

OFFICE OF ADMINISTRATIVE LAW JUDGES WASHINGTON, D.C. 20424

DEFENSE COMMISSARY AGENCY, FORT MCCLELLAN COMMISSARY STORE, FORT MCCLELLAN, ALABAMA Respondent . and . Case Nos. AT-CA-20125 . AT-CA-20132

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1941, AFL-CIO Charging Party .

Brent S. Hudspeth For the General Counsel
Before: Eli Nash, Jr. Administrative Law Judge

DECISION

Statement of the Case

On May 20, 1992, the Regional Director of the Atlanta Region of the Federal Labor Relations Authority (herein called the FLRA), issued a Consolidated Complaint and Notice of Hearing which was duly served by certified mail upon the named Respondent. The Complaint alleged that Respondent violated section 7116(a)(1) and (5) of the Statute by implementing a required lunch break schedule for all Grocery Department Personnel, which conflicted with a negotiated work schedule agreement entered into by the Respondent and the Charging Party.

The Consolidated Complaint allowed Respondent the requisite 20 days, until June 15, 1992 to file an answer pursuant to section 2423.13 of the FLRA's Rules and Regulations. Respondent filed no answer within the required period.

On or around November 9, 1992, Counsel for the General Counsel moved for summary judgment and submitted a supporting brief. The Acting Regional Director, pursuant to section 2423.22(b) of the FLRA's Rules and Regulations referred the motion to the Chief Administrative Law Judge. On November 20, 1992, the Chief Administrative Law Judge issued an Order granting all parties until December 7, 1992 to file Responses. Thereafter, the case was assigned to the undersigned for disposition pursuant to section 2423.19(t) and section 2423.22(b)(3) of the FLRA regulations. To date there have been no responses to the Order of the Chief Administrative Law Judge nor has any party sought special permission to file any further materials in the matter.

Since Respondent failed to reply to either the Consolidated Complaint or the Order of the Chief Administrative Law Judge, it is recommended that the motion for summary judgment be granted for the following reasons:

Findings and Conclusions

Section 2423.13(b) of the Regulations provides, in pertinent part:

Failure to file an answer or to plead specifically to or explain any allegation shall constitute an admission of such allegation and shall be so found by the Authority, unless good cause to the contrary is shown.

The failure of Respondent to file any answer in this case requires a finding that it has admitted all the allegations of the instant Consolidated Complaint. Therefore, no genuine issue of fact exists in the matter and disposition by summary judgment is proper.

Consequently, the uncontested facts disclose that on October 17, 1991, Respondent entered into an agreement with the Charging Party establishing new work hours and a tour of duty schedule for unit member, Dennis Thomas. Sometime around October 29, 1991, Respondent by Grocery Department Manager James George, implemented a required lunch break and break schedule for all Grocery Department Personnel. Beginning sometime around October 29, 1991 and continuing to date, this schedule has been applied to Thomas although it conflicts with the work schedule which the Charging Party and Respondent negotiated on Thomas' behalf. Respondent implemented the above lunch break schedule without providing the Charging Party with notice and an opportunity to bargain over the substance or the impact and implementation of the change. Thereafter, sometime around November 27, 1991 the Charging Party was notified by Commissary Officer James L. Wolfe that the schedule previously negotiated for Thomas would not be honored.

In accord with Counsel for the General Counsel, it is found that the topic of timing of breaks and meal period is substantively negotiable. See, e.g., U. S. Department of Agriculture, Agricultural Research Service and America Federation of Government Employee, Local 1940, 37 FLRA 1058, 1063 (1990). Furthermore, I agree that the repudiation of the instant agreement is an independent violation of the Statute. Department of Defense, Warner Robin Air Logistics Center, Robins Air Force Base, Georgia, 40 FLRA 1211, 1218 (1989).

