

	<p>UNITED STATES OF AMERICA <b>FEDERAL LABOR RELATIONS AUTHORITY</b> Office of Administrative Law Judges WASHINGTON, D.C. 20424-0001</p>	
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MEMORANDUM

DATE: March 13, 2006

TO: The Federal Labor Relations Authority

FROM: PAUL B. LANG  
Administrative Law Judge

SUBJECT: SMALL BUSINESS ADMINISTRATION  
WASHINGTON, D.C.  
(SOUTH FLORIDA DISTRICT OFFICE)

Respondent

CA-05-0105 and Case No. AT-

AMERICAN FEDERATION OF GOVERNMENT  
EMPLOYEES, LOCAL 3841, AFL-CIO

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 are the transcript, exhibits, and any briefs filed by the parties.

Enclosures

UNITED STATES OF AMERICA <b>FEDERAL LABOR RELATIONS AUTHORITY</b> Office of Administrative Law Judges WASHINGTON, D.C. 20424-0001	
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SMALL BUSINESS ADMINISTRATION WASHINGTON, D.C. (SOUTH FLORIDA DISTRICT OFFICE)  Respondent	
and  AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 3841, AFL-CIO  Charging Party	Case No. AT-CA-05-0105

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 **APRIL 12, 2006**, and addressed to:

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

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PAUL B. LANG  
 Administrative Law Judge

Dated: March 13, 2006  
 Washington, DC

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

SMALL BUSINESS ADMINISTRATION WASHINGTON, D.C. (SOUTH FLORIDA DISTRICT OFFICE)  Respondent	
and  AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 3841, AFL-CIO  Charging Party	Case No. AT-CA-05-0105

Brent S. Hudspeth  
 For the General Counsel

Helen Jacobson  
 For the Respondent

Sarah D. McCormick  
 For the Charging Party

Before: PAUL B. LANG  
 Administrative Law Judge

**DECISION ON MOTION FOR SUMMARY JUDGMENT**

**Statement of the Case**

On December 21, 2005, the Regional Director of the Atlanta Region of the Federal Labor Relations Authority (Authority) issued a Complaint and Notice of Hearing in which it was alleged that the Small Business Administration, Washington, D.C. (South Florida District Office) (Respondent) failed to comply with §7114(a)(2)(A) of the Federal Service Labor-Management Relations Statute (Statute) and that the Respondent committed an unfair labor practice in violation of §7116(a)(1) and (8) of the Statute. The Complaint included a notice that the Respondent was required to file an answer no later than January 17, 2006, that an answer filed by mail must be postmarked as of that date and that, if no postmark date is evident on the mailing, the answer would be assumed to have been mailed 5 days prior to

receipt. It further stated that, absent a showing of good cause to the contrary, a failure to file an answer or to respond to any allegation would constitute an admission of that allegation.

On January 26, 2006, the General Counsel filed a motion for summary judgment pursuant to §2423.27 of the Authority's Rules and Regulations (Rules and Regulations) and also moved to postpone the hearing which had been set for February 3, 2006.<sup>1</sup> The motion was accompanied by a certificate of service showing that it had been served on the Respondent by regular mail on January 26, 2006; it had been served on the Office of Administrative Law Judges by fax on the same date.

The hearing was indefinitely postponed by Order of January 26, 2006. As of this date the Respondent has not filed an answer to the Complaint, a response to the motion for summary judgment or a motion for an extension of time in accordance with §2423.21 of the Rules and Regulations.

### **Discussion and Analysis**

#### Procedural Standards

Parties appearing before the Authority are charged with knowledge of all pertinent statutory and regulatory filing requirements, *U.S. Environmental Protection Agency, Environmental Research Laboratory, Narragansett, Rhode Island*, 49 FLRA 33, 37 (1994). §2423.20(b) of the Rules and Regulations requires that the Respondent file and serve its answer to the complaint within 20 days of the date of service of the complaint, but, in any event, prior to the start of the hearing. §2423.27(b) of the Rules and Regulations requires responses to motions for summary judgment to be filed within five (5) days after the date of service of the motion.<sup>2</sup>

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1

The motion was dated January 26, 2005, which was an obvious typographical error.

