

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

MEMORANDUM

DATE:

May 23, 2006

TO: The Federal Labor Relations Authority

FROM: CHARLES R. CENTER  
Chief Administrative Law Judge

SUBJECT: DEPARTMENT OF VETERANS AFFAIRS  
VETERANS AFFAIRS MEDICAL CENTER  
DECATUR, GEORGIA

Respondent

and

Case

No. AT-CA-06-0035

AMERICAN FEDERATION OF GOVERNMENT  
EMPLOYEES, LOCAL 2778

Charging Party

Pursuant to section 2423.27(c) of the Final Rules and Regulations, 5 C.F.R.  $\ni$  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

UNITED STATES OF AMERICA  
**FEDERAL LABOR RELATIONS AUTHORITY**  
Office of Administrative Law Judges  
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DEPARTMENT OF VETERANS AFFAIRS  
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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.  $\ni$  2423.34(b).

PLEASE BE ADVISED that the filing of exceptions to the attached Decision is governed by 5 C.F.R.  $\ni$  2423.40~~0~~2423.41, 2429.12, 2429.21~~0~~2429.22, 2429.24~~0~~2429.25, and 2429.27.

Any such exceptions must be filed on or before **JUNE 26, 2006**, and addressed to:

Office of Case Control  
Federal Labor Relations Authority  
1400 K Street, NW, 2<sup>nd</sup> Floor  
Washington, DC 20005

CHARLES R. CENTER  
Chief Administrative Law Judge

Dated: May 23, 2006  
Washington, DC

OALJ 06-14

**FEDERAL LABOR RELATIONS AUTHORITY**  
Office of Administrative Law Judges  
WASHINGTON, D.C.

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DEPARTMENT OF VETERANS AFFAIRS  
VETERANS AFFAIRS MEDICAL CENTER  
DECATUR, GEORGIA

Respondent

and

Case No. AT-CA-06-0035

AMERICAN FEDERATION OF GOVERNMENT  
EMPLOYEES, LOCAL 2778

Charging Party

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Paige Sanderson  
For the General Counsel

Gerald Magnuson and Kevin Jones  
For the Respondent

Palmerita Parker  
For the Charging Party

Before: CHARLES R. CENTER  
Chief Administrative Law Judge

**DECISION ON MOTION FOR SUMMARY JUDGMENT**

Procedural Standards

Parties appearing before the Authority are charged with knowledge of all pertinent statutory and regulatory filing requirements, *U.S. Environmental Protection Agency,*

*Environmental Research Laboratory, Narragansett, Rhode Island*, 49 FLRA 33, 37 (1994). Section 2423.20(b) of the Rules and Regulations requires that the Respondent file and serve its answer to the complaint within 20 days of the date of service of the complaint, but, in any event, prior to the start of the hearing. Section 2423.27(b) of the Rules and Regulations requires responses to motions for summary judgment to be filed within five (5) days after the date of service of the motion.<sup>1</sup>

### Standards for Summary Judgment

In considering motions for summary judgment submitted pursuant to § 2423.27 of the Rules and Regulations the standards to be applied are those used by United States District Courts under Rule 56 of the Federal Rules of Civil Procedure, *Department of Veterans Affairs, Veterans Affairs Medical Center, Nashville, Tennessee*, 50 FLRA 220, 222 (1995). Rule 56(c) provides, in pertinent part, that:

The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Upon review of the General Counsel's motion I have determined that the summary judgment process is appropriate in this case.

On March 27, 2006, 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, Veterans Affairs Medical Center, Decatur, Georgia (the Agency or Respondent), violated section 7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute (the Statute), by failing to meet and exchange proposals with the American Federation of Government Employees, Local 2778 (the Charging Party or

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<sup>1/</sup> According to § 2429.21 of the Rules and Regulations when the period of time allowed for the filing of papers is 7 days or less, intermediate Saturdays, Sundays and legal holidays are to be excluded from the computation. Therefore, the Respondent's response to the General Counsel's motion was to have been filed by May 10, 2006.

Union).

The Complaint, which was served on the Respondent by certified mail, specified that Respondent's answer was to be filed by April 25, 2006, and that a failure to file an answer would constitute an admission of the allegations of the Complaint. See 5 C.F.R. § 2423.20(b). A hearing was scheduled for July 25, 2006. The Respondent did not submit an Answer or other response to the Complaint.

On May 3, 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, it neither made 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**

1. This unfair labor practice complaint and notice of hearing is issued under 5 U.S.C. §§ 7101-7135 and 5 C.F.R. Chapter XIV.
2. The Department of Veterans Affairs, Veterans Affairs

Medical Center, Decatur, Georgia (Agency or Respondent) is an agency under 5 U.S.C. § 7103(a) (3).

3. The American Federation of Government Employees, AFL-CIO (AFGE) is a labor organization under 5 U.S.C. § 7103 (a) (4), and is the exclusive representative of a unit of employees appropriate for collective bargaining with the Respondent.

4. AFGE, Local 2778 (Union) is an agent of the exclusive representative for representing employees of the Respondent within the unit described in paragraph 3.

5. The charge in Case No. AT-CA-06-0035 was filed by the Union with the Atlanta Regional Director on October 26, 2005 and amended on February 13, 2006.

6. Copies of the charge and amended charge described in paragraph 5 were served on the Respondent.

7. During the time period covered by this complaint, Gerald Magnuson occupied the position of Labor Relations Specialist for the Respondent.

