FEDERAL LABOR RELATIONS AUTHORITY OALJ 15-49
Office of Administrative Law Judges
WASHINGTON, D.C.

DEPARTMENT OF VETERANS AFFAIRS
VA NORTHERN CALIFORNIA HEALTH CARE SYSTEM
MATHER, CALIFORNIA

RESPONDENT

AND

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 1206, AFL-CIO

CHARGING PARTY

Case No. SF-CA-13-0583

Vanessa G. Lim
For the General Counsel

Coleen L. Welch
For the Respondent

Gloria Salter
For the Charging Party

Before: SUSAN E. JELEN
Administrative Law Judge

DECISION

This case arose under the Federal Service Labor-Management Relations Statute (Statute), 5 U.S.C. §§ 7101-7135 and the revised Rules and Regulations of the Federal Labor Relations Authority (FLRA/Authority), Part 2423.

On August 8, 2013, the American Federation of Government Employees, Local 1206, AFL-CIO (Union) filed an unfair labor practice (ULP) charge against the Department of Veterans Affairs, VA Northern California Health Care System, Mather, California (Respondent). (G.C. Ex. 1(a)). On February 13, 2014, the Regional Director of the San Francisco Region of the FLRA issued a Complaint and Notice of Hearing alleging that the Respondent violated § 7116(a)(1) and (5) of the Statute by implementing changes in the performance plans of audiology section employees without providing the Union an opportunity to bargain over the

changes. (G.C. Ex. 1(b)). The Respondent timely filed an Answer to the Complaint in which it admitted certain allegations but denied others, including the allegation that it violated the Statute. (G.C. Ex. 1(c)).

A hearing was held in Martinez, California on June 4, 2014. All parties were represented and afforded an opportunity to be heard, to introduce evidence, and to examine witnesses. The General Counsel and Respondent timely filed post-hearing briefs, which I have fully considered.

Based on the entire record, including my observation of the witnesses and their demeanor, I find that the Respondent violated § 7116(a)(1) and (5) of the Statute when it implemented changes in audiology section employees' performance plans without affording the Union an opportunity to bargain over the changes. In so finding, I reject the Respondent's contention that the Union waived the right to bargain.

I make the following findings of fact, conclusions, and recommendations.

FINDINGS OF FACT

The Respondent is an agency under § 7103(a)(3) of the Statute. (G.C. Exs. 1(b) & 1(c)). The Union is a labor organization under § 7103(a)(4) of the Statute and is the exclusive representative of a consolidated unit of employees appropriate for collective bargaining at the Department of Veterans Affairs. (*Id.*). The Union is an agent of AFGE for the purpose of representing employees of the Respondent within the bargaining unit. (*Id.*).

The VA Northern California Health Care System includes a medical center in Sacramento and several clinics throughout Northern California. (Tr. 25-26). Audiology and speech pathology throughout the system fall under a single service chief, Janet Patterson. (Tr. 108). Audiology includes around twenty-one audiologists who evaluate hearing and prescribe hearing aids, seven technicians who assist the audiologists, and one secretary who performs administrative support. (Tr. 51-52, 67, 83, 138-39). Jane Sliheet directly supervises the audiology section employees. (Tr. 110).

On or about December 3, 2012, Patterson and Sliheet held a staff meeting to announce new performance plans for the audiology section. (Tr. 53, 67, 84, 118-19). The performance plans outline the critical and noncritical elements of the employees' job responsibilities for the performance period and contained standards for evaluating employees' performance. (Jt. Exs. 1(b) & 1(c)). Employees who are performing successfully receive one of three ratings: fully successful, excellent, or outstanding, in ascending order. (*Id.*).

Under the new performance plans, the Respondent began requiring employees to do a special project or "stretch goal" to receive a performance rating above the fully successful level. (Tr. 53, 61, 143; Jt. Ex. 1(d)). Some aspects of the "stretch goal" would need to be performed on the employees' own time. (Tr. 70, 85, 121-22). Previously, employees were rated based on their performance in around four to six different areas, called critical and noncritical elements, and would achieve a summary rating based only on their performance in those areas. (Tr. 71-72).

