

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

DEPARTMENT OF VETERANS AFFAIRS VA MEDICAL CENTER AUGUSTA, GEORGIA Respondent	
and GEORGIA NURSES ASSOCIATION UNITED AMERICAN NURSES VA MEDICAL CENTER AUGUSTA CHAPTER Charging Party	Case No. AT-CA-03-0363

NOTICE OF TRANSMITTAL OF DECISION

The above-entitled case having been submitted to 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 3, 2003**, and addressed to:

Federal Labor Relations Authority
Office of Case Control
1400 K Street, NW, 2nd Floor
Washington, DC 20424-0001

RICHARD A. PEARSON
Administrative Law Judge

Dated: September 30, 2003
Washington, DC

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

MEMORANDUM

DATE: September 30, 2003

TO: The Federal Labor Relations Authority

FROM: RICHARD A. PEARSON
Administrative Law Judge

SUBJECT: DEPARTMENT OF VETERANS AFFAIRS
VA MEDICAL CENTER
AUGUSTA, GEORGIA

Respondent

and
CA-03-0363

Case No. AT-

GEORGIA NURSES ASSOCIATION
UNITED AMERICAN NURSES
VA MEDICAL CENTER AUGUSTA CHAPTER

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 is a Motion for Summary Judgment and other supporting documents filed by the parties.

Enclosures

FEDERAL LABOR RELATIONS AUTHORITYOffice of Administrative Law Judges
WASHINGTON, D.C.

DEPARTMENT OF VETERANS AFFAIRS VA MEDICAL CENTER AUGUSTA, GEORGIA Respondent	
and GEORGIA NURSES ASSOCIATION UNITED AMERICAN NURSES VA MEDICAL CENTER AUGUSTA CHAPTER Charging Party	Case No. AT-CA-03-0363

Brad A. Stuhler
For the General Counsel

Before: RICHARD A. PEARSON
Administrative Law Judge

DECISION ON MOTION FOR SUMMARY JUDGMENT

On July 8, 2003, the Regional Director of the Atlanta Region of the Federal Labor Relations Authority (FLRA), issued a Complaint and Notice of Hearing alleging that the Department of Veterans Affairs, VA Medical Center, Augusta, Georgia (the Respondent), violated section 7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute (the Statute) by repudiating a provision of its collective bargaining agreement with the Georgia Nurses Association, United American Nurses, VA Medical Center Augusta Chapter (the Union). The complaint was served on the Respondent by certified mail; it specified that Respondent's answer must be filed by July 28, 2003, and that a failure to file an answer shall constitute an admission of the allegations of the complaint. A hearing was scheduled for October 9, 2003.

The Respondent has not submitted anything in response to the complaint.

On August 26, 2003, Counsel for the General Counsel filed a Motion for Summary Judgment, asserting that by its failure to answer the complaint, the Respondent has admitted all of the allegations therein. Since no facts are in dispute, the General Counsel submits that the record

demonstrates that the Respondent violated section 7116(a)(1) and (5) of the Statute.

The Respondent has filed no response to the 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. . . .

Not only has the Respondent failed to answer the allegations of the complaint in any manner, but it has neither made any showing of good cause nor responded to the Motion for Summary Judgment. By its inaction, it has admitted the allegations of the complaint. Accordingly, there are no factual issues in dispute, and it is appropriate to resolve this case by summary judgment. Based on the existing record, I make the following findings of fact, conclusions of law, and recommendations.

Findings of Fact

The Respondent is an agency as defined by 5 U.S.C. § 7103(a)(3). The Georgia Nurses Association, United American Nurses, VA Medical Center Augusta Chapter, is the exclusive representative of a bargaining unit of employees of the Respondent. The Respondent and the Union are parties to a collective bargaining agreement (CBA), which contains the following provision:

Time schedules will be planned in such a fashion so that:

- (1) Three (3) weekly schedules, including the present workweek, will be posted at all times and will not be changed except for emergencies;
- (2) Three (3) weeks schedules will be of a tentative nature and be accessible to

unit members for information and planning purposes.