2

According to §2429.21 of the Rules and Regulations, when the period of time allowed for the filing of papers is 7 days or less, intermediate Saturdays, Sundays and legal holidays are to be excluded from the computation. Pursuant to §2429.22 of the Rules and Regulations, the time within which a party is required to respond to a paper is extended by 5 days when the paper has been served upon the party by mail. Accordingly, the Respondent's response to the motion for summary judgment was due on February 9, 2006 and, if served by mail, should have been received by February 16, 2006.

## Standards for Summary Judgment

In considering motions for summary judgment submitted pursuant to §2423.27 of the Rules and Regulations the standards to be applied are those used by United States District Courts under Rule 56 of the Federal Rules of Civil Procedure, *Department of Veterans Affairs, Veterans Affairs Medical Center, Nashville, Tennessee*, 50 FLRA 220, 222 (1995). Rule 56(c) provides, in pertinent part, that:

The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Upon review of the General Counsel's motion I have determined that the summary judgment process is appropriate in this case.

### **Findings of Fact and Conclusions of Law**

Since the Respondent has not filed an answer to the Complaint, it is deemed to have admitted its allegations. Therefore, pursuant to §2423.20(b) of the Rules and Regulations, I will adopt the following factual and legal allegations of the Complaint:

1. This unfair labor practice complaint and notice of hearing is issued under 5 U.S.C. §§7101-7135 and 5 C.F.R. Chapter XIV.

2. The Small Business Administration, Washington, D.C., (South Florida District Office) (the Respondent), is an agency under 5 U.S.C. §7103(a)(3).

3. The American Federation of Government Employees, AFL-CIO (AFGE) 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 at the Respondent.

4. The American Federation of Government Employees, Local 3841, AFL-CIO (Local 3841 or the Charging Party), is an agent of AFGE for the purpose of representing employees at the Respondent within the unit described in paragraph 3.

5. The charge in Case No. AT-CA-05-0105 was filed by the Union with the Atlanta Regional Director on December 6, 2004.

6. A copy of the charge described in paragraph 5 was served on the Respondent.

7. During the time period covered by this complaint, Gil Colon ("Colon") occupied the position of Deputy District Director at the Respondent.

8. During the time period covered by this complaint, the person named in paragraph 7 was either a supervisor or management official under 5 U.S.C. §§7103(a)(10) and (11).

9. During the time period covered by this complaint, the person named in paragraph 7 was acting on behalf of the Respondent.

10. On or about December 1, 2004, Respondent, through Colon, conducted a meeting with bargaining unit employees.

11. During the meeting described in paragraph 10, Respondent, through Colon, discussed Personal Business Commitment Plans for these employees under the revised Article 28 of the parties' collective bargaining agreement. During this discussion, Colon stated that he could no longer utilize weighted elements to appraise the employees' performance and informed employees that the Agency could place employees on a Performance Improvement Plan and terminate the employees for not meeting each performance element in full.

12. The meeting described in paragraphs 10 and 11 was formal in nature.

13. The meeting described in paragraphs 10 through 12 was held without affording the Charging Party an opportunity to be represented.

14. By the conduct described in paragraphs 10 through 13, the Respondent failed to comply with 5 U.S.C. §7114(a)(2)(A).

15. By the conduct described in paragraphs 10 through 14, the Respondent committed an unfair labor practice in violation of 5 U.S.C. §7116(a)(1) and (8).

§7114(a) of the Statute, entitled "**Representation rights and duties**", states, in pertinent part:

(2) An exclusive representative of an appropriate unit in an agency shall be given the opportunity to be represented at-

(A) any formal discussion between one or more representatives of the agency and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment . . . .

