

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

DEPARTMENT OF VETERANS AFFAIRS GULF COAST VETERANS AFFAIRS HEALTH CARE SYSTEM BILOXI, MISSISSIPPI Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1045, AFL-CIO Charging Party	Case No. AT-CA-04-0490

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 **JANUARY 24, 2005**, and addressed to:

Office of Case Control
Federal Labor Relations Authority
1400 K Street, NW, Suite 201
Washington, DC 20005

SUSAN E. JELEN
Administrative Law Judge

Dated: December 21, 2004
Washington, DC

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY

Office of Administrative Law Judges
WASHINGTON, D.C. 20424-0001

MEMORANDUM

DATE: December 21, 2004

TO: The Federal Labor Relations Authority

FROM: SUSAN E. JELEN
Administrative Law Judge

SUBJECT: DEPARTMENT OF VETERANS AFFAIRS
GULF COAST VETERANS AFFAIRS
HEALTH CARE SYSTEM
BILOXI, MISSISSIPPI

Respondent

and

Case No. AT-CA-04-0490

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 1045, AFL-CIO

Charging Party

Pursuant to section 2423.27(c) of the Final 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 is a Motion 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 GULF COAST VETERANS AFFAIRS HEALTH CARE SYSTEM BILOXI, MISSISSIPPI Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1045, AFL-CIO Charging Party	Case No. AT-CA-04-0490

Melissa L. Creech, Esq.
For the General Counsel

Before: SUSAN E. JELEN
Administrative Law Judge

DECISION ON MOTION FOR SUMMARY JUDGMENT

On October 29, 2004, the Regional Director of the Atlanta Region of the Federal Labor Relations Authority issued a Complaint and Notice of Hearing, alleging that the Department of Veterans Affairs, Gulf Coast Veterans Affairs Health Care System, Biloxi, Mississippi (the Respondent) violated section 7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute (the Statute), by bypassing the Union when an agent of the Respondent solicited from a bargaining unit employee a copy of the answer filed by the Union representative in response to a proposed disciplinary action against the unit employee. The complaint was served on Respondent by certified mail 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 specified that, in accordance with the Authority's Rules and Regulations, the Respondent must file an Answer to the complaint no later than November 23, 2004, and that a failure to file an answer shall constitute an admission of the allegations of the complaint. A hearing was scheduled for January 25, 2005.

The Respondent did not file an answer, either in person or by mail, within the required period or at any time thereafter.

On December 2, 2004, 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 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 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 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

1. The Respondent is an agency as defined by 5 U.S.C. § 7103(a)(3).

2. The American Federation of Government Employees, AFL-CIO (AFGE) is the exclusive representative of a bargaining unit at the Department of Veterans Affairs, and the Union is an agent of AFGE for purposes of representing employees at the Respondent's facility in Biloxi, Mississippi.

3. During the time period covered by the complaint, the following individuals were employees under 5 U.S.C. § 7103(a)(2) and were in the bargaining unit described above:

Sonya Kifer (Kifer) Vice President, Title 5, and steward

John Mechanic (Mechanic) Chief Steward

4. During the time period covered by the complaint, Kifer was acting as Mechanic's Union representative in a proposed disciplinary action against him.

5. On or about June 28, 2004, Kifer, in her capacity as Mechanic's representative, submitted an answer to a proposed disciplinary action to Robert Peden, Chief of Facilities Management.

6. On or about July 9, 2004, Christine Massey, Human Resources and Employee Relations Specialist, called Mechanic and requested that he provide her with a copy of the answer referred to in paragraph 5 above.

7. This conduct constituted a bypass of the exclusive representative, in violation of 5 U.S.C. § 7116(a)(1) and (5) and an independent violation of 5 U.S.C. § 7116(a)(1).

Discussion and Conclusions

Agencies unlawfully bypass an exclusive representative when they communicate directly with bargaining unit employees concerning grievances, disciplinary actions and other matters relating to the collective bargaining relationship. Such conduct constitutes direct dealing with an employee and is violative of section 7116(a)(1) and (5) of the Statute because it interferes with the union's rights under section 7114(a)(1) of the Statute to act for and represent all employees in the bargaining unit. Such conduct also constitutes an independent violation of section

7116(a)(1) of the Statute because it demeans the union and inherently interferes with the rights of employees to designate and rely on the union for representation. *U.S. Department of Justice, Bureau of Prisons, Federal Correctional Institution, Bastrop, Texas*, 51 FLRA 1339 (1996); *Department of Health and Human Services, Social Security Administration, Baltimore, Maryland*, 39 FLRA 298 (1991). Respondent has admitted by its failure to file an answer that it bypassed the designated union representative of a bargaining unit employees in communicating directly with that employee regarding disciplinary proceedings. Therefore, as admitted by its failure to answer the complaint, Respondent violated the Statute as alleged.

Remedy

Counsel for the General Counsel proposed a recommended remedy that the Respondent be required to post an appropriate notice.

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, it is hereby ordered that the Department of Veterans Affairs, Gulf Coast Veterans Affairs Health Care Center, Biloxi, Mississippi, shall:

1. Cease and desist from:

(a) Failing and refusing to bargain in good faith with the American Federation of Government Employees, Local 1045, AFL-CIO (the Union), the exclusive representative of its employees, by bypassing a designated Union representative and communicating directly with a bargaining unit employee concerning a disciplinary proceeding.

(b) Interfering with the right of its employees to designate and rely on the Union for representation in a disciplinary proceeding.

(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) Post at the Department of Veterans Affairs, Gulf Coast Veterans Affairs Health Care Center, Biloxi, Mississippi facility, where bargaining unit 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 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.

(b) 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, December 21, 2004.

—

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, Gulf Coast Veterans Affairs Health Care Center, Biloxi, Mississippi, 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 bargain in good faith with the American Federation of Government Employees, Local 1045, AFL-CIO (the Union), the exclusive representative of our employees, by bypassing the designated Union representatives of our employees and communicating directly with bargaining unit employees concerning disciplinary proceedings.

WE WILL NOT interfere with the right of employees to designate and rely on the Union for representation in disciplinary proceedings.

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.

(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 30303-1270, and whose telephone number is: 404-331-5380.

CERTIFICATE OF SERVICE

I hereby certify that copies of the **DECISION** issued by SUSAN E. JELEN, Administrative Law Judge, in Case No. AT-CA-04-0490, were sent to the following parties:

CERTIFIED MAIL & RETURN RECEIPT

CERTIFIED NOS:

Melissa L. Creech, Esq.

7000 1670 0000 1175

4793

Federal Labor Relations Authority
Marquis Two Tower
285 Peachtree Center Ave., Suite 701
Atlanta, GA 30303-1270

Alan M. Hathorne, Esquire

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4816

Department of Veterans Affairs
Office of Regional Counsel
1500 East Woodrow Wilson Drive
Jackson, MS 39216

REGULAR MAIL:

Sonya Kifer

VP Title 5

AFGE, Local 1045

P.O. Box 9081

Gulfport, MS 39506-9081

President

AFGE

80 F Street, NW

Washington, DC 20001

DATED: December 21, 2004
Washington, DC