

**FEDERAL LABOR RELATIONS AUTHORITY**

Administrative Law Judges

WASHINGTON, D.C.

Office of

DEPARTMENT OF HEALTH AND HUMAN  
SERVICESPUBLIC HEALTH SERVICEINDIAN HEALTH  
SERVICEQUENTIN N. BURDICK MEMORIAL HEALTH  
CARE FACILITY, BELCOURT, NORTH DAKOTA  
Respondentand

Case No. CH-CA-01-0298

LABORERS' INTERNATIONAL UNION OF  
NORTHAMERICA, LOCAL 580, AFL-CIOCharging  
Party

John F. Gallagher, Esquire For the General CounselBefore: SUSAN E. JELEN  
Administrative Law Judge

**DECISION ON MOTION FOR SUMMARY JUDGEMENT**

On July 30, 2001, the Regional Director for the Chicago Region of the Federal Labor Relations Authority (FLRA) issued a Complaint and Notice of Hearing which was duly served by certified mail upon the named Respondent. The Complaint alleged that the Department of Health and Human Services, Public Health Service, Indian Health Service, Quentin N. Burdick Memorial Health Care Facility, Belcourt, North Dakota (herein called Respondent) violated section 7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute (the Statute), 5 U.S.C. § 7116(a)(1) and (5), by unilaterally implementing a housing rental rate increase affecting employees represented by the Laborers' International Union of North America, Local 580, AFL-CIO (herein called Union), without providing the Union with notice and opportunity to negotiate over this change to the extent required by the Statute. A hearing was scheduled for December 11, 2001 in Bismarck, North Dakota.

The Complaint specifically advised the Respondent that an answer must be filed "no later than August 27, 2001" and that "a failure to file an answer or respond to any allegation of this complaint will constitute an admission. See 5 C.F.R. § 2423.20(b)." Respondent did not file an answer, either in person or by mail, within the required period or at any time thereafter.

Since Respondent failed to answer the instant Complaint, Counsel for the General Counsel filed a Motion for Summary Judgement on September 17, 2001. Respondent also failed to file any response to the General Counsel's Motion for Summary Judgement within the 5 day time period provided for in the Regulations. See 5 C.F.R. § 2423.27(b).

No answer was received from the Respondent nor has the Respondent acknowledged receipt of any of the above-mentioned documents. Accordingly, Respondent has admitted all of the allegations of the Complaint. *Department of Veterans Affairs Medical Center, Asheville, North Carolina*, 51 FLRA 1572, 1594 (1996).

### **Conclusions**

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. . . . Absent a showing of good cause to the contrary, failure to file an answer or respond to any allegation shall constitute an admission.

In this case the Respondent has not filed an answer as required by the Regulations. Furthermore, Respondent has not filed any response to the Motion for Summary Judgement. Accordingly, there are not disputed factual or legal issues in this case.

Consequently, it can only be found that the Respondent has admitted that it implemented a housing rental rate increase affecting bargaining unit employees represented by the Union, without providing the Union with notice and an opportunity to bargain over the change. Thus, Respondent violated section 7116(a)(1) and (5) of the Statute as alleged.

Counsel for the General Counsel proposed a recommended remedy requiring the Respondent to rescind the increase in rents; to effect a further decrease in rental rates charged to unit employees for a period of time necessary to offset the difference between the unlawfully implemented rental increase and the former rents until such time as the effected employees have been made whole; to notify and, upon request, negotiate with the Union concerning any proposed change in rental rates to the extent required by the Statute and to post an appropriate Notice To All Employees signed by the Director, Indian Health Service, Quentin N. Burdick Memorial Health Care Facility, Belcourt, North Dakota. It is noted that this issue was recently litigated in *Department of Health and*

*Human Services, Public Health Service, Indian Health Service, Quentin N. Burdick Memorial Health Care Facility, Belcourt North Dakota, OALJ 01-38, CH-CA-00465 (June 20, 2001) (exceptions pending before the Authority) and a similar remedy was recommended by the Administrative Law Judge. Under the circumstances of this case, it is found that the proposed remedy does effectuate the purposes and policies of the Statute.*

Accordingly, it is recommended 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, it is hereby ordered that the Department of Health and Human Services, Public Health Service, Indian Health Service, Quentin N. Burdick Memorial Health Care Facility, Belcourt, North Dakota, shall:

1. Cease and desist from:

- (a) Failing to give notice and refusing to bargain with the Laborers' International Union of North America, Local 580, AFL-CIO, concerning the increase in rents that it charged unit employees beginning March 11, 2001.
- (b) Unilaterally implementing changes in working conditions of its unit employees government-provided housing without first providing the Laborers' International Union of North America, Local 580, AFL-CIO, with notice of the change and an opportunity to bargain over the change to the extent required by the Federal Service Labor-Management Relations Statute.
- (c) In any like or related manner, interfering with, restraining or coercing its employees in the exercise of their rights assured by the Federal Service 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) Rescind the March 12, 2000 increase in rental rates for bargaining unit employees.
- (b) Effect a further decrease in rental rates charged bargaining unit employees for a period of time necessary to offset the difference between the unlawfully implemented rate and the former rate until such time as the affected employees have been made whole.
- (c) Notify, and upon request, negotiate with the Laborers' International Union of North America, Local 580, AFL-CIO, concerning any proposed change in rental rates.

(d) Post at the Quentin N. Burdick Memorial Health Care Facility, Belcourt, North Dakota, 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 Director, Indian Health Service, Quentin N. Burdick Memorial Health Care Facility, Belcourt, North Dakota, 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 Notice are not altered, defaced or covered by any other material.

(e) Pursuant to section 2423.41(e) of the Authority's Rules and Regulations, notify the Regional Director, Chicago 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 herewith.

Issued, Washington, D.C., October 9, 2001.

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SUSAN E. JELEN

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 Department of Health and Human Services, Public Health Service, Indian Health Service, Quentin N. Burdick Memorial Health Care Facility, Belcourt, North Dakota 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 provide the Laborers' International Union of North America, Local 580, AFL-CIO, the exclusive representative of our employees, with notice concerning increases in rental rates that were implemented/charged on March 12, 2000.

WE WILL NOT unilaterally implement changes in working conditions of unit employees' government-provided housing without first providing the

Laborers' International Union of North America, Local 580, AFL-CIO, with notice of the change and an opportunity to bargain over the change to the extent required by the Federal Service Labor-Management Relations Statute.

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 rescind the March 11, 2001 increase in rental rates for government-owned housing rented by bargaining unit employees.

WE WILL effect a further decrease in rental rates charged bargaining unit employees for a period of time necessary to offset the difference between the unlawfully implemented rate and the former rate until such time as the affected employees have been made whole.

WE WILL notify, and upon request, negotiate with the Laborers' International Union of North America, Local 580, AFL-CIO, concerning any proposed change in rental rates for bargaining unit employees.

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(Respondent/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 questions concerning this Notice or compliance with any of its provisions, they may communicate with the Regional Director, Chicago Regional Office, 55 W. Monroe, Suite 1150, Chicago, Illinois 60603, and whose telephone number is (312)353-6306.