

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

MEMORANDUM

DATE: October 15, 1997

TO: The Federal Labor Relations Authority

FROM: SAMUEL A. CHAITOVITZ  
Chief Administrative Law Judge

SUBJECT: NATIONAL ASSOCIATION OF GOVERNMENT  
EMPLOYEES, LOCAL R1-32  
BEDFORD, MASSACHUSETTS

Respondent

and

Case No. BN-CO-70244

LAWRENCE BOUCHARD

Individual/Charging Party

Pursuant to section 2423.34(b) of the Final 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 a 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 GOVERNMENT EMPLOYEES, LOCAL R1-32 BEDFORD, MASSACHUSETTS  Respondent	
and  LAWRENCE BOUCHARD  Individual/Charging Party	Case No. BN-CO-70244

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 **NOVEMBER 17, 1997**, and addressed to:

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

SAMUEL A. CHAITOVITZ  
Chief Administrative Law

Judge

Dated: October 15, 1997  
Washington, DC

**FEDERAL LABOR RELATIONS AUTHORITY  
OFFICE OF ADMINISTRATIVE LAW JUDGES  
WASHINGTON, D.C. 20424-0001**

NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES, LOCAL R1-32 BEDFORD, MASSACHUSETTS  Respondent	
and  LAWRENCE BOUCHARD  Individual/Charging Party	Case No. BN-CO-70244

Gary J. Lieberman, Esq.  
David J. Mithen, Esq.  
For the General Counsel

Before: SAMUEL A. CHAITOVITZ  
Chief Administrative Law Judge

**DECISION ON MOTION FOR SUMMARY JUDGMENT**

On June 26, 1997, the Regional Director for the Boston Region of the Federal Labor Relations Authority (herein called the FLRA) issued a Complaint and Notice of Hearing which was duly served by certified mail upon the named Respondent. The complaint alleged that the Respondent violated section 7116(b)(1) of the Federal Service Labor-Management Relations Statute (the Statute), 5 U.S.C. § 7116 (b)(1), by informing the Charging Party in writing that he would be suspended as First Vice President of the Respondent because, among other things, he filed unfair labor practice charges against the Respondent and its President, and by subsequently suspending him for engaging in such protected activity.

The complaint afforded Respondent the requisite twenty (20) days, until July 21, 1997, to file an answer pursuant

to section 2423.13(a) of the FLRA's Rules and Regulations, 5 C.F.R. § 2423.13(a).<sup>1</sup> Respondent filed no answer within the required period. Thereafter, by letter dated July 31, 1997, Counsel for the General Counsel advised the Respondent that if no answer to the complaint was received in the Boston Regional Office by August 8, 1997, the General Counsel would have no alternative but to seek summary judgment in the case.

On August 25, 1997, Counsel for the General Counsel filed a motion for summary judgment and a brief in support thereof with the Regional Director of the Boston Region. The latter, pursuant to section 2423.22(b)(1) of the FLRA's Rules and Regulations, 5 C.F.R. § 2423.22(b)(1), transferred the motion for summary judgment to the undersigned on August 29, 1997. Thereafter, on September 3, 1997, the undersigned issued an order directing the Respondent to show cause by September 22, 1997, why the General Counsel's motion for

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Although the FLRA's Rules and Regulations were amended in certain respects effective October 1, 1997, references herein are to the Rules and Regulations which were in effect prior to those amendments and apply to the disposition of this case.

summary judgment should not be granted. No response to that order was received by September 22, 1997.<sup>2</sup>

Since the Respondent has failed to answer the complaint and did not reply in a timely manner to the order to show cause, it is recommended that the General Counsel's motion for summary judgment be granted for the following reasons:

### **Findings of Fact**

The uncontested facts establish the following:

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On September 25, 1997, three days after a response to the order to show cause had to be physically received in this office, the Respondent submitted a short "brief" in opposition to the General Counsel's motion for summary judgment. Respondent's brief is rejected as untimely filed. Despite having 19 days to submit a response to the order to show cause, the Respondent's statement was received three days after the deadline specified in the order.

Moreover, the reasons submitted by Counsel for the Respondent to explain the failure to file an answer to the complaint herein are unpersuasive. Even if the complaint went astray in the agency's internal mail distribution system and "was never actually delivered . . . to the respondent at his union office," as the Respondent now asserts, the General Counsel's letter dated July 31, 1997 "remind[ing the Respondent] of his failure to respond" was admittedly received in a timely manner. Nevertheless, the Respondent neither filed an answer by August 8, 1997, as the July 31 letter required, nor contacted the Boston Regional Office to request a further extension. The fact that Respondent's counsel was scheduled to take vacation in August was not a justifiable excuse for failing to communicate with the Boston Regional Office in any manner. It should be noted that the Respondent's counsel did not even contact the Boston Regional Office upon his return from vacation, which was prior to the General Counsel's submission of the motion for summary judgment. Respondent cannot claim surprise that such a motion was filed; the General Counsel's July 31 letter specifically stated that the failure to file an answer to the complaint by August 8 would have that consequence. Finally, the fact that the Respondent believes it has good defenses to the complaint's allegations, far from excusing the failure to file an answer, is all the more reason why the Respondent should have taken some timely action to insure the opportunity to assert those defenses in the proper forum.