8. During the time period covered by this complaint, the person named in paragraph 7 was a supervisor and/or management official under 5 U.S.C. § 7103(a) (10) and (11), and/or an agent of the Respondent.

9. During the time period covered by this complaint, the person named in paragraph 7 was acting on behalf of the Respondent.

10. Prior to October 2005, the Respondent, through Magnuson, met with the Union and negotiated and agreed upon ground rules regarding negotiations over office space.

11. The ground rules described in paragraph 10 contain the following enumerated provisions:

1) The Chief Negotiator will be granted with all powers to negotiate subject to the approval provisions of 5 U.S.C. 7114(c).

2) The names of each negotiating team members will be exchanged at least five (5) workdays prior to the beginning of the negotiations.

6) The negotiations are tentatively set to begin on October 6, 2005.

12) Each party shall forward to the other a written list of items it deems essential for consideration in the selection of office space for the Union. Said list shall be exchanged at least four (4) workdays prior to the date of the initial date scheduled for negotiations. Each side will provide responses to the other side no later than 48 hours before negotiations are to begin.

12. The parties agreed to meet on October 20 and 21, 2005. However, Respondent, by Magnuson, failed to submit the names of negotiating team members as required by paragraph 2 of the ground rules.

13. At no time prior to October 20, 2005, or since October 20, 2005, has Respondent forwarded to the Union a written list of items as required by paragraph 12 of the ground rules.

14. Respondent, by Magnuson, attended a meeting with the Union on October 20, 2005; however, he submitted no proposals, indicated that he did not have power to make decisions, and left after one hour.

15. Since October 20, 2005, Respondent has failed and refused to meet with the Union, and failed and refused to exchange proposals or otherwise communicate with the Union concerning the issue of office space.

16. By the conduct described in paragraphs 12 through 15, the Respondent has repudiated the agreement described in paragraphs 10 and 11.

17. By the conduct described in paragraph 16, the Respondent committed an unfair labor practice in violation of 5 U.S.C. § 7116(a)(1) and (5).

18. Since October 20, 2005, the Respondent, by Magnuson, refused to bargain in good faith by failing and refusing to meet with the Union at reasonable times and places, failing to exchange proposals and failing to designate a bargaining agent with authority to bind Respondent.

19. By the conduct described in paragraph 18, the Respondent committed unfair labor practices in violation of

5 U.S.C. § 7116(a)(1) and (5).

### **Discussion and Conclusions**

In this case, by not answering the Complaint, the Respondent admitted that it failed to submit the names of negotiating team members as required by the ground rules, failed to exchange proposals or otherwise communicate with the Union concerning the issue of office space, failed and refused to meet with the Union at reasonable times and places, and failed to designate a bargaining agent with authority to bind Respondent. By this conduct, I find that the Agency violated section 7114 (a)(1) and (5) of the Federal Service Labor-Management Relations Statute (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, Veterans Affairs Medical Center, Decatur, Georgia, signed by the Respondent's District 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(a)(7) of the Federal Service Labor-Management Relations Statute, it is hereby ordered that the Department of Veterans Affairs, Veterans Affairs Medical Center, Decatur, Georgia shall:

1. Cease and desist from:

(a) Failing to meet, negotiate and exchange proposals with the employee's exclusive representative, the American Federation of Government Employees, Local 2778, (Union) concerning the issue of office space, as required by a signed document entitled "Mutual Office Space Ground Rules."

(b) Refusing to bargain in good faith by refusing to meet with the Union at reasonable times and places, refusing

to exchange proposals and failing to designate a bargaining agent that could bind Respondent during negotiations.

(c) 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 Statute:

(a) Post at its facilities at the Department of Veterans Affairs, Veterans Affairs Medical Center in Decatur, 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 District 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.

(b) 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, May 23, 2006.

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CHARLES R. CENTER  
Chief 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, Veterans Affairs Medical Center, Decatur, Georgia (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 meet, negotiate and exchange proposals with our employee's exclusive representative, the American Federation of Government Employees, Local 2778 (Union) concerning the issue of office space.

WE WILL NOT refuse to bargain in good faith with the Union, by refusing to meet at reasonable times and places and by failing to designate a bargaining agent who could bind us during negotiations.

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 exchange proposals, meet and negotiate at reasonable times and places with the Union, the exclusive representative of a unit of our employees regarding the issue of office space.

WE WILL designate a bargaining agent with authority to bind us during all negotiations with the Union.

\_\_\_\_\_  
(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 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.

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the **DECISION** issued by CHARLES R. CENTER, Chief Administrative Law Judge, in Case No. AT-CA-06-0035, were sent to the following parties:

**CERTIFIED MAIL & RETURN RECEIPT**

**CERTIFIED NOS:**

Paige A. Sanderson  
Counsel for the General Counsel  
Federal Labor Relations Authority  
Suite 701, Marquis Two Tower  
285 Peachtree Center Avenue  
Atlanta, Georgia 30303-1270

**7004 2510 0004 2351 1634**

Gerald Magnuson and Kevin Jones  
Labor Relations Specialist  
Department of Veterans Affairs  
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1670 Clairmont Road  
Decatur, Georgia 30033

**7004 2510 0004 2351 1641**

Palmerita Parker  
Chief Steward  
AFGE Local 2778  
1670 Clairmont Road  
Decatur, Georgia 30033

**7004 2510 0004 2351 1658**

**REGULAR MAIL:**

President  
AFGE  
80 F Street, NW  
Washington, DC 20001

DATED: May 23, 2006  
Washington, DC

