

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

MEMORANDUM

DATE: March 18, 2004

TO: The Federal Labor Relations Authority

FROM: RICHARD A. PEARSON
Administrative Law Judge

SUBJECT: DEFENSE COMMISSARY AGENCY (DeCA)
CHARLESTON AIR FORCE BASE
SOUTH CAROLINA

and

DEFENSE COMMISSARY AGENCY (DeCA)
NAVAL WEAPONS STATION CHARLESTON
SOUTH CAROLINA

Respondents

and
CA-03-0728

Case Nos. AT-

AT-
CA-03-0729

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 1869

Charging Party

Pursuant to sections 2423.27(c) and 2423.34(b) of the Rules and Regulations, 5 C.F.R. §§ 2423.27(c) and 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 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

<p>DEFENSE COMMISSARY AGENCY (DeCA) CHARLESTON AIR FORCE BASE SOUTH CAROLINA</p> <p style="text-align: center;">and</p> <p>DEFENSE COMMISSARY AGENCY (DeCA) NAVAL WEAPONS STATION CHARLESTON SOUTH CAROLINA</p> <p style="text-align: center;">Respondents</p>	
<p style="text-align: center;">and</p> <p>AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1869</p> <p style="text-align: center;">Charging Party</p>	<p>Case Nos. AT-CA-03-0728 AT-CA-03-0729</p>

NOTICE OF TRANSMITTAL OF DECISION

The above-entitled case having been presented 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 APRIL 19,
2004, 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: March 18, 2004
Washington, DC

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FEDERAL LABOR RELATIONS AUTHORITY

Office of Administrative Law Judges
WASHINGTON, D.C.

<p>DEFENSE COMMISSARY AGENCY (DeCA) CHARLESTON AIR FORCE BASE SOUTH CAROLINA</p> <p>and</p> <p>DEFENSE COMMISSARY AGENCY (DeCA) NAVAL WEAPONS STATION CHARLESTON SOUTH CAROLINA</p> <p>Respondents</p>	
<p>and</p> <p>AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1869</p> <p>Charging Party</p>	<p>Case Nos. AT-CA-03-0728 AT-CA-03-0729</p>

Ruth Pippin Dow

For the General Counsel

Darrin W. Gibbons

For the Respondent

Before: RICHARD A. PEARSON

Administrative Law Judge

DECISION ON MOTION FOR SUMMARY JUDGMENT

Statement of the Case

Based on an unfair labor practice charge filed by the American Federation of Government Employees, Local 1869 (the Union), the Regional Director of the Atlanta Region of the Federal Labor Relations Authority issued a Consolidated Complaint and Notice of Hearing on November 24, 2003, which alleged that Respondent Defense Commissary Agency, Charleston Air Force Base, South Carolina (CAFB), and Respondent Defense Commissary Agency, Naval Weapons Station Charleston, South Carolina (NWS), violated section 7116(a) (1) and (5) of the Federal Service Labor-Management Relations Statute (the Statute) by removing cashiers' stools from the cash register stations at the CAFB Commissary Store and at the NWS Commissary Store. On December 22, 2003, the Respondents filed their Answer, in which they admitted removing the cashiers' stools but denied failing to negotiate properly with the Union or violating the Statute. However, on February 27, 2004, the Respondents filed an Amended Answer, in which they admitted all factual and legal allegations of the Complaint; simultaneously, the Respondents moved to cancel the scheduled hearing, based on their admission of the allegations. On the same date, the General Counsel agreed that a hearing was unnecessary and moved for summary judgment against the Respondents. Therefore, I issued an order on February 27, 2004, canceling the hearing.

Discussion of Motion for Summary Judgment

The Authority has held that motions for summary judgment, filed under section 2423.27 of its Regulations, 5 C.F.R. § 2423.27, serve the same purpose, and are governed by the same principles as motions filed in 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); *Department of the Navy, U.S. Naval Ordnance Station, Louisville, Kentucky*, 33 FLRA 3, 4-5 (1988). When it is clear from the pleadings and any supporting documents that there are no genuine issues of material fact, or when all material facts have been admitted, then a hearing is

unnecessary and summary judgment is appropriate. That is certainly the case here. The Respondents have admitted committing the actions alleged in the Complaint, and they have further admitted that those actions violated section 7116(a)(1) and (5) of the Statute. Therefore, I will grant summary judgment against the Respondents. Based on the existing record, I make the following findings of fact, conclusions of law, and recommendations.

Findings of Fact

The American Federation of Government Employees, AFL-CIO (AFGE) is a labor organization within the meaning of 5 U.S.C. § 7103(a)(4) and is the exclusive representative of a consolidated unit of employees appropriate for collective bargaining at the Defense Commissary Agency. AFGE Local 1869 is an agent of AFGE for the purpose of representing unit employees at CAFB and NWS. CAFB and NWS (together, the Respondents) are agencies within the meaning of 5 U.S.C. § 7103(a)(3).

