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

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1923, AFL-CIO Respondent	
and U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, CENTERS FOR MEDICARE AND MEDICAID SERVICES, BALTIMORE, MARYLAND Charging Party	Case Nos. WA-CO-01-0675 WA-CO-02-0348

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 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 **JULY 14, 2003**, and addressed to:

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

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RICHARD A. PEARSON
Administrative Law Judge

Dated: June 11, 2003
Washington, DC

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

MEMORANDUM DATE: June 11, 2003

TO: The Federal Labor Relations Authority

FROM: RICHARD A. PEARSON
Administrative Law Judge

SUBJECT: AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1923, AFL-CIO

Respondent

Case Nos. WA-CO-01-0675
WA-CO-02-0348

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, CENTERS FOR MEDICARE AND MEDICAID SERVICES, BALTIMORE, MARYLAND

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 cases to the Authority. Enclosed are copies of my Decision, the service sheet, and the transmittal form sent to the parties. Also enclosed are the transcripts, exhibits and any briefs filed by the parties.

Enclosures

FEDERAL LABOR RELATIONS AUTHORITY

Office of Administrative Law Judges
Washington, D.C.

OALJ 03-32

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1923, AFL-CIO Respondent	
and U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, CENTERS FOR MEDICARE AND MEDICAID SERVICES, BALTIMORE, MARYLAND Charging Party	Case Nos. WA-CO-01-0675 WA-CO-02-0348

Angela A. Bradley, Esquire
Thomas F. Bianco, Esquire
For the General Counsel

Steve Fesler, Director of Litigation
For the Respondent

Before: RICHARD A. PEARSON
Administrative Law Judge

DECISION

On July 17, 2002, the Acting General Counsel of the Federal Labor Relations Authority, by the Acting Regional Director of its Washington Region, issued a consolidated unfair labor practice (ULP) complaint in these two cases, alleging that the Respondent violated section 7116(b)(1) and (8) of the Federal Service Labor-Management Relations Statute (the Statute) by refusing to participate in the selection of arbitrators for twelve grievances filed by the Charging Party. On August 2, 2002, the Respondent submitted a letter in response to the Complaint, and on September 17, 2002, it filed its Answer, denying that it had refused to participate in the selection of arbitrators or that it had violated the Statute. The General Counsel filed a Motion for Summary Judgment on September 6, 2002, but that motion was denied. A hearing was held in Washington, D.C., on October 17, 2002, at which all parties were present and afforded the opportunity to be heard, to introduce evidence, and to examine and cross-examine witnesses. The General Counsel and the Respondent subsequently filed post-hearing briefs, which I have fully considered.

Based on the entire record, including my observation of the witnesses and their demeanor, I make the following findings of fact, conclusions of law, and recommendations.

FINDINGS OF FACT

The U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, Baltimore, Maryland (Charging Party/Agency) is an agency as defined by 5 U.S.C. § 7103(a)(3). The American Federation of Government Employees (AFGE) is the exclusive representative of a unit of the Agency's employees; AFGE and the Agency[1] are parties to a collective bargaining agreement (CBA) covering all employees in the unit. American Federation of Government Employees, Local 1923 (Respondent/Union), a labor organization within the meaning of 5 U.S.C. § 7103(a)(4), is an agent of AFGE for the purpose of representing employees within the unit.

The CBA sets forth, in Articles 23, 24 and 25, the procedures for processing grievances and for arbitrating unresolved grievances. Different procedures are established for the handling of disciplinary grievances (Article 23), grievances on other issues relating to the employment of employees (Article 24, Sections 5, 7 and 9), and grievances relating to alleged violations of the CBA. Grievances filed by employees have either a two-step or three-step procedure in advance of arbitration, but grievances initiated by the Union or the Agency have only one step prior to arbitration. Article 24, Section 8 provides:

> A grievance on behalf of the Union or the Agency will be submitted in writing to the Director of Human Resources Management Group or the Union President. The Parties or their designees will promptly meet to attempt resolution. Arbitration may be invoked within thirty (30) working days after the informal meeting. Neither Party will use this procedure to circumvent time frames for filing individual grievances or to combine unrelated dissimilar individual grievances.