In the new performance plans, the Respondent also decreased the number of mistakes or errors employees could make and still be rated fully successful. (Tr. 59-60; 76-78, 89-81, 114-15). The Respondent also changed the number of critical elements for two of the positions and changed the content of some of the elements for all of the positions. (Jt. Exs. (n), (o), (u), (v), (w), (x)).

The Respondent did not provide the new plans to the Union before providing them to the employees. (Tr. 14-15, 101). After hearing complaints from employees about the plans, the Union President, Gloria Salter, contacted Bryan Rainey, Chief of Employee and Labor Relations. (Tr. 14-15, 98). On February 5, 2013, Rainey sent the Union the new performance plans for the first time and appointed Patterson as the point of contact. (Tr. 15-16, 102; Jt. Ex. 1(e)).

Eight days later, on February 13, Salter demanded to bargain and proposed that the Respondent cease and desist implementation of the performance plans and cease the requirement that employees sign the performance plans until bargaining is completed. (Jt. Ex. 1(f); Tr. 16). The Union proposed that the parties meet on March 6. (*Id.*).

Six weeks later, on March 27, Patterson offered to talk to Salter about the performance plans. (Jt. Ex. 1(h); Tr. 103). Over the next two months, the parties exchanged over a dozen emails in an effort to schedule a meeting. They never met in person to discuss this matter, nor did they speak on the telephone. (Tr. 140-41). Salter testified that it typically takes three months to get a date to bargain. (Tr. 28).

On April 8, Salter proposed meeting on April 24 or 25 and requested that the effected employees be present. (Jt. Ex. 1(h)). Patterson agreed to meet on April 24, but did not agree to allow the employees to attend. (*Id.*). Salter reiterated that she was demanding to bargain and requested that the chief negotiator for the Respondent, Christopher Howell, be present. (*Id.*; Tr. 31).

Howell did not respond, and on April 24, Salter requested a date during the week of May 1. (Jt. Ex. 1(h)). On May 6, Patterson offered four dates and times in late May to discuss the performance plans. (Jt. Ex. 1(i)). On May 13, Salter accepted May 28. (*Id.*). A week later, on May 21, Patterson requested May 29 instead. (*Id.*). Salter confirmed that she could meet that day at the Respondent's facility in Mather. (*Id.*). Patterson requested that they meet in Martinez instead. (*Id.*). Salter offered to meet on May 28 in Martinez. (*Id.*). On May 24, Patterson confirmed and reserved a room. (*Id.*). Later that day, Salter asked to reschedule for May 29. (*Id.*). On May 28, Patterson confirmed that date. (*Id.*).

About three hours after Patterson confirmed the date, Salter sent Patterson a proposed Memorandum of Understanding (MOU) and a copy of the existing performance plan for audiologists, highlighting changes. (Jt. Ex. 1(i); Tr. 19). She said that if the Respondent was agreeable, she would forgo meeting. (*Id.*). Otherwise, she said, she just noticed a scheduling conflict and could not travel to Martinez on May 29. (*Id.*). She asked the Respondent to offer counter changes, and then the Union would offer dates and times to meet. (*Id.*). On May 31, Salter asked whether her changes were acceptable. (Jt. Ex. 1(i)). She also said that she would forward proposed language changes for the technician and secretary performance plans. (*Id.*).

Between May 28 and June 25, no one from the Respondent replied to Salter. (Tr. 47). On June 25, Rainey replied that the Respondent "will not be signing an MOU regarding Performance Plans." (Jt. Ex. 1(k) at 2). He said that Patterson would be reviewing Salter's input and finalizing her plan. (*Id.*). He explained further that the bargaining obligation only arises when the changes in performance standards result in a change in the general conditions of employment for bargaining unit employees. (*Id.*). Further, Rainey stated the "changes being made have not changed the conditions of employment for the bargaining unit employees." (*Id.*).

