

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

DEPARTMENT OF VETERANS AFFAIRS VETERANS AFFAIRS MEDICAL CENTER MIAMI, FLORIDA  Respondent	
and  NATIONAL FEDERATION OF FEDERAL EMPLOYEES, LOCAL 1453  Charging Party	Case No. AT-CA-02-0408

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 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. §§ 2423.40-2423.41, 2429.12, 2429.21-2429.22, 2429.24-2429.25, and 2429.27.

Any such exceptions must be filed on or before **DECEMBER 9, 2002**, and addressed to:

Office of Case Control  
Federal Labor Relations Authority  
607 14th Street, NW, Suite 415  
Washington, DC 20424

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SUSAN E. JELEN  
Administrative Law Judge

Dated: November 7, 2002  
Washington, DC

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

MEMORANDUM

DATE: November 7, 2002

TO: The Federal Labor Relations Authority

FROM: SUSAN E. JELEN  
Administrative Law Judge

SUBJECT: DEPARTMENT OF VETERANS AFFAIRS  
VETERANS AFFAIRS MEDICAL CENTER  
MIAMI, FLORIDA

Respondent

and

Case No. AT-

CA-02-0408

NATIONAL FEDERATION OF FEDERAL  
EMPLOYEES, LOCAL 1453

Charging Party

Pursuant to section 2423.27(c) of the Rules and Regulations 5 C.F.R. § 2423.27(c), 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 Motions for Summary Judgment and other supporting documents filed by the parties.

Enclosures

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

DEPARTMENT OF VETERANS AFFAIRS VETERANS AFFAIRS MEDICAL CENTER MIAMI, FLORIDA  Respondent	
and  NATIONAL FEDERATION OF FEDERAL EMPLOYEES, LOCAL 1453  Charging Party	Case No. AT-CA-02-0408

Melissa L. Libertini, Esq.  
For the General Counsel

Gregory Ochalek, Labor Relations Specialist  
For the Respondent

Jeff Shapiro, President  
For the Charging Party

Before: SUSAN E. JELEN  
Administrative Law Judge

**DECISION ON MOTION FOR SUMMARY JUDGMENT**

On August 23, 2002, the Regional Director of the Atlanta Region of the Federal Labor Relations Authority issued a Complaint and Notice of Hearing, which was duly served by certified mail upon the Department of Veterans Affairs, Veterans Affairs Medical Center, Miami, Florida (the Respondent). The Complaint alleged that Respondent violated section 7114(b)(4) and 7116(a)(1) and (8) of the Federal Service Labor-Management Relations Statute (the Statute), by refusing to provide the National Federation of Federal Employees, Local 1453 (the Union), with information regarding whether any member of the Social Work staff had received a 2 week suspension or any other adverse action for breach of confidentiality in the past three years. The

Complaint was sent by certified mail to the Respondent's representative and the certified mail receipt, demonstrating service upon the Respondent, was returned to the Atlanta Region. (G.C. Ex. 1(b) and 1(c)). The Complaint also specified that, in accordance with the Authority's Rules and Regulations, the Respondent must file an Answer to the Complaint no later than September 16, 2002, and that a failure to file an answer shall constitute an admission of the allegations of the Complaint. Respondent did not file an answer, either in person or by mail, within the required period or at any time thereafter.

On October 22, 2002, Counsel for the General Counsel filed a Motion for Summary Judgment, based on the Respondent's failure to file a timely answer. <sup>1</sup> A facsimile copy of this motion was received in the Office of Administrative Law Judges on October 22, 2002. No answer has been received from the Respondent in this matter. The Respondent has also failed to file any response to the General Counsel's Motion for Summary Judgment within the time period provided by Regulations. See 5 C.F.R. § 2423.27 (b).

#### **Discussion of Motion for Summary Judgment**

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 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.

The Rules and Regulations also explain how to calculate filing deadlines and how to request extensions of time for filing the required documents. See, e.g., sections 2429.21 through 2429.23.

In this case the Respondent has not filed an answer as required by the Regulations. In accordance with section 2423.20(b) of the Rules and Regulations, this failure

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The General Counsel's Motion for Summary Judgment was initially filed on October 4, 2002. Due to an error in service, the Motion was refiled on October 22, 2002.

constitutes an admission of each of the allegations of the Complaint. *Department of Veterans Affairs Medical Center, Asheville, North Carolina*, 51 FLRA 1572, 1594 (1996). Furthermore, the Respondent has not filed any response to the Motion for Summary Judgment. Accordingly, there are no disputed factual or legal issues in this case.

