

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

DEPARTMENT OF VETERANS AFFAIRS VA MEDICAL CENTER AUGUSTA, GEORGIA Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 217 Charging Party	Case No. AT-CA-03-0314

NOTICE OF TRANSMITTAL OF DECISION

The above-entitled case having been submitted to the undersigned Administrative Law Judge pursuant to the Statute and the Rules and Regulations of the Authority, the undersigned herein serves his Decision, a copy of which is attached hereto, on all parties to the proceeding on this date and this case is hereby transferred to the Federal Labor Relations Authority pursuant to 5 C.F.R. § 2423.34(b).

PLEASE BE ADVISED that the filing of exceptions to the attached Decision is governed by 5 C.F.R. §§ 2423.40-2423.41, 2429.12, 2429.21-2429.22, 2429.24-2429.25, and 2429.27.

Any such exceptions must be filed on or before **NOVEMBER 3, 2003**, and addressed to:

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

RICHARD A. PEARSON
Administrative Law Judge

Dated: September 30, 2003
Washington, DC

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

MEMORANDUM

DATE: September 30, 2003

TO: The Federal Labor Relations Authority

FROM: RICHARD A. PEARSON
Administrative Law Judge

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

Respondent

and
CA-03-0314

Case No. AT-

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 217

Charging Party

Pursuant to section 2423.34(b) of the Rules and Regulations, 5 C.F.R. § 2423.34(b), I am hereby transferring the above case to the Authority. Enclosed are copies of my Decision, the service sheet, and the transmittal form sent to the parties. Also enclosed is a Motion for Summary Judgment and other supporting documents filed by the parties.

Enclosures

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

DEPARTMENT OF VETERANS AFFAIRS VA MEDICAL CENTER AUGUSTA, GEORGIA Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 217 Charging Party	Case No. AT-CA-03-0314

Richard S. Jones
For the General Counsel

Before: RICHARD A. PEARSON
Administrative Law Judge

DECISION ON MOTION FOR SUMMARY JUDGMENT

On June 24, 2003, the Regional Director of the Atlanta Region of the Federal Labor Relations Authority (FLRA), issued a Complaint and Notice of Hearing alleging that the Department of Veterans Affairs, VA Medical Center, Augusta, Georgia (the Respondent), violated section 7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute (the Statute), by unilaterally changing employees' conditions of employment without notifying the American Federation of Government Employees, Local 217 (the Union) or providing the Union with the opportunity to negotiate. The complaint was served on the Respondent by certified mail; it specified that Respondent's answer must be filed by July 21, 2003, and that a failure to file an answer shall constitute an admission of the allegations of the complaint. A hearing was scheduled for October 9, 2003.

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

On August 22, 2003, Counsel for the General Counsel filed a Motion for Summary Judgment, asserting that by its failure to answer the complaint, the Respondent has admitted all of the allegations therein. Since no facts are in

dispute, the General Counsel submits that the record demonstrates that the Respondent violated section 7116(a)(1) and (5) of the Statute.

The Respondent has filed no response to the Motion for Summary Judgment.

Section 2423.20(b) of the Authority's Rules and Regulations, 5 C.F.R. § 2423.20(b), provides, in pertinent part:

(b) *Answer.* Within 20 days after the date of service of the complaint . . . the Respondent shall file and serve . . . an answer with the Office of Administrative Law Judges. The answer shall admit, deny, or explain each allegation of the complaint. . . . Absent a showing of good cause to the contrary, failure to file an answer or respond to any allegation shall constitute an admission. . . .

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

Findings of Fact

The Respondent is an agency as defined by 5 U.S.C. § 7103(a)(3). The American Federation of Government Employees (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 VA Medical Center in Augusta, Georgia.

On or about January 8, 2003, the Respondent informed employees working on the night shift in the Respiratory Department that instead of working a tour of duty from 7:00 p.m. to 3:30 a.m., they would work from 11:30 p.m. to 7:30 a.m. On or about January 14, 2003, the Union learned of this change and requested to negotiate. On or about January 24, 2003, the Respondent posted the above-cited change in the night shift's tour of duty, as well as a change in the day shift tour of duty from 7:00 a.m. - 3:30 p.m. to 3:30 p.m. - 11:00 p.m. The Respondent did not

provide the Union with notice in advance of these changes or with an opportunity to negotiate over the changes.

Discussion and Conclusions

The Authority held in *Veterans Administration Medical Center, Prescott, Arizona*, 46 FLRA 471, 474 (1992), that a change in an employee's tour of duty is a change in a condition of employment, and that when an agency makes such a change, it is required to notify the exclusive representative of such employees and negotiate over the impact and implementation of the change. However, as noted in *Department of the Air Force, Scott Air Force Base, Illinois*, 33 FLRA 532, 542-43 (1988), the actual decision to change tours of duty is negotiable only at the agency's election under section 7106(b)(1). Requiring employees to report for duty at 11:30 p.m. instead of 7:00 p.m., and to leave work at 7:30 a.m. instead of 3:30 a.m., will have the reasonably foreseeable effect of disrupting the responsibilities and commitments previously made by the employees, to a sufficient degree that the Respondent had a duty to bargain over these effects. A similar conclusion can be made regarding the change in tour of duty for day shift employees. The Respondent has offered no explanation of its actions that would otherwise negate its duty to bargain over the impact and implementation of its decision to change tours of duty.

Accordingly, I conclude that the Respondent committed an unfair labor practice, in violation of section 7116(a)(1) and (5) of the Statute, by making these changes unilaterally.