On June 27, Salter reiterated her demand to bargain. (Jt. Ex. 1(k)). Rainey replied that there is no requirement to bargain the content of the plan. (*Id.*). Salter argued that the Respondent made changes to performance plans and the local union may, pursuant to the parties' collective bargaining agreement (CBA), provide input into any changes to performance standards and/or to the establishment of new performance standards. (*Id.*). She noted that the Respondent had rejected the Union's input. (*Id.*). She said the CBA also states that prior to implementation of changes to standards, the Respondent shall meet all bargaining obligations. (*Id.*). She demanded that the Respondent cease and desist implementation and demanded to bargain adverse impacts. (*Id.*).

On July 9, Patterson issued the performance plans for the technicians and the secretary. (Jt. Ex. (l)). On July 10, Salter asked for dates and times to bargain the adverse impacts of the change in the audiologists' performance plans. (*Id.*). That day, the Respondent replied and said that it had met its contractual obligations. (*Id.*). The Respondent said it would be issuing the final versions of the performance plans to all employees and "will not be offering dates and time[s] for the purpose of bargaining." (*Id.*).

Three months later, the Respondent evaluated the employees under the new performance plans for the entire performance year, beginning on the prior October 1, 2012 through September 30, 2013. (Jt. Exs. (o), (v), (x); Tr. 139). Several employees received lower ratings than they had in the past based solely on their failure to perform a stretch goal. (Tr. 63, 117, 127). For example, one employee was rated outstanding every year between 2006 and 2012 and received a performance award for each of those years. (Tr. 79). In the 2012-2013 performance year, she did not complete a stretch goal. (Tr. 80). That year, she received a rating of fully successful and did not receive a performance award. (*Id.*). Two other employees fell from excellent to fully successful because they did not complete a stretch goal. (Tr. 62-63, 93-94). They also did not receive performance awards for the 2012-2013 performance year, as they had in the previous year. (*Id.*). Some employees received higher ratings based on their completion of a stretch goal. (Tr. 128).

Under Article 27 of the parties' CBA, the "local union may provide input into any changes to performance standards and/or establishment of new performance standards," and the Respondent is obligated to provide the Union with reasonable advance notice of no less than fifteen calendar days when the Respondent changes, adds to, or establishes new elements and performance standards. (Jt. Ex. 1(a); Tr. 17). According to the CBA, prior to implementing those changes to performance standards, the Respondent "shall meet all bargaining obligations." (*Id.*).

POSITIONS OF THE PARTIES

General Counsel

The General Counsel contends that the Respondent violated § 7116(a)(1) and (5) of the Statute by refusing to bargain over the changes in the audiology performance plans. The General Counsel argues that the changes to the performance plans were more than de minimis. *See, e.g., U.S. EEOC, Wash. D.C.*, 48 FLRA 306, 310 (1993); *Dep't of the Air Force, Air Force Sys. Command, Elec. Sys. Div.*, 14 FLRA 390 (1984).

The General Counsel also asserts that the Union did not waive its right to bargain. A waiver must be clear and unmistakable. *Bureau of Engraving & Printing, Wash., D.C.*, 44 FLRA 575, 582 (1992) (*Bureau of Engraving*). A union may waive its right to bargain by inaction where the union does not timely request bargaining, request additional information, or request an extension of time. *See U.S. INS, Wash. D.C.*, 55 FLRA 69, 73 (1999). The General Counsel argues that the Union promptly requested to bargain, and that the Respondent did not establish that the Union failed to submit bargaining proposals within a contractual or other agreed upon time limit. Further, the Union communicated back and forth with the Respondent, tried to set up a date, provided initial input in the form of a proposed MOU, requested alternate dates, and continually asserted that it wanted to bargain over impact and implementation.

The General Counsel also argues that the Union did not waive its right to bargain by failing to submit negotiable proposals because the Union's proposals were only substantive input, which is permitted under the parties' CBA, and the Respondent never declared the Union's proposals nonnegotiable.[1] Moreover, the Respondent foreclosed bargaining, so submission of impact and implementation proposals would have been futile. *See Fed. BOP, Fed. Corr. Inst., Bastrop, Tex.*, 55 FLRA 848, 854-55 (1999).