Article 25 of the CBA covers arbitration procedures. Section 1 (Invoking Arbitration) states:

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[1] The Agency is the successor to the Health Care Financing Administration, which is the named employer in the applicable CBA.

> If unresolved, a grievance processed under Article 24 or a disciplinary action processed under Article 23 of this Agreement may be referred to arbitration as provided for in this Article. Such referral will be made within twenty (20) working days except where otherwise noted after receipt of the final written decision of an action processed under Article 23 or Article 24. If not appealed within this time limit, there will be no other appeal. . . .

Section 2 goes on to provide:

> Within five (5) working days from the date of the request for arbitration, the Parties will jointly or separately request the Federal Mediation and Conciliation Service (hereinafter called FMCS) to provide a list of five (5) impartial persons to act as arbitrators from the appropriate geographical area. The Parties will meet within three (3) working days after receipt of such a list. If they cannot mutually agree upon one (1) of the listed arbitrators, then the Agency and the Union will each strike one (1) arbitrators' [sic] name from the list of five (5) and will then repeat this procedure. The remaining person will be the duly selected arbitrator.

Other sections of Article 25 provide that: the parties may arrange a prehearing conference, with or without the arbitrator, to consider methods of expediting the hearing; the procedures used to conduct the arbitration will be determined by the arbitrator; and if the parties cannot agree on a joint submission of the issue for arbitration, each party will submit a separate submission and the arbitrator will determine the issue.

Prior to March 2001, it appears that the Agency had not filed a formal grievance under the CBA for at least several years. Between March 20 and May 22, 2001, however, the Agency initiated at least thirteen separate grievances against the Union (Joint Exhibits 2A - 2L, G.C. Exhibit 8, and Union Exhibit 1). All of these grievances related generally to the Union's use of the Agency's internal e-mail system to communicate with employees: all but one of the grievances alleged that the Union had violated Article 12, Section 2 of the CBA by failing to furnish the "designated Labor Relations Officer" with a copy of the material at

least one day in advance;[2] the other grievance (Joint Exhibit 2G) alleged that the Union-circulated material maligned the character of Agency officials in violation of Article 12, Section 2.

In April and May of 2001, the Union and Agency held informal meetings to discuss all of these grievances (except for the one filed on May 22), as well as a related grievance filed by the Union (Tr. 54, 84; G.C. Exhibit 8). The Union was able to satisfy the Agency's objections concerning one of the communications (Union Exhibit 1), and as a result the Agency withdrew that grievance. But the other grievances could not be resolved, and the Agency notified the Union on May 14 that it was invoking arbitration on the eleven grievances that were then outstanding (G.C. Exhibit 10).

After invoking arbitration on the first eleven grievances, the Agency requested panels of arbitrators from the FMCS for each grievance, and on June 11, 2001, the FMCS submitted eleven panels to the parties (G.C. Exhibit 10). Fran Legg, an attorney in the Agency's Human Resources Management Group, was assigned to handle the eleven cases, and on June 20 she asked John Gage, the Union President, to contact her to proceed with the striking of arbitrators from the panels (G.C. Exhibit 2). A meeting was held on June 25 to discuss the possibilities of resolving the eleven Agency grievances and the one related Union grievance, attended by several representatives of each party. The Union identified David Bavaria, Union Vice President, as the person who would be handling the grievances, and at the end of the meeting, when it was evident that the grievances would not be settled, Ms. Legg asked Mr. Bavaria to stay, so they could select arbitrators from the panels. Mr. Bavaria said he was not prepared to select arbitrators yet, but he proposed that the grievances be consolidated, since they were all factually and contractually similar. Ms. Legg indicated that management was opposed to consolidating the cases, and she told him that she would schedule a meeting with him in the near future to strike arbitrators.