1. Lawrence Bouchard, the Charging Party, is a person under 5 U.S.C. § 7103(a) (1).

2. The National Association of Government Employees, SEIU, AFL-CIO (NAGE) and NAGE Local R1-32 (Respondent) are labor organizations under 5 U.S.C. § 7103(a) (4).

3. NAGE represents a nationwide consolidated unit of employees appropriate for collective bargaining at the U.S. Department of Veterans Affairs, including certain employees at the Edith Nourse Rogers Memorial Veterans Hospital in Bedford, Massachusetts (the Hospital).

4. The Respondent is an agent of NAGE for purposes of representing bargaining unit employees located at the Hospital.

5. The Charging Party is an employee at the Hospital and, during the time period covered by the complaint, was a member of the bargaining unit represented by NAGE and its agent, the Respondent.

6. During the time period covered by the complaint, James Gavin was the Respondent's President and was acting on behalf of the Respondent.

7. On January 15, 1997, the Charging Party charged the Respondent and its President, James Gavin, with unfair labor practices in Case No. BN-CO-70224.

8. On February 11, 1997, the Respondent, by Gavin, informed the Charging Party, in writing, that he would be suspended from his position as First Vice President of the Respondent because, among other things, he filed unfair labor practice charges in Case No. BN-CO-70224.

9. On February 26, 1997, the Respondent, by Gavin, suspended the Charging Party from his position as First Vice President of the Respondent because he filed unfair labor practice charges against the Respondent and its President in Case No. BN-CO-70224.

10. The Respondent's actions described in paragraphs 8 and 9 were taken because the Charging Party engaged in the activity described in paragraph 7.

#### **CONCLUSIONS**

Section 2423.13(b) of the FLRA's Rules and Regulations, 5 C.F.R. § 2423.13(b), 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.

In this case, the Respondent failed to file an answer by July 21, 1997, as required by section 2423.13(a) of the FLRA's Rules and Regulations, even though it was specifically notified of such requirement in the complaint. Moreover, the Respondent was given an unrequested extension of time by the General Counsel until August 8, 1997, to file an answer and was warned that a failure to do so would result in the filing of a motion for summary judgment. Nevertheless, the Respondent neither filed an answer nor explained its failure to do so. Finally, there was no timely response to my Order directing the Respondent to show cause by September 22, 1997, why summary judgment should not be granted--as requested by the General Counsel--for the failure to file an answer to the complaint herein. The Respondent's failure to file an answer in this case requires a finding that it has admitted all of the complaint's allegations. Therefore, since no genuine issue of material fact exists, disposition by summary judgment is proper. *U.S. Environmental Protection Agency, Environmental Research Laboratory, Narragansett, Rhode Island*, 49 FLRA 33, 41 (1994); *U.S. Department of Treasury, Customs Service, Washington, D.C. and Customs Service, Region IV, Miami, Florida*, 37 FLRA 603, 610 (1990).

Based upon the admitted facts contained in the complaint, I find that the Respondent, through its President, James Gavin, threatened to suspend the Charging Party, Lawrence Bouchard, from his position as the Respondent's First Vice President on February 11, 1997, and then carried through on that threat two weeks later. I further find that one of the specific reasons for the threat and the suspension was the Charging Party's filing of unfair labor practice charges against the Respondent and President Gavin in Case No. BN-CO-70224 on January 15, 1997. I recognize that the Respondent articulated additional reasons for the decision to suspend Bouchard from his position of leadership within the Union, and that the Respondent might have been able to demonstrate that the suspension would have occurred regardless of Bouchard's protected activity. See *Letterkenny Army Depot*, 35 FLRA 113, 119 (1990). However, I conclude that the General Counsel has established a *prima facie* case that the Respondent's actions were based at least in part on the Charging Party's exercise of protected

activity under the Statute. That is, Bouchard was told that he would be--and he was in fact--suspended from his position as First Vice President of the Respondent because he exercised a protected right under the Statute to file unfair labor practice charges with the General Counsel. Such conduct by the Respondent, unless rebutted, violates section 7116(b)(1) of the Statute. *American Federation of Government Employees Local 1857, AFL-CIO and Mary Elizabeth Crawford*, 44 FLRA 959, 966-67 (1992). See also *National Association of Government Employees, Local R5-66 and James A. Confer, Jr.*, 17 FLRA 796, 814-16 (1985); *National Treasury Employees Union and National Treasury Employees Union, Chapter 53*, 6 FLRA 218 (1981). Accordingly, I conclude that the Respondent's actions constituted a violation of section 7116(b)(1) of the Statute as alleged in the complaint.<sup>3</sup>