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[1] Since the Respondent does not argue that it was entitled to implement because the Union offered only non-negotiable proposals, I will not consider this issue. *Pension Benefit Guar. Corp.*, 59 FLRA 48, 50 (2003) (then-Member Pope dissenting in part on other grounds) (finding that in a ULP case, the respondent has the burden of demonstrating that all proposals on the table were nonnegotiable, the General Counsel does not have burden to establish their negotiability); *see U.S. DOJ, INS*, 55 FLRA 892, 901 (1999) (then-Member Cabaniss dissenting on other grounds) (concluding that a finding that a union has submitted negotiable proposals is not a necessary element for finding that unilateral implementation violates the Statute); *U.S. DOJ, INS, Wash., D.C.*, 56 FLRA 351, 356 (2000) (then-Member Cabaniss dissenting on other grounds). Moreover, I note that the Authority has found a proposal that the agency delay implementation until negotiations are completed is negotiable. *Air Force Accounting & Fin. Ctr., Denver, Colo.*, 42 FLRA 1196, 1207 (1991). The Union made a similar proposal here.

Respondent

The Respondent first acknowledges that because employees needed to achieve a stretch goal to be rated higher than "fully successful" under the new plan, the revisions to the performance plans were more than de minimis. The Respondent argues, however, that the Union waived its right to bargain based on dilatory and time wasting tactics.

The Respondent cites *Dep't of the Treasury, U.S. Customs Serv., Region I, (Boston, Mass.)*, 16 FLRA 654 (1984) (*Customs Service*), where the Authority affirmed an Administrative Law Judge's conclusion that a union waived the right to bargain by not promptly requesting bargaining until two days before the day the Respondent had announced it would implement the change. In that case, the Judge explained that by delaying, the union "lulled the agency into believing that the union had accepted the new procedure and elected not to bargain" and "gave the impression, correctly or incorrectly, that its real desire was not to bargain but, rather, to delay implementation of the change." (*Id.* at 670).

The Respondent argues that, here, the Union gave the impression that its real desire was not to bargain but rather to delay negotiations. It says that this impression is bolstered by the Union's eleventh-hour MOU that only addressed the audiologist performance plans. The Respondent further avers that the Union's input could have been submitted months earlier and that it was only intended to nullify the changes implemented, even though the content of the plan was not subject to negotiation. The Respondent argues that the evidence shows the Union did not intend to meet on May 29, but instead sought to drag out and delay the negotiation process. In short, the Respondent asserts that it was "lulled into believing" there would be impact negotiations on May 29, but, instead, the Union sent changes to the plan and cancelled the meeting. The Union thereby waived its right to bargain.

Finally, the Respondent maintains that if a waiver is not found, any decision should be limited to audiologists. The Respondent argues that over the course of three months, the Respondent and the Union worked on a date to discuss impact and implementation of all of the performance plans for the department, but the Union's MOU failed to address non-audiologist positions and gave no indication as to when it would send that information. Since the Union "sat on its hands" and never sent any MOUs or input to the Respondent for anyone other than audiologists, the decision should be limited to audiologists.

ANALYSIS AND CONCLUSIONS

Before implementing a change in conditions of employment, an agency is required to provide the exclusive representative with notice of the change and an opportunity to bargain over those aspects of the change that are within the duty to bargain. *U.S. DOJ, Fed. BOP*, 68 FLRA 728, 731 (2015); *U.S. Dep't of the Air Force, 355th MSG/CC, Davis-Monthan AFB, Ariz.*, 64 FLRA 85, 89 (2009). When, as here, an agency exercises a reserved management right and the substance of the decision is not itself subject to negotiation, the agency nonetheless has an obligation to bargain over the procedures to implement that decision and appropriate

arrangements for unit employees adversely affected by that decision, if the resulting change has more than a de minimis effect on conditions of employment. *Pension Benefit Guar. Corp.*, 59 FLRA 48, 50 (2003).

