

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 MEDICAL CENTER BILOXI, MISSISSIPPI Respondent and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1045, AFL-CIO Charging Party	Case No. AT-CA-04-0552

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 **APRIL 25, 2005**, 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: March 25, 2005
Washington, DC

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

MEMORANDUM

DATE: March 25, 2005

TO: The Federal Labor Relations Authority

FROM: RICHARD A. PEARSON
Administrative Law Judge

SUBJECT: DEPARTMENT OF VETERANS AFFAIRS
GULF COAST VETERANS AFFAIRS
MEDICAL CENTER
BILOXI, MISSISSIPPI

Respondent

and

Case No. AT-CA-04-0552

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

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

05-24

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

DEPARTMENT OF VETERANS AFFAIRS GULF COAST VETERANS AFFAIRS MEDICAL CENTER BILOXI, MISSISSIPPI Respondent and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1045, AFL-CIO Charging Party	Case No. AT-CA-04-0552

Ruth Pippin Dow
For the General Counsel

Before: RICHARD A. PEARSON
Administrative Law Judge

DECISION ON MOTION FOR SUMMARY JUDGMENT

On November 19, 2004, the Regional Director of the Atlanta Region of the Federal Labor Relations Authority (the Authority), issued a Complaint and Notice of Hearing alleging that the Department of Veterans Affairs, Gulf Coast Veterans Affairs Medical Center, Biloxi, Mississippi (the Agency or Respondent), violated section 7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute (the Statute), by failing to respond to a request to bargain made by the American Federation of Government Employees, Local 1045 (the Charging Party or Union) and violated section 7116(a)(1), (5) and (8) by failing to respond to a request for information made by the Union.

The complaint, which was served on the Respondent by certified mail, specified that Respondent's answer was to be filed by December 14, 2004, and that a failure to file an answer would constitute an admission of the allegations of the complaint. A hearing was scheduled for March 3, 2005.

The Respondent did not submit anything in response to the complaint.

On February 4, 2005, Counsel for the General Counsel filed a Motion for Summary Judgment, asserting that by its failure to answer the complaint, the Respondent admitted all of the allegations therein. Since no facts are in dispute, the General Counsel submits that the record demonstrates that the Respondent violated the Statute as alleged.

The Respondent 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 did the Respondent fail to answer the allegations of the complaint in any manner, but it neither made any showing of good cause nor responded to the Motion for Summary Judgment. By its inaction, Respondent 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 that includes employees of the Respondent, and the Union is an agent of AFGE for purposes of representing employees of the Respondent.

On or about August 2, 2004, the Union sent a memorandum to Respondent's representative requesting to negotiate about Agency notification to employees regarding mandatory training requirements. Since August 2, 2004, Respondent has failed to reply to the Union's request to bargain.

On or about August 2, 2004, the Union requested that the Respondent furnish station memoranda that concern Agency notification to employees regarding mandatory training requirements. Since on or about August 2, 2004, the Respondent has failed to reply to the request for information.

Discussion and Conclusions

The request to bargain

Under section 7114 of the Statute, a labor organization that is the exclusive representative of employees in a bargaining unit is entitled to act for and negotiate collective bargaining agreements covering employees in the unit. The Authority has held that the statutory obligation to bargain under section 7114 includes, at a minimum, the requirement that a party respond to a bargaining request. *See, e.g., Army and Air Force Exchange Service, McClellan Base Exchange, McClellan Air Force Base, California*, 35 FLRA 764, 769 (1990). A failure to respond in a timely manner to a request to bargain constitutes a violation of section 7116 (a) (1) and (5) of the Statute. *Id.* The requirement that an agency respond to a bargaining request applies even in circumstances where other factors may relieve the agency of liability for a failure or refusal to bargain. *See U.S. Department of Justice, Immigration and Naturalization Service*, 55 FLRA 892, 900-02 (1999) (where a union requests bargaining and the agency does not respond to the request, the agency violates the duty to bargain even where the union did not submit specific proposals or negotiable proposals).