Between June 25 and July 13, 2001, Ms. Legg initiated a flurry of e-mails, letters and phone calls to Mr. Bavaria, attempting to arrange for the selection of arbitrators for the pending grievances. She attempted to set up a meeting for June 28 through the Agency's electronic scheduling system; Bavaria opened the e-mail message on June 26 but didn't respond until a half-hour before the proposed time, when he declined (G.C. Exhibits 3A - 3C). Legg then

[2] The allegations described in Joint Exhibit 2F also vary slightly from the allegations of the other grievances.

discussed the matter with Bavaria in a telephone conversation on June 28; no progress was made by either party in moving the cases forward, as Bavaria repeated his desire to consolidate the grievances and Legg repeated management's opposition to consolidation and its insistence on selecting separate arbitrators. Bavaria informed her that the Union was seeking the assistance of the FMCS in mediating the consolidation dispute, but Legg replied that the Agency would accept only arbitration and not mediation. They each confirmed their positions in e-mail messages dated June 29, and immediately thereafter, Legg attempted again to schedule a meeting for July 2 for the striking of arbitrators; Bavaria deleted this message without even opening it or responding (G.C. Exhibits 4A - C).

Ms. Legg then wrote a letter dated July 11 (which was faxed and hand-delivered) to Bavaria, protesting the Union's refusal to select arbitrators and reasserting the Agency's insistence on proceeding immediately to arbitration (G.C. Exhibit 5). She warned that if Bavaria refused her next attempt to schedule a meeting to strike arbitrators, the Agency would file an unfair labor practice charge. Also on July 11, Legg tried to electronically schedule a meeting with Bavaria for July 13; Bavaria declined this meeting on July 12, without offering any alternative dates or times. The next day, the Agency filed a ULP charge against the Union.

The last of the Agency's thirteen grievances was filed on May 22, 2001 (Joint Exhibit 2L), subsequent to its submission on May 14 of eleven of the earlier grievances to arbitration. The record is not clear whether a Step 1 meeting was held on this grievance,[3] but the Agency invoked arbitration on it on July 9, and the FMCS sent a panel of arbitrators to the Union and the Agency on September 20 (G.C. Exhibit 11). Ms. Legg contacted Mr. Bavaria by e-mail on September 26 and requested that they meet to strike arbitrators on this case, but he told Legg to contact Zaneta Davis in the Union's office first (G.C. Exhibit 7A). Legg did promptly contact Ms. Davis and advise her of the nature of the grievance, but the Union didn't respond substantively to Legg until January 14, 2002, when Davis told her that Bavaria would be handling the grievance. She also indicated that the Union had thought this grievance had been consolidated with the other eleven cases (*Id.*). The Union did not respond to the Agency's request to select an arbitrator until January 31, when the parties happened to be

[3] The June 25 meeting, at which the other grievances were discussed, might have encompassed this latter grievance as well.

meeting on other matters. At that meeting, according to Legg, she confronted Bavaria and requested that they select an arbitrator; according to Legg, Bavaria said he wasn't prepared to do so, and he told her instead to "just include that with the other eleven" grievances (Tr. 37). Bavaria did not recall a meeting in which they discussed the last grievance, but he conceded that he may have made a comment to that effect (Tr. 116-17). After hearing nothing further from the Union concerning the selection of an arbitrator for the last grievance, the Agency filed a second ULP charge on February 27, 2002.

DISCUSSION AND CONCLUSIONS

Issues and Positions of the Parties

The General Counsel asserts that the Union violated section 7116(b)(1) and (8) of the Statute by refusing to select an arbitrator for the twelve pending grievances, despite the Agency's repeated requests. It cites the Authority's decisions in *American Federation of Government Employees, Local 1457, AFL-CIO*, 39 FLRA 519 (1991)("*AFGE*"), and *Department of Labor, Employment Standards Administration/Wage and Hour Division, Washington, D.C.*, 10 FLRA 316 (1982)("*DOL*"), for the principle that the refusal to arbitrate, or to participate in the selection of an arbitrator, by either an exclusive representative or an agency constitutes an unfair labor practice. In the GC's view, the Union's refusal to select an arbitrator unless the Agency agreed to consolidate the grievances constituted a refusal to comply with section 7121's requirement that "any grievance not satisfactorily settled under the negotiated grievance procedure shall be subject to binding arbitration . . . ."