The Respondent concedes that it made a change that has a greater than de minimis impact on bargaining unit employees' conditions of employment. And the Authority has long held that changes to critical elements and performance standards represent a greater than de minimis change. *56th Combat Support Grp. (Tac), MacDill AFB, Fla.*, 43 FLRA 434, 447-48 (1991) (*MacDill AFB*) (affirming Judge's holding that performance standards and critical elements strike at the heart of an employee's job situation and impact employee job retention, wage increases and the like and finding that numeric standards which greatly increase the chances for employees to fail to meet any given standard are greater than de minimis); *U.S. Dep't of HUD*, 56 FLRA 592, 592 (2000) (*HUD*) (finding that changing from a performance plan with one critical element with three ratings to a performance plan with five critical elements and five ratings represented a greater than de minimis change); *Dep't of the Air Force, Air Force Logistics Command, Wright-Patterson AFB, Ohio*, 21 FLRA 609, 612 (1986).

The Respondent's sole defense is that the Union waived its right to bargain. The Authority has recognized that a union may waive its right to bargain over a proposed change through agreement or inaction. *U.S. DHS, U.S. CBP*, 62 FLRA 263, 265 (2007) (*CBP*). But such waiver must be "clear and unmistakable" and the Respondent bears the burden of proving the waiver. *U.S. Dep't of the Army, Womack Army Med. Ctr., Fort Bragg, N.C.*, 63 FLRA 524, 527 (2009); *Bureau of Engraving*, 44 FLRA at 582; *U.S. Dep't of the Navy, Portsmouth Naval Shipyard, Portsmouth, N.H.*, 44 FLRA 205, 207 (1992).[2] The Authority has found a waiver when, after an agency provides adequate notice of a change, a union fails to request bargaining within a reasonable period of time after being notified of the change, fails to submit bargaining proposals within a contractual or other agreed upon time limit, or fails to bargain. *CBP*, 62 FLRA at 265; *see Dep't of the Air Force, AFMC, Wright-Patterson AFB, Ohio*, 51 FLRA 1532, 1536 (1996).

Typically, when the Authority finds a waiver by inaction, the union has not requested bargaining at all or has waited until right before or after an announced implementation date to demand bargaining. *See, e.g., IRS, (Dist., Region, Nat'l Office Unit)*, 14 FLRA 698, 700 (1984); *U.S. DOD, Dep't of the Army, Headquarters, Fort Sam Hous., Tex.*, 8 FLRA 623, 624 (1982); *cf. Medco Health Solutions of Las Vegas, Inc.*, 357 NLRB No. 25, slip op. at 2 n.11 (2011) *petition for review denied, remanded as to other matters, Medco Health Solutions of Las Vegas, Inc. v. NLRB*, 701 F.3d 710 (D.C. Cir. 2012). In the case relied on by the Respondent, *Customs Service*, which the Authority confined to its facts, the agency had provided the union a specific date for implementation, and the union did not demand to bargain until two days before the implementation date. *Customs Service*, 16 FLRA at 654, 669.

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[2] As to burden, the Authority has cited National Labor Relations Board (Board) precedent approvingly for the proposition that the burden should be assigned to the employer to prove waiver. *See U.S. Army Corps of Eng'rs Memphis Dist., Memphis, Tenn.*, 53 FLRA 79, 82-83 n.2 (1997); *see also Murtis Taylor Human Servs. Sys.*, 360 NLRB No. 66, slip op. at 4 (2014).