While in agreement with Counsel for the General Counsel that two separate violations are involved in this matter, it is my opinion that the proposed remedy of the General Counsel does not effectuate the purposes of the Statute. It is my belief that Respondent should be required to live up to the negotiated agreement until it reaches a new agreement with the Union concerning employee Dennis Thomas' new work hours and tour of duty schedule. Thus the responsibility should be placed on Respondent, and not the Union to seek bargaining in that respect.

In light of the foregoing, it is recommended that the Authority grant Counsel for the General Counsel's motion for summary judgment and issue the following:

ORDER

Pursuant to section 2423.29 of the Authority's Rules and Regulations and section 7118 of the Federal Service Labor-Management Relations Statute, the Defense Commissary Agency, Fort MCCIellan Commissary Store, Fort MCCIellan, Alabama shall:

1. Cease and desist from:

(a) Failing and refusing to honor the agreement it negotiated with the American Federation of Government Employees, Local 1941, the employees' exclusive representative, by failing and refusing to assign employee Dennis Thomas to the shift required by the agreement.

(b) In any like or related manner, interfering with, restraining, or coercing its employees in the exercise Labor-Management Relations 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 request by the American Federation of Government Employees, Local 1941, the employees' exclusive representative, assign employee Dennis Thomas, to the shift required by the parties' agreement.

(b) Post at its MCClellan Commissary Store facilities where employees in the bargaining unit 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 Commissary Officer 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 2423.30 of the Authority's Rules and Regulations, notify the Regional Director, Atlanta, Georgia 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.

Issued, Washington, DC, December 23, 1992

Eli Nash, Jr.

Administrative Law Judge

Dated: December 23 1992

Washington, DC

NOTICE TO ALL EMPLOYEES

AS ORDER BY THE FEDERAL LABOR RELATIONS AUTHORITY

AND TO EFFECTUATE THE POLICIES OF THE

FEDERAL SERVICE LABOR-MANAGEMENT RELATION STATUE

WE WILL NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT fail and refuse to honor the agreement we negotiated with the American Federation of Government Employees, Local 1941, our employees' exclusive representative, by failing and refusing to assign employee to the shift required by the agreement.

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

WE WILL, upon request by the American Federation of Government Employees, Local 1941, our employees' exclusive representative, assign employee Dennis Thomas, to the shift required by the agreement.

(Activity)

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 question concerning this Notice or compliance with any of its provisions, they may communicate directly with the Regional Director, Atlanta, Georgia Regional Office, Federal Labor Relations Authority, whose address is: 1371 Peachtree Street, N.E., Suite 122, Atlanta, GA 30367, and whose telephone number is:

(404) 347-2324.

CERTIFICATE OF SERVICE

I hereby certify that copies of this DECISION issued by ELI NASH, JR., Administrative Law Judge, in Case Nos. AT-CA-20125 and AT-CA-20132, were sent to the following parties in the manner indicated:

CERTIFIED MAIL:

Donna Sanders, President

American Federation of Government

Employees, Local 1941

P.O. Box 5094

Fort MCClellan, AL 36205-5000

Joseph H. Doyle, Esquire

Office of the Staff Judge Advocate

Buckner Circle, Building 63

Fort MCClellan, AL 36205

Mr. Brent S. Hudspeth
Federal Labor Relation Authority
1371 Peachtree Street, NE, Suite 122
Atlanta, GA 30367

December 23, 1992

Washington, DC

DATE: DECEMBER 23, 1992

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
OFFICE OF ADMINISTRATIVE LAW JUDGES
WASHINGTON, D.C. 20424

.....
DEFENSE COMMISSARY AGENCY, .
FORT MCCLELLAN COMMISSARY .
STORE, FORT MCCLELLAN, ALABAMA .

Respondent .

and .

Case Nos. AT-CA-20125

AMERICAN FEDERATION OF .
GOVERNMENT EMPLOYEES, .
LOCAL 1941, AFL-CIO .

Charging Party .

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Brent S. Hudspeth

For the General Counsel

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Administrative Law Judge

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Issued, Washington, DC, December 23, 1992

Eli Nash, Jr

Administrative Law Judge

Dated: December 23, 1992

Washington, DC

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