Consequently, it can only be found that the Respondent has admitted that it has refused to comply with the provisions of section 7114(b)(4) of the Statute by failing to provide the Union with the requested information, specifically with information regarding whether any member of the Social Work staff had received a 2 week suspension or any other adverse action for breach of confidentiality in the past three years. Respondent has admitted that the requested data was: (1) normally maintained in the regular course of business; (2) reasonably available and necessary for collective bargaining; (3) devoid of any guidance, advice, counsel, or training provided for management officials or supervisors related to collective bargaining; and (4) not otherwise in conflict with any law, such as the Privacy Act. *Health Care Financing Administration*, 56 FLRA 503, 506 (2000).

Therefore, I find that the Respondent violated section 7116(a)(1) and (8) of the Statute, as alleged, and the General Counsel's Motion for Summary Judgment is hereby granted.

### **Remedy**

Counsel for the General Counsel proposed a recommended remedy requiring the Respondent to provide the requested information and to post a facility-wide notice signed by the Chief of Human Resources Management Services.

Accordingly, I recommend that the Authority adopt 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 Veterans Affairs, Veterans Affairs Medical Center, Miami, Florida, shall:

1. Cease and desist from:

(a) Failing and refusing to furnish the National Federation of Federal Employees, Local 1453, information to which it is entitled to under the Federal Service Labor-Management Relations Statute, specifically information regarding whether any member of the Social Work staff had received a 2 week suspension or any other adverse action for breach of confidentiality in the past three years.

(b) 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 actions in order to effectuate the purposes and policies of the Federal Service Labor-Management Relations Statute:

(a) Furnish the National Federation of Federal Employees, Local 1453, a copy of the information regarding whether any member of the Social Work staff had received a 2 week suspension or any other adverse action for breach of confidentiality in the past three years, as requested on March 7, 2002.

(b) Post at its Miami, Florida facility, where bargaining unit employees represented by the National Federation of Federal Employees, Local 1453, 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 Chief of the Human Resources Management Services, 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 2423.41(e) of the Authority's Rules and Regulations, notify the Regional Director, Atlanta 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, DC, November 7, 2002.

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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 Veterans Affairs, Veterans Affairs Medical Center, Miami, Florida, 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 and refuse to furnish the National Federation of Federal Employees, Local 1453, the exclusive representative of certain of our employees, information to which it is entitled to under the Federal Service Labor-Management Relations Statute, specifically information regarding whether any member of the Social Work staff had received a 2 week suspension or any other adverse action for breach of confidentiality in the past three years.

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 furnish the National Federation of Federal Employees, Local 1453, the exclusive representative of certain of our employees, a copy of the information regarding whether any member of the Social Work staff had received a 2 week suspension or any other adverse action for breach of confidentiality in the past three years, as requested on March 7, 2002.

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(Activity)

Date:

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, Federal Labor Relations Authority, whose address is: Marquis Two Tower, 285 Peachtree Center Avenue, Suite 701, Atlanta, GA 30303, and whose telephone number is: (404) 331-5300.

**CERTIFICATE OF SERVICE**

I hereby certify that copies of this **DECISION** issued by SUSAN E. JELEN, Administrative Law Judge, in Case No. AT-CA-02-0408 were sent to the following parties:

—

**CERTIFIED MAIL:**

**CERTIFIED NOS:**

Melissa L. Libertini, Esq.  
1686  
Counsel for the General Counsel  
Federal Labor Relations Authority  
285 Peachtree Center Ave., Suite 701  
Atlanta, GA 30303-1270

7000 1670 0000 1175

Gregory Ochalek, LRS  
1693  
Veterans Affairs Medical Center  
Human Resources Management (05)  
1201 N.W. 16<sup>th</sup> Street  
Miami, FL 33125

7000 1670 0000 1175

Jeff Shapiro, President  
NFFE Local 1453  
Oakland Park Outpatient Clinic  
Room 121 C  
5599 N. Dixie Highway  
Oakland Park, FL 33334

7000 1670 0000 1175 1709

**REGULAR MAIL**

National President  
National Federation of Federal Employees  
1016 16<sup>th</sup> St., NW

Washington, DC 20036

Issued: November 7, 2002  
Washington, D.C.