Here, however, the Union promptly demanded to bargain and renewed its demand several times. And the Respondent never provided the Union with an implementation date for the performance plans or otherwise indicated that time was of the essence. Indeed, the Respondent's waiver defense is largely premised on the Union's delay in scheduling bargaining, but its own actions display little urgency. The Respondent did not reply to the Union's demand to bargain for six weeks and waited over a month after the Union cancelled the parties' meeting date before it implemented the new performance plans. And a three-month delay in scheduling bargaining was not unusual for the parties. Further, the Respondent never communicated to the Union the importance of the cancelled meeting going forward and never asked for "input" or proposals by a specific date. (Tr. 47). While the Union certainly could have proceeded with greater urgency, in these circumstances, I am unable to conclude that the Union waived the right to bargain.[3]

I also find that the Respondent never afforded the Union a meaningful opportunity to bargain over the changes to the performance plans. The Respondent initially delivered the performance plans to unit employees before it ever provided them to the Union. *See Roll & Hold Warehouse & Distribution Corp.*, 325 NLRB 41, 42 (1997) (finding a union's role in the process is totally undermined when it learns of the change incidentally upon notification to all employees). And it ultimately implemented those same plans retroactive to a date before it provided them to the employees or the Union. Further, throughout the parties' discussions, the Respondent never actually offered to negotiate over the impact and implementation of the performance plans and instead agreed only to "discuss" the changes. Before it ultimately implemented the changes, the Respondent said categorically that it would not be negotiating because it had not changed conditions of employment for bargaining unit employees. Thus, the Respondent's delay in implementing the performance plans was largely illusory, and it did not unequivocally provide the Union with an opportunity to bargain. In this context, having not afforded the Union a meaningful opportunity to bargain, the Respondent cannot establish that the Union waived the right to bargain. *U.S. DOD, Def. Commissary Agency, Peterson AFB, Colo. Springs, Colo.*, 61 FLRA 688, 694 (2006) (*Defense Commissary*); *see Blue Grass Army Depot, Richmond, Ky.*, 50 FLRA 643, 653 (1995); *U.S. Dep't of the Navy, Naval Avionics Ctr., Indianapolis, Ind.*, 36 FLRA 567, 572 (1990), *see also Tesoro Ref. & Mktg. Co.*, 360 NLRB No. 46, slip op. at 3 n.10, 12 (2014).

Lastly, I reject the Respondent's contention that the decision should be limited to the audiologists. That the Union did not submit input or an MOU for the secretary and technician plans did not waive its right to bargain here, where the Respondent did not request input by a specific date, did not provide an implementation date for the changes, did not suggest that time was of the essence, and did not otherwise manifest a willingness to bargain. *See Defense Commissary*, 61 FLRA at 694.

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[3] I also find that Salter did not intentionally schedule the May 29 meeting when she knew she had a conflict (Tr. 48), and I credit her testimony that her difficulty in scheduling the meeting was due to her difficulty scheduling appointments in light of the size of the workforce and territory she covers, not a result of a desire to delay bargaining. (Tr. 34, 42-43).

REMEDY

The General Counsel argues that a status quo ante (SQA) remedy is appropriate in this case. The Authority considers the appropriateness of a SQA remedy in a case where the agency has failed to bargain over the impact and implementation of a management decision by examining the factors set forth in *Fed. Corr. Inst.*, 8 FLRA 604, 606 (1982) (*FCI*). They are: (1) whether and when notice was given to the union by the agency concerning the change; (2) whether and when the union requested bargaining; (3) the willfulness of the agency's conduct in failing to discharge its bargaining obligation; (4) the nature and extent of the adverse impact on unit employees; and (5) whether and to what degree a SQA remedy would disrupt the efficiency and effectiveness of the agency's operations. *U.S. Dep't of the Treasury, IRS, Nat'l Distribution Ctr., Bloomington, Ill.*, 64 FLRA 586, 593 (2010) (*Treasury*) (citing *U.S. Dep't of Navy, Naval Aviation Depot, Jacksonville, Fla.*, 63 FLRA 365, 370 (2009)). The appropriateness of a SQA remedy must be determined on a case-by-case basis, carefully balancing the nature and circumstances of the particular violation against the degree of disruption in government operations that would be caused by such a remedy. *Treasury*, 64 FLRA 586, 593. When an agency argues that a SQA remedy would disrupt the efficiency and effectiveness of the agency's operations, the Authority requires that the agency's argument be "based on record evidence." *Id.* (citing *Defense Commissary*, 61 FLRA at 688, 695 (citation omitted)).