As a remedy, the General Counsel asks, among other things, that the Respondent be ordered to rescind the changes, return employees to the shifts that existed prior to the changes, and to negotiate with the Union over any proposed changes in tours of duty.¹ The standards for utilizing a *status quo ante* remedy in cases of failure to bargain over the impact and implementation of the exercise of a management right were set forth in *Federal Correctional Institution*, 8 FLRA 604, 606 (1982). Although the facts of record do not fully illuminate these issues, it is evident that the Respondent gave no notice whatever to the Union of the changes in tours of duty, that the Union requested bargaining as soon as it heard informally about the changes,

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Contrary to the text of paragraphs 1(a) and 2(b) of the General Counsel's proposed order, it is not appropriate to order the Respondent to bargain over the decision to change tours of duty.

and that this bargaining request was ignored by the Respondent. By failing to respond to the complaint or to the proposed summary judgment, the Respondent has also failed to offer any evidence that a status quo ante remedy would disrupt the agency's operations. In accordance with the VA *Prescott* decision and order, supra, 46 FLRA at 476-77, I find that it is necessary and appropriate here to order the Respondent to rescind the January 2003 changes in the tours of duty of Respiratory Department employees, to return employees (at the Union's request) to the shifts that existed prior to those changes, and to notify and bargain with the Union over the impact and implementation of any subsequently proposed changes in tours of duty.

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 Department of Veterans Affairs, VA Medical Center, Augusta, Georgia (the Agency), shall:

1. Cease and desist from:

(a) Unilaterally implementing changes in the working conditions of bargaining unit employees by changing the employees' tours of duty without first notifying the American Federation of Government Employees, Local 217 (the Union), the exclusive bargaining representative of certain of its employees, and affording the Union an opportunity to bargain concerning the procedures management will observe in exercising its authority to change employees' tours of duty and appropriate arrangements for unit employees adversely affected by the changes in tours of duty.

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

2. Take the following affirmative action in order to effectuate the purposes and policies of the Federal Service Labor-Management Relations Statute:

(a) Upon request by the Union, rescind the changes in tours of duty imposed in January 2003 on unit employees in the Respiratory Department, and restore employees to their tours of duty that existed prior to those changes.

(b) Notify and, upon request, negotiate in good faith with the Union concerning the procedures management will observe in exercising its authority to change unit employees' tours of duty and appropriate arrangements for unit employees adversely affected by such changes in tours of duty.

(c) Post at its facilities at the VA Medical Center, Augusta, Georgia, where employees represented by the Union are located, copies of the attached Notice on forms to be furnished by the Federal Labor Relations Authority. Upon receipt of such forms, they shall be signed by the Medical Center Director and shall be posted and maintained for 60 consecutive days thereafter, in conspicuous places, including all bulletin boards and other places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that such Notices are not altered, defaced, or covered by any other material.

(d) Pursuant to section 2423.41(e) of the Authority's Rules and Regulations, notify the Regional Director, Atlanta Regional Office, Federal Labor Relations

Authority, in writing, within 30 days from the date of this

Order, as to what steps have been taken to comply herewith.

Issued, Washington, DC, September 30, 2003.

—
RICHARD A. PEARSON
Administrative Law Judge

NOTICE TO ALL EMPLOYEES

POSTED BY ORDER OF THE

FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the Department of Veterans Affairs, VA Medical Center, Augusta, Georgia (the Agency), violated the Federal Service Labor-Management Relations Statute, and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT unilaterally implement changes in the working conditions of bargaining unit employees by changing employees' tours of duty without first notifying the American Federation of Government Employees, Local 217 (the Union), the exclusive bargaining representative of certain of our employees, and affording the Union an opportunity to bargain concerning the procedures we will observe in exercising our authority to change employees' tours of duty and appropriate arrangements for employees adversely affected by the changes in tours of duty.

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

WE WILL , upon request by the Union, rescind the changes in tours of duty imposed in January 2003 on unit employees in the Respiratory Department, and restore employees to their tours of duty that existed prior to those changes.

WE WILL notify and, upon request, negotiate in good faith with the Union concerning the procedures management will observe in exercising its authority to change unit employees' tours of duty and appropriate arrangements for unit employees adversely affected by such changes in tours of duty.

—

(Respondent)

Dated: _____

By: _____
(Signature) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

If employees have any questions concerning this Notice or compliance with any of its provisions, they may communicate directly with the Regional Director, Atlanta Regional Office, Federal Labor Relations Authority, whose address is: Marquis Two Tower, Suite 701, 285 Peachtree Center Avenue, Atlanta, GA 30303-1270, and whose telephone number is: 404-331-5212.

CERTIFICATE OF SERVICE

I hereby certify that copies of the **DECISION** issued by RICHARD A. PEARSON, Administrative Law Judge, in Case No. AT-CA-03-0314, were sent to the following parties:

CERTIFIED MAIL & RETURN RECEIPT

CERTIFIED NOS:

Richard S. Jones

7000 1670 0000 1175

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

James Bartlett

7000 1670 0000 1175 2690

President

AFGE, Local 217

1 Freedom Way

Augusta, GA 30904

Kevin Jones

7000 1670 0000 1175

2706

Network 7 Labor Relations Manager
VA Medical Center
Network Business Office, Suite 250
3700 Crestwood Parkway
Duluth, GA 30096

Karen Carrington

7000 1670 0000 1175

2713

Department of Veterans Affairs
1 Freedom Way
Augusta, GA 30904

REGULAR MAIL:

President

AFGE, AFL-CIO

80 F Street, NW

Washington, DC 20001

Dated: September 30, 2003

Washington, DC