Accordingly, I recommend 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 Federal Labor Relations Authority's Rules and Regulations and section 7118 of the Statute, it is hereby ordered that the National Association of Government Employees, Local R1-32, Bedford, Massachusetts, shall:

1. Cease and desist from:

(a) Interfering with, restraining, or coercing its members in the exercise of their rights assured by the Federal Service Labor-Management Relations Statute by suspending Lawrence Bouchard or any other member from the position of First Vice President for filing unfair labor practice charges against the National Association of Government Employees, Local R1-32.

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In view of the foregoing conclusion, I find it unnecessary to decide whether the Respondent's notice to Bouchard that he was going to be suspended from his Union position for having filed unfair labor practice charges constituted an independent violation of section 7116(b)(1). Certainly the Respondent's suspension of Bouchard would reasonably tend to chill other unit employees in their exercise of rights protected by the Statute. In my judgment, nothing further would be added by a finding that the Respondent notified Bouchard what was going to happen to him shortly before it happened.

(b) In any like or related manner interfering with, restraining or coercing its members in the exercise of rights assured them by the Federal Service Labor-Management Relations Statute.

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

(a) Rescind the decision to suspend the Charging Party, Lawrence Bouchard, as First Vice President of the National Association of Government Employees, Local R1-32, because he filed unfair labor practice charges against it and its President.

(b) Offer Lawrence Bouchard reinstatement to his former position as First Vice President.

(c) Post at the business office of the National Association of Government Employees, Local R1-32, and in normal meeting places, including all places where notices to members and unit employees are customarily posted, 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 President of the National Association of Government Employees, Local R1-32, 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 insure that such Notices are not altered, defaced, or covered by any other material.

(d) Submit signed copies of said Notice to the Edith Nourse Rogers Memorial Veterans Hospital, Bedford, Massachusetts, for posting in conspicuous places where members of the National Association of Government Employees, Local R1-32 are located, where they shall be maintained for 60 consecutive days from the date of posting.

(e) Pursuant to section 2423.30 of the Authority's Rules and Regulations, notify the Regional Director, Boston 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, D.C., October 15, 1997

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SAMUEL A.

CHAITOVITZ  
Law Judge

Chief Administrative

NOTICE TO ALL MEMBERS AND EMPLOYEES

POSTED BY ORDER OF THE

FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the National Association of Government Employees, Local R1-32, Bedford, Massachusetts, violated the Federal Service Labor-Management Relations Statute and has ordered us to post and abide by this notice.

We hereby notify our members and other employees that:

WE WILL NOT interfere with, restrain, or coerce our members in the exercise of their rights assured by the Federal Service Labor-Management Relations Statute by suspending Lawrence Bouchard, or any other member, from the position of First Vice President for filing unfair labor practice charges against the National Association of Government Employees, Local R1-32.

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

WE WILL rescind the decision to suspend the Charging Party, Lawrence Bouchard, as First Vice President of the National Association of Government Employees, Local R1-32, because he filed unfair labor practice charges against us and our President.

WE WILL offer Lawrence Bouchard reinstatement to his former position as First Vice President.

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(Union)

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, Boston Regional Office, whose address is: 99 Summer Street, Suite 1500, Boston, Massachusetts 02110-1200, and whose telephone number is: (617) 424-5730.

CERTIFICATE OF SERVICE

I hereby certify that copies of this DECISION issued by SAMUEL A. CHAITOVITZ, Chief Administrative Law Judge, in Case No. BN-CO-70244 , were sent to the following parties in the manner indicated:

**CERTIFIED MAIL:**

Gary J. Lieberman, Esq.  
David J. Mithen, Esq..  
Counsel for the General Counsel  
Federal Labor Relations Authority  
99 Summer St., Suite 1500  
Boston, MA 02110  
**P 600 695 515**

James Gavin, President  
National Association of Government  
Employees, Local R1-32  
c/o Dept. of Veterans Affairs  
ENRM Veterans Hospital  
200 Springs Road  
Bedford, MA 01730  
**P 600 695 516**

Mr. Lawrence Bouchard  
5A Mossman Road  
Westminster, MA 01473  
**P 600 695 517**

**REGULAR MAIL:**

National President  
National Association of  
Government Employees  
159 Burgin Parkway  
Quincy, MA 02169

Dated: October 15, 1997  
Washington, DC