

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 Nos. AT-CA-04-0099 AT-CA-04-0140

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 **JUNE 21, 2004**, and addressed to:

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

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SUSAN E. JELEN  
Administrative Law Judge

Dated: May 19, 2004  
Washington, DC

UNITED STATES OF AMERICA  
**FEDERAL LABOR RELATIONS AUTHORITY**

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

MEMORANDUM

DATE: May 19, 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 Nos. AT-CA-04-0099  
AT-CA-04-0140

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 Nos. AT-CA-04-0099 AT-CA-04-0140

Brent S. Hudspeth  
For the General Counsel

Before: SUSAN E. JELEN  
Administrative Law Judge

**DECISION ON MOTION FOR SUMMARY JUDGMENT**

On March 24, 2004, the Regional Director of the Atlanta Region of the Federal Labor Relations Authority issued a Consolidated 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 unilaterally (1) posting work schedules for bargaining unit employees in its Acute Care and Extended Care units which eliminated twelve (12) hour shifts and implemented eight (8) hour shifts; and (2) requiring bargaining unit employees in its Acute Care and Extended Care units to work eight (8) hour shifts rather than twelve (12) hour shifts they had previously worked. These actions were taken without negotiating with the American Federation of Government Employees, Local 1045, AFL-CIO (the Union or Local 1045). The consolidated complaint was served on Respondent by certified mail and specified that, in accordance with the Authority's Rules and Regulations, the Respondent must file an Answer to the consolidated complaint no later than April 19, 2004. The consolidated complaint further advised that a failure to file an answer shall

constitute an admission of the allegations of the complaint. A hearing was scheduled for May 13, 2004.

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

On April 26, 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).

On May 3, 2004, Counsel for the General Counsel filed its Motion To Postpone Hearing Indefinitely. The scheduled hearing in this matter was postponed indefinitely by Order dated May 5, 2004.

#### **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 consolidated 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 Local 1045 is an agent of AFGE for purposes of representing employees at the Respondent's facility in Biloxi, Mississippi.

3. During the time period at issue in the consolidated complaint, Evelyn Wingard occupied the position of Associate Chief of Staff, Nursing and Julie Catellier occupied the position of Director, at Respondent's Biloxi, Mississippi facility. Wingard and Catellier were supervisors or management officials under 5 U.S.C. § 7103(a)(10) and (11) and were acting on behalf of the Respondent.

4. On October 29, 2003, the Respondent, through Wingard, notified Local 1045 of its intention to eliminate the twelve (12) hour shifts for employees in its Acute Care and Extended Care units and implement eight (8) hour shifts instead.

5. On November 5, 2003, Local 1045 requested to negotiate the change described in paragraph 4 above.

6. On November 12, 2003, representatives of Local 1045 and the Respondent met to negotiate the change described in paragraph 4 above but no agreement was reached.

7. On or about November 18, 2003, the Respondent, through Wingard, posted schedules for the time period beginning November 30, 2003, which incorporated the change described in paragraph 4 above.

8. On November 30, 2003, the Respondent, through Wingard, required employees in the Extended Care and Acute Care units to be working eight (8) hour shifts.

9. The Respondent, through Wingard, took the actions described in paragraphs 7 and 8 without submitting this issue to the Federal Service Impasses Panel (Panel) and obtaining a final decision from the Panel as required by 5 U.S.C. § 6131(c) (1).

10. The Respondent implemented the changes described in paragraphs 7, 8 and 9 without negotiating with the Union to the extent required by the Statute.

### **Discussion and Conclusions**

Section 7116(a) (5) of the Statute provides that it shall be an unfair labor practice for an agency to refuse to negotiate in good faith with a labor organization as required by the Statute. This duty to negotiate in good faith requires that prior to implementing a change in conditions of employment of bargaining unit employees, an agency is required to provide the exclusive representative with notice and an opportunity to bargain over those aspects of the change that are within the duty to bargain. *United States Department of the Air Force, Luke Air Force Base, Arizona*, 57 FLRA 730 (2002); *Indian Health Service, Crownpoint Comprehensive Health Care Facility, Crownpoint, New Mexico*, 53 FLRA 1161 (1998) and *Veterans Administration Medical Center, Prescott, Arizona*, 46 FLRA 471 (1992). Respondent has admitted by its failure to file an answer that the change in working conditions in this case is one that triggers the agency's duty to negotiate in good faith with the exclusive representative. Therefore, as admitted by its failure to answer the consolidated complaint, Respondent violated section 7116(a) (1) and (5) of the Statute when it implemented the above changes in conditions of employment without completing negotiations with Local 1045.