The Authority has held that the term "discussion" is to be interpreted broadly so as to apply to meetings at which no actual discussion or dialogue occurs, *U.S. Department of the Army, New Cumberland Army Depot, New Cumberland, Pennsylvania*, 38 FLRA 671, 677 (1990). It is, therefore, of no consequence whether employees attending the meeting in question were allowed to ask questions or raise objections.

The allegations of the Complaint, as admitted by the Respondent in view of its failure to file an answer, show that the Respondent violated §7114(a)(2)(A) of the Statute. Accordingly, I have concluded that the Respondent committed an unfair labor practice in violation of §7116(a)(1) and (8) of the Statute and recommend that the Authority adopt the following Order:

#### **ORDER**

Upon consideration of the motion of the General Counsel for summary judgment, it is hereby ordered that the motion be, and hereby is, granted. Pursuant to §2423.41(c) of the Rules and Regulations of the Authority and §7118 of the Federal Service Labor-Management Relations Statute (Statute), it is hereby ordered that the Small Business Administration, Washington, D.C. (South Florida District Office) (Respondent) shall:

1. Cease and desist from:

(a) Failing to give the American Federation of Government Employees, Local 3841, AFL-CIO (Union), prior notice of and the opportunity to be represented at formal discussions with bargaining unit employees concerning grievances, personnel policies and practices or other general conditions of employment.

(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) Give the Union prior notice of and the opportunity to be represented at formal discussions with bargaining unit employees concerning grievances, personnel policies and practices or other general conditions of employment.

(b) Post at its facilities at the Respondent's South Florida District Office, where employees represented by the Union are located and where notices to such employees are customarily posted, copies of the attached Notice on forms to be furnished by the Authority. Upon receipt of such forms they shall be signed by the District 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 §2423.41(e) of the Rules and Regulations of the Authority, notify the Regional Director of the Atlanta Region of the Authority, in writing and within 30 days of the date of this Order, as to what steps have been taken to comply.

Issued, Washington, DC, March 13, 2006

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PAUL B. LANG  
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 mall Business Administration, Washington, DC (South Florida District Office) 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 to give the American Federation of Government Employees, Local 3841, AFL-CIO (Union), prior notice of and the opportunity to be represented at formal discussions with bargaining unit employees concerning grievances, personnel policies and practices or other general conditions of employment.

**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 Statute.

**WE WILL** give the Union prior notice of and the opportunity to be represented at formal discussions with bargaining unit employees concerning grievances, personnel policies and practices or other general conditions of employment.

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(Agency)

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 its provisions, they may communicate directly with the Regional Director, Atlanta Regional Office, whose address is: Federal Labor Relations Authority, Marquis Two Tower, Suite 701, 285 Peachtree Center Avenue, NE, Atlanta, Georgia 30303-1270, and whose telephone number is: 404-331-5300.



CERTIFICATE OF SERVICE

I hereby certify that copies of this **DECISION**, issued by PAUL B. LANG, Administrative Law Judge, in Case No. AT-CA-05-0105, were sent to the following parties:

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**CERTIFIED MAIL AND RETURN RECEIPT**

**CERTIFIED NOS:**

Brent S. Hudspeth

7000 1670 0000 1175

**1068**

Counsel for the General Counsel  
Federal Labor Relations Authority  
Marquis Two Tower, Suite 701  
285 Peachtree Center Avenue, NE  
Atlanta, GA 30303-1270

Helen Jacobson

7000 1670 0000 1175

**1075**

Personnel Management Specialist  
U.S. Small Business Administration  
Office of Human Resources  
633 17<sup>th</sup> Street, 7<sup>th</sup> Floor  
Denver, CO 80202-3607

Sarah D. McCormick

7000 1670 0000 1175

**1082**

AFGE, Local 3841  
208 Swallow Drive  
Brandon, MS 39047

**REGULAR MAIL**

President  
AFGE  
80 F Street, NW  
Washington, DC 20001

Dated: March 13, 2006  
Washington, DC