The Union doesn't dispute the holdings in the *AFGE* and *DOL* cases, but it denies that it refused to strike arbitrators. Rather, the Union contends that it "simply . . . attempted to negotiate a process for processing the large number of management grievances." Respondent's Post-Hearing Brief at 2. Since both parties concede that the CBA neither requires nor prohibits the consolidation of grievances, the Union argues that it was free to negotiate on this issue; Bavaria's delay in selecting an arbitrator and his request for FMCS mediation were indicative of his effort to negotiate the question of consolidation with the Agency. In this perspective, it is the Agency rather than the Union that was undermining bargaining and acting unlawfully. The Union further argues that it hardly can be accused of "delay" in selecting an arbitrator, as only 19 days elapsed from the June 25

grievance meeting until the Union filed the first ULP charge on July 13. Finally, the Union argues that its insistence on consolidating the grievances was "covered by" the CBA, as the last sentence of Article 24, Section 8 arguably suggests that similar grievances should be processed jointly.

Analysis

As a procedural matter, I must first reject the Union's attempt to raise the "covered by" doctrine here as a defense to its actions. As explained by the Authority in *U.S. Department of Health and Human Services, Social Security Administration, Baltimore, Maryland*, 47 FLRA 1004, 1015-19 (1993), a party has no duty to bargain over a matter that has already been reduced to writing in a contract. The doctrine has not been applied as a justification for a party's refusal to arbitrate a dispute over a provision of the contract. Indeed, the Union refutes its own theory by arguing that because the CBA left open the question of consolidating grievances, it was demanding that the Agency negotiate on this point before arbitrating. It cannot simultaneously demand bargaining on an issue and claim the issue is covered by the CBA. I also note that the Respondent did not assert the "covered by" defense in its Answer, its Prehearing Submissions or at the hearing.

Moving to the substantive issues presented in this case, I also reject the Union's characterization of its actions, and I find instead that it unlawfully refused to arbitrate the grievances. The applicable law in this case is straightforward and not really in dispute. Since the inception of the Statute, the Authority has made clear that unless the parties mutually agree to specific exclusions, section 7121 requires that collective bargaining agreements establish grievance procedures, culminating in binding arbitration of all grievances not satisfactorily settled by the grievance procedures, including questions of arbitrability. *Interpretation and Guidance*, 2 FLRA 273, 278-79 n.7 (1979). For a brief period, the Authority held the view that, since either party to a CBA could proceed to arbitration *ex parte*, the other side's refusal to arbitrate was not an independent unfair labor practice. *See*, *Federal Aviation Administration, Alaskan Regional Office*, 7 FLRA 164 (1981). But in *DOL*, it partially overruled *FAA*, holding instead that even though a party can arbitrate a grievance in the absence of the other, the refusal to arbitrate still violates sections 7121 and either 7116(a)(1) and (8) or 7116 (b)(1) and (8). 10 FLRA at 320. In *AFGE*, 39 FLRA at 522, 528, the fact that the respondent union refused to meet to select the arbitrator (as opposed to refusing to arbitrate) did not alter the conclusion that its refusal was unlawful,

nor did the fact that it based its refusal on the alleged untimeliness of the agency's grievance. The ALJ and the Authority noted that pursuant to section 7121, questions of grievability and arbitrability are also left to the arbitrator. And in a case bearing some resemblance to the instant case, *Department of the Army, 83rd United States Army Reserve Command, Columbus, Ohio*, 11 FLRA 55 (1983) ("*Army Reserve*"), an agency and union jointly submitted a grievance to the arbitrator, but the agency then refused to participate unless the arbitrator held a separate hearing and ruled on the arbitrability of the grievance before hearing the merits of the case. Despite the agency's offer to pay the additional costs of a bifurcated hearing, the Authority held that "the Respondent was not thereby relieved of its statutory obligation to proceed to arbitration when the Union rejected the Respondent's offer . . .", reasoning that the procedural issue should be decided by the arbitrator, subject to appeal to the Authority. 11 FLRA at 56 n.1.