For an unspecified period of time prior to and until May 7, 2003, cashiers at the NWS Commissary Store were permitted to have and to use stools at their cash register stations. Similarly, for an unspecified period of time prior to and until June 13, 2003, cashiers at the CAFB Commissary Store were permitted to have and to use stools at their cash register stations. On the respective dates cited above, management of NWS and CAFB removed the stools from the cashiers' stations and told the cashiers that stools were no longer permitted. The Respondents acted unilaterally, in that they did not provide the Union the opportunity to negotiate with the Respondents concerning either the substance of the action or its impact and implementation. On August 19, 2003, the Union filed two unfair labor practice charges relating to the Respondents' actions. On February 24, 2004, shortly before the hearing in this case was to be held, the Respondents unilaterally returned stools to all cash register stations at the CAFB and NWS commissaries (Exhibit C of Motion for Summary Judgment).

Prior to implementing a change in the conditions of employment of bargaining unit employees, an agency generally is required to provide the exclusive representative with notice and an opportunity to bargain over those aspects of the change that are within the duty to bargain. *Federal Bureau of Prisons, Federal Correctional Institution, Bastrop, Texas*, 55 FLRA 848, 852 (1999). Although there are exceptions to this general requirement and the extent of the

agency's duty to bargain may vary the Respondents have not asserted any justification for their failure to bargain here. Rather, they have admitted that they did not fulfill their bargaining obligation with respect to the removal of the cashiers' stools. Because they did not bargain at all with the Union before removing the stools, they violated section 7116(a)(1) and (5) of the Statute and committed an unfair labor practice.

The facts of this case appear to parallel those in another case involving the Respondents' parent agency, *United States Department of Defense, Defense Commissary Agency, Northeast Region, Groton, CT*, 59 FLRA 472 (2003), but I do not have enough facts before me to determine whether the cases are identical. It is undisputed in this case nonetheless that the Respondents have violated the Statute.

To remedy the unfair labor practices, the General Counsel has requested a *status quo ante* remedy, specifically that the Respondents be ordered to return the cashiers' stools to both commissary stores and to post a notice to employees. The Respondents have not submitted a position concerning an appropriate remedy, but they have indicated that they returned the stools to all cash register stations at both locations on February 24, 2004. Since the status quo has already been restored, it is unnecessary for me to address that issue.

Accordingly, I 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 Defense Commissary Agency, Charleston Air Force Base, South Carolina (CAFB), and the

Defense Commissary Agency, Naval Weapons Station Charleston, South Carolina (NWS) (jointly, the Respondents), shall:

1. Cease and desist from:

(a) Removing the stools from all check stands at the CAFB Commissary Store and the NWS Commissary Store without first completing bargaining with the American Federation of Government Employees, AFL-CIO, the exclusive representative of its bargaining unit employees.

(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) Post at the Naval Weapons Station Commissary Store and the Charleston Air Force Base Commissary Store 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 Commissary Officer at each facility and shall be posted and maintained for 60 consecutive days thereafter. Reasonable steps shall be taken to ensure that such Notices are not altered, defaced, or covered by any other material.

(b) 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.

Issued, Washington, DC, March 18, 2004.

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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 Defense Commissary Agency, Charleston Air Force Base, South Carolina, and the Defense Commissary Agency, Naval Weapons Station Charleston, South Carolina, 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 remove the stools from all check stands at the Naval Weapons Station Commissary Store or the Charleston Air Force Base Commissary Store without first completing bargaining with the American Federation of Government Employees, AFL-CIO, the exclusive representative of its bargaining unit employees.

WE WILL NOT in any like or related manner interfere with, restrain or coerce employees in the exercise of their rights assured by the Statute.

-
(Respondent)

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 any of its provisions, they may communicate directly with the Regional Director of the Federal Labor Relations Authority, Atlanta Regional Office, whose address is: 285 Peachtree Center Avenue, Suite 701, Atlanta, GA 30303, and whose phone number is: 404-331-5300.

CERTIFICATE OF SERVICE

I hereby certify that copies of this DECISION issued by RICHARD A. PEARSON, Administrative Law Judge, in Case Nos. AT-CA-03-0728 and AT-CA-03-0729, were sent to the following parties in the manner indicated:

CERTIFIED MAIL AND RETURN RECEIPT

CERTIFIED NOS:

Ruth P. Dow

7000 1670 0000 1175

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

Darrin W. Gibbons

7000 1670 0000 1175

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Agency Representative
Defense Commissary Agency
Office of the General Counsel
1300 E Avenue
Fort Lee, VA 23801-1800

Delmar Davids, President

7000 1670 0000 1175

3574

AFGE, Local 1869
P.O. Box 4465
Charleston AFB, SC 29404-4465

REGULAR MAIL:

President
AFGE
80 F Street, NW
Washington, DC 20001

Dated: March 18, 2004
Washington, DC