In this case, by failing to respond to the complaint, the Respondent admitted that it failed to respond to the Union's request to bargain about Agency notification to employees regarding mandatory training requirements. By this conduct, the Agency violated section 7114(a) (1) and (5).

The request for information

Under section 7114(b) (4) of the Statute, an agency must furnish information to a union, upon request and to the extent not prohibited by law, if that information is (1) normally maintained by the agency in the regular course of business; (2) reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and (3) not guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective

bargaining. The Authority has held that section 7114(b)(4) also requires that an agency respond to an information request in a timely manner and that a failure to do so violates section 7116(a)(1), (5) and (8) of the Statute. *See, e.g., Department of Health and Human Services, Social Security Administration, New York Region, New York, New York*, 52 FLRA 1133, 1149-50 (1997). The obligation to respond to the request applies regardless of whether the information requested meets the criteria for disclosure set forth in section 7114(b)(4). *Id.* (Authority found that agency violated the Statute when it failed to respond to an information request despite the fact that disclosure of the requested information was not required under section 7114(b)(4)).

By failing to respond to the complaint in this case, the Respondent admitted that it ignored the Union's requests for information. By failing to respond to the Union's request for information, the Agency violated section 7114(b)(4) and committed an unfair labor practice under section 7116(a)(1), (5) and (8) of the Statute.

As a remedy for the Respondent's violations, the General Counsel requests, and I find it is appropriate, that a cease and desist order be issued and that the Respondent post a notice to employees throughout its facilities at the Department of Veterans Affairs, Gulf Coast Veterans Affairs Medical Center in Biloxi, Mississippi, signed by the Center Director.

I therefore 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, Gulf Coast Veterans Affairs Medical Center, Biloxi, Mississippi (the Agency), shall:

1. Cease and desist from:

(a) Failing and refusing to respond to requests to bargain by the American Federation of Government Employees, Local 1045 (the Union), including the August 2, 2004, request to bargain about Agency notification to employees concerning mandatory training requirements.

(b) Failing and refusing to reply to requests for data from the Union, including the August 2, 2004, request for station memoranda concerning Agency notification to employees regarding mandatory training requirements.

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

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

(a) Respond to the August 2, 2004, request by the Union to bargain about Agency notification to employees concerning mandatory training requirements.

(b) Respond to the August 2, 2004, request by the Union for station memoranda concerning Agency notification to employees regarding mandatory training requirements.

(c) Post at its facilities at the Department of Veterans Affairs, Gulf Coast Veterans Affairs Medical Center in Biloxi, Mississippi, 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 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, March 25, 2005.

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, Gulf Coast Veterans Affairs Medical Center, Biloxi, Mississippi (the Agency), 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 EMPLOYEES THAT:

WE WILL NOT fail or refuse to respond to requests to bargain by the American Federation of Government Employees, Local 1045 (the Union), including the August 2, 2004, request to bargain about Agency notification to employees concerning mandatory training requirements.

WE WILL NOT fail or refuse to reply to requests for data from the Union, including the August 2, 2004, request for station memoranda concerning Agency notification to employees regarding mandatory training requirements.

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

WE WILL respond to the August 2, 2004, request by the Union to bargain about Agency notification to employees concerning mandatory training requirements.

WE WILL respond to the August 2, 2004, request by the Union for station memoranda concerning Agency notification to employees regarding mandatory training requirements.

(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: Suite 701, Marquis Two Tower, 285 Peachtree Center Avenue, Atlanta, GA 30303-1270, and whose telephone number is: 404-331-5300, extension 5024.

CERTIFICATE OF SERVICE

I hereby certify that copies of the **DECISION** issued by RICHARD A. PEARSON, Administrative Law Judge, in Case No. AT-CA-04-0552, were sent to the following parties:

CERTIFIED MAIL & RETURN RECEIPT

CERTIFIED NO:

Ruth Pippin Dow

7000 1670 0000 1175

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Biloxi, MS 39531

REGULAR MAIL

John Mechanic, President
AFGE, Local 1045
P.O. Box 9081
Gulfport, MS 39506-9081

President
AFGE
80 F Street, NW
Washington, DC 20001

Dated: March 25, 2005

Washington, DC