The simple lesson of all these cases is that all issues related to a grievance, regardless of whether they are procedural or substantive in nature, should be resolved by the arbitrator. A comparable lesson can be drawn from private sector arbitration law, as evidenced by *Shaw's Supermarkets, Inc. v. United Food and Commercial Workers Union, Local 791, AFL-CIO*, No. 02-2032, 171 LRRM 3235 (1st Cir. Mar. 6, 2003). In that case, the union filed three identical grievances under three separate CBAs against Shaw's and then submitted them for arbitration to the American Arbitration Association, asking for a single consolidated hearing. Shaw's objected to the consolidated hearing and filed a declaratory judgment action in federal court, claiming that the union had violated 29 U.S.C. § 185. Both the district and the circuit courts ruled in favor of the union and ordered Shaw's to arbitrate the grievances, holding that the question of consolidation was a procedural issue for the arbitrator to decide. While the statutory basis of the *Shaw's* case was entirely different from ours,[4] and there was no allegation of an unfair labor practice there, the guiding principle for parties responding to grievances is the same: if you have an objection to any aspect of a grievance, whether it is substantive or procedural, raise it before the arbitrator rather than

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[4] Indeed, this preference for arbitration is much stronger in the federal sector, since private sector labor law does not contain any equivalent provision to section 7121 of the Statute, requiring that negotiated grievance procedures provide for binding arbitration.

refusing to arbitrate. *See also*, *Avon Products, Inc. v. UAW, Local 710*, 386 F.2d 651, 658-59 (8th Cir. 1967), where the court also decided that it is up to the arbitrator, not the court, to decide whether consolidated grievances should be resolved in a single or in multiple proceedings.

The Respondent professes not to dispute this underlying principle, but its actions reflect otherwise. The Union claims, instead, that it was willing to arbitrate, and that it never refused to do so. However, an objective evaluation of the Union's (and particularly Mr. Bavaria's) actions in June and July of 2001 reveals that the Union refused to proceed to arbitration unless the Agency first agreed to consolidate the cases.

When the Agency requested arbitration panels from the FMCS, the grievances were already between two and three months old, and grievance meetings had already been held on them in April and May. When management and Union representatives met again to discuss the grievances on June 25, Legg directly asked Bavaria to sit down with her to select arbitrators, and Bavaria rebuffed her for the first time. Subsequently, he refused again when she tried to arrange meetings for June 28 and July 2, each time simply ignoring her e-mails rather than dignifying them with a reply or a reason for the delay. At no time did he offer alternative meeting dates. Bavaria did plead his case for consolidating the grievances and for meeting with a mediator, but neither of these efforts furthered the contractual grievance procedure, which called for selecting an arbitrator within three working days after the receipt of FMCS's June 11 letters. Legg stated the Agency's unequivocal demand to proceed to arbitration each time Bavaria suggested an alternate procedure. And finally, Legg's July 11 letter informed Bavaria that she would make one final attempt to arrange a meeting with him: if he declined that meeting (which he promptly did), the Agency would file a ULP charge. A similar pattern of pursuit and evasion occurred with the final grievance. The Union delayed for four months in responding to Legg's request to meet to select an arbitrator, and when Legg finally was able

to speak to Bavaria, he told her to "include [it] with the other eleven" grievances.[5]

Although Bavaria may never have explicitly told Legg that he absolutely refused to select arbitrators for the twelve grievances, his actions demonstrated precisely such an intention. When he was presented with the first eleven cases, he sought to consolidate them, and management promptly responded that it would not consent to consolidation. Bavaria then rejected numerous attempts to follow the contractual procedure, which called for a meeting to select an arbitrator within three working days, suggesting instead that they meet with a mediator. When the Agency rejected mediation (a step not called for in the grievance procedure), the Union's response was simply to "stonewall," to absolutely refuse to do anything to comply with the contractual process. Legg's letter of July 11 made it crystal-clear to the Union that any further refusal of a meeting request would be interpreted as a refusal to arbitrate, and that such a refusal would trigger the filing of a ULP charge. When Bavaria did indeed decline the next meeting request, all parties understood that the Union was refusing to arbitrate. For the Union now to attempt to portray its actions as anything else is futile.

