 60603 and whose telephone number is: (312) 886-3465.

CERTIFICATE OF SERVICE

I hereby certify that copies of this **DECISION**, issued by SUSAN E. JELEN, Administrative Law Judge, in Case No. CH-CO-11-0005, were sent to the following parties:

CERTIFIED MAIL & RETURN RECEIPT

CERTIFIED NOS:

**John Gallagher
Counsel for the General Counsel
Federal Labor Relations Authority
55 West Monroe, Suite 1150
Chicago, IL 60603**

7004-1350-0003-5175-4267

**Roberta Sharbutt
President, AFGE, Local 3
c/o VA Medical Center
5000 W. National Avenue
Milwaukee, WI 53295**

7004-1350-0003-5175-4274

**Laurie Vacca
10359 S. Katie Drive
Oak Creek, WI 53154**

7004-1350-0003-5175-4281

REGULAR MAIL:

President
AFGE, AFL-CIO
80 F Street, N.W.
Washington, DC 20001

Catherine Turner
Office of Administrative Law Judges
Federal Labor Relations Authority

Dated: April 8, 2011
Washington, DC