Since February 25, 2003, the Respondent has repudiated the above-cited provision of the parties' CBA.

Discussion and Conclusions

In *Department of Defense, Warner Robins Air Logistics Center, Robins Air Force Base, Georgia*, 40 FLRA 1211 (1991), and in many subsequent decisions, the Authority has articulated the criteria for determining whether a party's breach of a collective bargaining agreement constitutes an unfair labor practice. Although a single violation of a CBA may not amount to a violation of the Statute, it will be considered unlawful under section 7116(a)(1) and (5) when the nature and scope of the breach amount to a repudiation of the parties' negotiated agreement. *Department of the Air Force, 375th Mission Support Squadron, Scott Air Force Base, Illinois*, 51 FLRA 858 (1996).

In this case, the Respondent has chosen not to contest the factual and legal allegations of the complaint, and as noted previously, those allegations are therefore admitted as true. Accordingly, I find that the Respondent has violated the provision of the CBA regarding the posting of time schedules, that the violation constitutes a clear and patent breach of the CBA, and that the violation goes to the heart of the parties' agreement. Based on these findings, the Respondent has repudiated that portion of the CBA and has violated section 7116(a)(1) and (5) of the Statute.

I therefore recommend 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 (the Statute), it is hereby ordered that the Department of Veterans Affairs, VA Medical Center, Augusta, Georgia (the Agency), shall:

1. Cease and desist from:

(a) Failing and refusing to honor Article XII Section 4(a) of the collective bargaining agreement (the Agreement) currently in effect with the Georgia Nurses Association, United American Nurses, VA Medical Center

Augusta Chapter (the Union), the exclusive bargaining representative of certain of its employees.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of rights assured them by the Statute.

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

(a) Implement Article XII Section 4(a) of the Agreement by providing time schedules in accordance with this provision, which states:

"Time schedules will be planned in such a fashion so that:

(1) Three (3) weekly schedules, including the present workweek, will be posted at all times and will not be changed except for emergencies;

(2) Three (3) weeks schedules will be of a tentative nature and be accessible to unit members for information and planning purposes."

(b) Post at its facilities at the VA Medical Center, Augusta, Georgia, where employees represented by the Union 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 Medical Center 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 section 2423.41(e) of the Authority's Rules and Regulations, notify the Regional Director, Atlanta 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, DC, September 30, 2003.

RICHARD A. PEARSON
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, VA Medical Center, Augusta, Georgia (the Agency), 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 or refuse to honor Article XII Section 4(a) of our Collective Bargaining Agreement with the Georgia Nurses Association, United American Nurses, VA Medical Center Augusta Chapter (the Union), the exclusive bargaining representative of certain of our employees.

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

WE WILL post time schedules in accordance with Article XII, Section 4(a) of the collective bargaining agreement.

—

(Respondent)

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, Atlanta Regional Office, Federal Labor Relations Authority, whose address is: Marquis Two Tower, 285 Peachtree Center Avenue, Suite 701, Atlanta, GA 30303-1270, and whose telephone number is: 404-331-5212.

CERTIFICATE OF SERVICE

I hereby certify that copies of the **DECISION** issued by RICHARD A. PEARSON, Administrative Law Judge, in Case No. AT-CA-03-0363, were sent to the following parties:

—

CERTIFIED MAIL & RETURN RECEIPT

CERTIFIED NOS:

Brad A. Stuhler

7000 1670 0000 1175

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

Karen Carrington

7000 1670 0000 1175

2737

Department of Veterans Affairs
1 Freedom Way
Augusta, GA 30904

Irma L. Westmoreland, RN
President GNA, VAMC Augusta
VA Medical Center
1 Freedom Way
Augusta, GA 30904

7000 1670 0000 1175 2744

Dated: September 30, 2003

Washington, DC