The Union argues that its "short delay in processing the grievances"[6] was simply an effort to negotiate a procedure for minimizing the expense of handling multiple identical grievances. Post-Hearing Brief at 6. It cites

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[5] In this regard, I credit Legg's testimony that Bavaria made this comment to her at a meeting. It is consistent with the other evidence of record, and Bavaria's recollection of the incident was dim. Even if Bavaria did not make the statement to Legg, however, the Union's actions concerning the last grievance communicated that it assumed the grievance would be "consolidated" with the other eleven; in other words, the Union would only arbitrate under its own rules.

[6] I also reject the Union's claim that the time between the June 25 grievance meeting and the filing of the ULP charge on July 13 was too brief to demonstrate a "refusal" by the Union to arbitrate. The Union's refusal was demonstrated by the totality of its actions, not merely the elapsed time, and in the facts of this case the Union's refusal to negotiate was evident in much less than those 19 days. Moreover, the grievances had been pending since March; grievance meetings had been held in April and May; and arbitration had been invoked on May 14. Thus it is inaccurate to measure the Union's delay from June 25.

Article 4, Section 7 of the CBA, concerning mid-term bargaining, as a basis for its actions. This, however, is an after-the-fact rationalization (actually a distortion) of its actions. There is no evidence from June and July of 2001 that the Union invoked mid-term bargaining, and no written request to bargain was ever submitted by the Union. It is true that Mr. Bavaria sought to "discuss" the matter of consolidating the grievances, and he may well have believed that the CBA supported the notion of consolidating similar grievances. (*See, e.g.*, Article 24, Section 8.) Moreover, "discussions" concerning consolidation did occur, although the Agency made it clear that it would not voluntarily consolidate the cases. The Union now tries to portray management's refusal to consolidate as a refusal to bargain and as an act of bad faith, but by doing so the Union is distorting the facts of this case, as well as the grievance procedure itself. In much the same way as a child stops playing ball when his friends won't play by his rules, the Union sought to add a new rule (consolidation) as a prerequisite to its following the existing rules (select an arbitrator within three days of receiving the list). The CBA, and indeed the Statute, are clear in requiring parties to proceed to arbitration when a grievance cannot be satisfactorily settled through the negotiated procedure. The Union was entitled to propose consolidating the grievances, just as it would have been entitled to raise objections to the grievances on grounds of timeliness or arbitrability, but absent the Agency's agreement to the proposal, the Union's proper recourse was to pursue consolidation before the arbitrator (or arbitrators).

Although I have rejected the Union's justifications for its actions, my decision should not be interpreted as rejecting its reasons for wanting to consolidate the grievances. The procedural question of consolidating grievances arises often in arbitration cases, and there is considerable case law to guide arbitrators in deciding such disputes. For a review of the merits on both sides of this issue, *see, e.g.*, *Heekin Can, Inc.*, 101 LA 129, 133-34 (Feldman, 1993); *Johnson Bronze Co.*, 41 LA 961, 963-65 (Dworkin, 1963); and the *Avon Products* case previously cited, 386 F.2d at 658-59. There are certainly advantages to hearing similar cases together, rather than prolonging litigation needlessly, but the merits of that argument must be weighed by the arbitrator, and the Union's actions here clearly prevented the dispute from going to an arbitrator. As the Authority stated in the *Army Reserve* case, "the Respondent was not relieved of its statutory obligation to proceed to arbitration when the [other party] refused the Respondent's offer" (in our case, an offer to consolidate). 11 FLRA at 56 n.1. By refusing to proceed to arbitration,

by refusing to strike names from arbitration panels, the Union failed to comply with section 7121 of the Statute, and thereby violated section 7116(b)(1) and (8).