I find that two of the factors strongly support a SQA remedy in this case. First, the Respondent has not argued, much less identified record evidence showing, that a SQA would disrupt the efficiency and effectiveness of the Respondent's operations. Second, I find the adverse impact on unit employees was significant. The Respondent's conduct left employees with substantial uncertainty about the performance standards they would be held to throughout much of the performance year. Ultimately, several employees received lower ratings because of the new performance plans. And the lower performance ratings were correlated to a loss of monetary awards.

The remaining factors also favor a SQA remedy. The Respondent failed to give notice to the Union before providing the performance plans to the employees. And the Union promptly requested bargaining over the change when notified. Finally, the Respondent's refusal to bargain was intentional, and therefore willful. *U.S. Dep't of Energy, W. Area Power Admin., Golden, Colo.*, 56 FLRA 9, 13 (2000).

Accordingly, consistent with prior decisions in similar circumstances, I order the Respondent to rescind the performance plans first implemented during the 2012 – 2013 performance year, reappraise employees who were evaluated under the new plans in FY2013 and in subsequent years by applying the previous plans, and make whole any employees adversely affected by application of the new plans. *HUD*, 56 FLRA at 592; *MacDill AFB*, 43 FLRA at 435-36.

CONCLUSION

The Respondent violated § 7116(a)(1) and (5) of the Statute when it implemented changes in audiology section performance plans without affording the Union an opportunity to bargain to the extent required by the Statute.

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

ORDER

Pursuant to § 2423.41(c) of the Authority's Rules and Regulations and § 7118 of the Federal Service Labor-Management Relations Statute (Statute), the Department of Veterans Affairs, VA Northern California Health Care System, Mather, California, shall:

1. Cease and desist from:

(a) Unilaterally implementing new performance plans for audiology section employees without providing the American Federation of Government Employees, Local 1206, AFL-CIO (Union) with an opportunity to bargain over the impact and implementation of the new performance standards.

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

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

(a) Rescind the performance plans for audiology section employees first implemented during the 2012-2013 performance year, reappraise employees who were evaluated under the new plans in FY2013 and in subsequent years, by applying the previous plans, and make whole any employee adversely affected by application of the new plans.

(b) Notify, and upon request, bargain with the Union over the impact and implementation of new or revised performance plans.

(c) Post at its facilities 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 Director, VA Health Care System, Mathers, California, and shall be posted and maintained for sixty (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 these Notices are not altered, defaced, or covered by any other material.

(d) In addition to physical posting of paper notices, the Notice shall be sent electronically, on the same date, to bargaining unit employees, such as by email, posting on an intranet or an internet site, or other electronic means, customarily used to communicate with employees.

(e) Pursuant to § 2423.41(e) of the Authority's Rules and Regulations, notify the Regional Director, San Francisco Region, Federal Labor Relations Authority, in writing, within thirty (30) days from the date of this Order, as to what steps have been taken to comply.

Issued, Washington, D.C., September 18, 2015

Susan E. Jelen

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, VA Northern California Health Care System, Mather, California, violated the Federal Service Labor-Management Relations Statute (Statute), and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT unilaterally implement changes to audiology employees' performance plans without providing the American Federation of Government Employees, Local 1206, AFL- CIO (Union) with an opportunity bargain over the impact and implementation of such changes.

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

WE WILL rescind the performance plans for audiology section employees first implemented during the 2012-2013 performance year, reappraise employees who were evaluated under the new plans in FY2013 and in subsequent years, by applying the previous plans, and make whole any employee adversely affected by application of the new plans.

WE WILL provide the Union with notice and an opportunity to bargain prior to changing employees' performance plans.

_____
(Agency/Respondent)

Dated: _____ By: _____
(Signature) (Title)

This Notice must remain posted for sixty (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, San Francisco Regional Office, Federal Labor Relations Authority, whose address is: 901 Market Street, Suite 470, San Francisco, CA 94103, and whose telephone number is: (415) 356-5000.