### **Remedy**

Counsel for the General Counsel proposed a recommended remedy requiring that the Respondent be ordered to restore the *status quo ante* by terminating the eight (8) hour shifts for bargaining unit employees in the Extended Care and Acute Care units and restore the twelve (12) hours shifts these employees previously worked. A *status quo ante* remedy is not always appropriate when an agency has unilaterally implemented a change in conditions of employment, but by failing to respond to the Motion for Summary Judgment and by failing to offer any evidence demonstrating the inappropriateness of such a remedy, the Respondent has waived any objection to the remedy proposed by the General Counsel.

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 System, Biloxi, Mississippi, shall:

1. Cease and desist from:

(a) Unilaterally changing working conditions of employees exclusively represented by the American Federation of Government Employees, Local 1045, AFL-CIO (Union) by posting work schedules for bargaining unit employees in the Extended Care and Acute Care units that eliminate twelve (12) hour shifts and implement eight (8) hour shifts without first completing bargaining with the Union over the decision to change such conditions of employment.

(b) Unilaterally changing working conditions of employees exclusively represented by the Union by requiring bargaining unit employees in its Extended Care and Acute Care units to work eight (8) hour shifts rather than twelve (12) hour shifts without first completing bargaining with the Union over the decision to change such conditions of employment.

(c) Refusing to bargain with the Union over the changes in working conditions of bargaining unit employees.

(d) 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) Terminate the eight (8) hour shifts for bargaining unit employees in the Extended Care and Acute Care units and restore the twelve (12) hours shifts these employees previously worked.

(b) Give notice to, and upon request, negotiate with the Union over the decision to implement eight (8) hour shifts in the Extended Care and Acute Care units.

(c) Post at its facilities at the Department of Veterans Affairs, Gulf Coast Veterans Affairs Health Care System, Biloxi, Mississippi, where bargaining unit employees represented by the American Federation of Government Employees, Local 1045, AFL-CIO, 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, 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 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, May 19, 2004.

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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 System, 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** unilaterally change working conditions of our employees exclusively represented by the American Federation of Government Employees, Local 1045, AFL-CIO (Union) by posting work schedules for bargaining unit employees in the Extended Care and Acute Care units that eliminate twelve (12) hour shifts and implement eight (8) hour shifts and by requiring bargaining unit employees in its Extended Care and Acute Care units to work eight (8) hour shifts rather than twelve (12) hour shifts without first completing bargaining with the Union over the decision to change such conditions of employment.

**WE WILL NOT** refuse to bargain with the Union over changes in working condition of bargaining unit employees.

**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.

**WE WILL** terminate the eight (8) hour shifts for bargaining unit employees in the Extended Care and Acute Care units and restore the twelve (12) hour shifts these employee previously worked.

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(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, Suite 701, 285 Peachtree Center Avenue, 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 Nos. AT-CA-04-0099 and AT-CA-04-0140, were sent to the following parties:

**CERTIFIED MAIL & RETURN RECEIPT**

**CERTIFIED NOS:**

Brent S. Hudspeth, Esq.

7000 1670 0000 1175

**3895**

Federal Labor Relations Authority  
Suite 701, Marquis Two Tower  
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Alan M. Hathorne

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**3901**

Agency Representative  
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Lakewood, CO 80228

**REGULAR MAIL**

Cheryl Berry-Smith  
Union Representative  
AFGE, Local 1045  
P.O. Box 9081  
Gulfport, MS 39506

President  
AFGE  
80 F Street, NW  
Washington, DC 20001

DATED: May 19, 2004  
Washington, DC