In order to remedy its unfair labor practices, the Union must cease refusing to strike names from the arbitration panels in all twelve grievances, and it must affirmatively participate in the selection of arbitrators by striking names from those panels, when requested by the Agency. Furthermore, the traditional practice of posting a notice, signed by the highest official of the party responsible for the violation, to members and employees of the affected bargaining unit, is appropriate here. This notice should be signed by the President of the Union and posted by the Union wherever notices to members are customarily placed, and a signed copy of the notice should be provided to the Agency for posting in locations where notices to employees are customarily placed.

Accordingly, I recommend that the Authority issue the following Order:

ORDER

Pursuant to section 2423.41(c) of the Federal Labor Relations Authority's Rules and Regulations and section 7118 of the Statute, it is hereby ordered that the American Federation of Government Employees, Local 1923, AFL-CIO (the Union) shall:

1. Cease and desist from:

(a) Failing or refusing to strike names from the panels of arbitrators submitted to the Union by the Federal Mediation and Conciliation Service in Grievances Number LR2211, LR2212, LR2213, LR2214, LR2215, LR2216, LR2217, LR2220, LR2221, LR2223, LR2225, and LR2240.

(b) In any like or related manner, failing and refusing to comply with its obligations under the Statute.

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

(a) Upon request, participate in the selection of arbitrators for each of the grievances identified above in the manner required by the Union's collective bargaining agreement with the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (the Agency).

(b) Post at its business office at the Agency and at all places where notices to its members and to employees of the Agency are customarily posted, 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 President of the Union 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 insure that these Notices are not altered, defaced, or covered by other material.

(c) Submit appropriate signed copies of such notices to the Agency for posting in conspicuous places where bargaining unit employees are located, where they shall be maintained for a period of 60 consecutive days from the date of posting.

(d) Pursuant to section 2423.41(e) of the Authority's Rules and Regulations, notify the Regional Director of the Washington Regional Office, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply.

Issued, Washington, DC, June 11, 2003

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RICHARD A. PEARSON
Administrative Law Judge

Appendix A

NOTICE TO ALL EMPLOYEES

POSTED BY ORDER OF THE

FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that we have violated the Federal Service Labor-Management Relations Statute (the Statute) and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY OUR MEMBERS AND ALL EMPLOYEES THAT:

WE WILL NOT fail or refuse to participate in the selection of arbitrators for grievances filed by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

WE WILL NOT, in any like or related manner, fail or refuse to comply with our obligations under the Statute.

WE WILL, upon request, proceed to arbitration by striking names from the panel of arbitrators submitted to us by the Federal Mediation and Conciliation Service in Grievances Number LR2211, LR2212, LR2213, LR2214, LR2215, LR2216, LR2217, LR2220, LR2221, LR2223, LR2224, and LR2240.

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(Union)

Dated: _____ By: _____

(Signature) President

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, Washington Regional Office, whose address is: Federal Labor Relations Authority, Tech World Plaza North, 800 K Street, NW, Suite 910, Washington, DC 20001-2000, and whose telephone number is: 202-482-6700.

CERTIFICATE OF SERVICE

I hereby certify that copies of this **DECISION**, issued by RICHARD A. PEARSON, Administrative Law Judge, in Case Nos. WA-CO-01-0675 and WA-CO-02-348, were sent to the following parties:

_____

CERTIFIED MAIL AND RETURN RECEIPT	**CERTIFIED NOS:**
Angela A. Bradley and Thomas F. Bianco Counsel for the General Counsel Federal Labor Relations Authority Tech World Plaza North 800 K Street, NW, Suite 910 Washington, DC 20001-2000	7000 1670 0000 1175 2010
Steve Fesler Director of Litigation AFGE, AFL-CIO, Local 1923 6401 Security Boulevard I-J-21 Operations Building Baltimore, MD 21235	7000 1670 0000 1175 2027

Dated: June 11, 2003
Washington, DC