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

MEMORANDUM DATE: January 31, 2005

TO: The Federal Labor Relations Authority

FROM: ELI NASH
Chief Administrative Law Judge

SUBJECT: DEPARTMENT OF VETERANS AFFAIRS
NORTHERN ARIZONA VETERANS
AFFAIRS HEALTHCARE
PRESCOTT, ARIZONA

Respondent

and Case No. DE-CA-04-0034

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 2401, 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 are the stipulation, exhibits and any briefs filed by the parties.

Enclosures

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

DEPARTMENT OF VETERANS AFFAIRS NORTHERN ARIZONA VETERANS AFFAIRS HEALTHCARE PRESCOTT, ARIZONA Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 2401, AFL-CIO Charging Party	Case No. DE-CA-04-0034

NOTICE OF TRANSMITTAL OF DECISION

Pursuant to §2423.26 of the Authority's Rules and Regulations, the above-entitled case was stipulated to the undersigned Administrative Law Judge. 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. §§2423.40-41, 2429.12, 2429.21-2429.22, 2429.24-2429.25, and 2429.27.

Any such exceptions must be filed on or before **MARCH 2, 2005**, and addressed to:

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

ELI NASH
Chief Administrative Law Judge

Dated: January 31, 2005
Washington, DC

OALJ 05-14

FEDERAL LABOR RELATIONS AUTHORITY

Office of Administrative Law Judges
WASHINGTON, D.C.

DEPARTMENT OF VETERANS AFFAIRS NORTHERN ARIZONA VETERANS AFFAIRS HEALTHCARE PRESCOTT, ARIZONA Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 2401, AFL-CIO Charging Party	Case No. DE-CA-04-0034

John R. Pannozzo, Jr.
For the General Counsel

Gregory Ferris
For the Respondent

Mary Garrison
For the Charging Party

Before: ELI NASH
Chief Administrative Law Judge

DECISION

Statement of the Case

The General Counsel of the Federal Labor Relations Authority (the Authority), by the Regional Director of the Denver Regional Office, issued a Complaint and Notice of Hearing on January 30, 2004, alleging that the Department of Veterans Affairs, Northern Arizona Veterans Affairs Healthcare, Prescott, Arizona (herein Respondent) through its Equal Employment Opportunity (EEO) Manager and Chief EEO Representative Sue Cox, violated section 7116(a)(1) and (8) of the Federal Service Labor-Management Relations Statute (herein Statute). Specifically, the Complaint alleges that on October 10, 2003, Respondent by Cox, conducted a formal discussion with unit employee Allen F. Perry, without affording the American Federation of Government Employee,

Local 2401, AFL-CIO (herein the Charging Party or Union) an opportunity to be represented.

Respondent filed a Response, and thereafter, the parties entered into a Stipulation of Fact in lieu of a hearing and submitted a joint motion to transfer the matter to the Chief Administrative Law Judge. On June 7, 2004, the Stipulation of Fact and the joint motion were forwarded to the Chief Administrative Law Judge. Thereafter, on June 21, 2004, the Chief Administrative Law Judge issued an Order setting July 12, 2004, as the last day to postmarks briefs in this matter.

The parties agreed that the Stipulation of Fact, including 15 exhibits attached thereto constituted the entire record in the case and that no oral testimony was either necessary or desired by the parties.

A summary of the stipulated facts is as follows:

1. The Respondent is an agency under 5 U.S.C. section 7103(a)(3).

2. The Union is a labor organization under 5 U.S.C. section 7103(a)(4). The Union is the exclusive representative of a nationwide unit of employees appropriate for collective bargaining at the Agency, including Respondent. The Charging Party is an agent of the Union for the purpose of representing certain employees at Respondent's facility. A nationwide collective bargaining agreement between the Department of Veterans Affairs covers employees in a bargaining unit at Respondent's facility.

3. Susan Cox is Respondent's Equal Employment Opportunity (EEO) Manager and Chief EEO representative. Cox was a supervisor or management representative under 5 U.S.C. section 7103(a)(10) and/or (11) for Respondent. During the time period covered by the complaint Cox was acting on behalf of Respondent.

4. The Respondent's Equal Employment Opportunity Program is governed by the regulations of the Equal Employment Opportunity Commission (EEOC), 29 Code of Federal Regulations (CFR) 1616; the EEOC Settlement Authority policy in EEO MD 110, Chapter 12; and page 18, in the paragraph entitled Settlement Agreement, of the Department of Veterans Affairs, Office of Resolution Management, Standard Operating Procedures set forth the agency's policy concerning the settlement of EEO complaints whenever alternative dispute resolution (ADR) is not chosen by the EEO complainant.

5. The EEO complainant Allen F. Perry, on July 20, 2003, chose to have his complaint resolved through the agency's settlement policy, instead of entering the ADR program. Susan Cox was the Agency's management representative during the settlement process.

6. Under Article 42, section 3 of the Master agreement, an employee may file either a discrimination complaint under the statutory procedure (29 CFR Part 1614) or a grievance under the negotiated grievance procedure, but not both. Thus, EEO complaints are not included/not excluded from the parties' Grievance Procedure.

7. Perry is an employee in the bargaining unit at Respondent's facility.

8. On June 2, 2003, the Charging Party filed a grievance on behalf of Perry. The grievance did not allege a claim of discrimination, however. On June 17, 2003, Respondent issued a second step decision concerning the grievance. The Charging Party, through Local President Mary Garrison, did not pursue Perry's requested remedy of a temporary promotion to a Wage Grade (WG) position because Garrison believed it was an inappropriate remedy for the grievance based on the results of a desk audit.

9. Perry also initiated an EEO action with Respondent. On August 5, 2003, after Perry exhausted Respondent's informal EEO process, Respondent notified him that he had the right to file a formal EEO complaint. Thereafter, on August 21, 2003, Perry filed a formal EEO complaint with Respondent alleging continued harassment, religion and gender as the reasons for his discrimination claim. Respondent acknowledged the receipt of Perry's, formal EEO complaint on September 5, 2003.

10. On September 11, 2003, Perry made an oral settlement offer, through Cox, to Respondent to settle his EEO complaint. Specifically, Perry wanted a developmental position within Facilities Maintenance and Management Services, which was not in an over hire status. Further, Perry wanted a new and correct position description at the WG 9 level corresponding to this developmental position. Moreover, Perry requested that Respondent, through Cox, prepare a written EEO complaint settlement embodying the terms of his oral settlement offer.

11. On October 2, 2003, Respondent through Cox, presented Perry with a draft written EEO complaint settlement offer. The parties discussed the terms of the draft settlement offer. Perry made a few changes/

modifications to the draft written offer and requested that Cox prepare the final EEO settlement agreement for the parties' execution.

12. On October 10, 2003, Cox telephoned Perry and asked that he to come to her office. The purpose of this meeting was for Respondent to present Perry with a final settlement proposal regarding his EEO matter. Respondent coordinated the date and time of the settlement session and made the location arrangements.

13. Cox advised Perry that the Union had a right to be present and Perry responded that he did not want the Union at the meeting. Cox requested that Perry handwrite a note stating that he did not want the Union present. Perry told Cox that it would look better if the note were typed and requested that Cox type the note. Cox agreed and drafted the first sentence of the note and Perry dictated the second sentence, which Cox typed. After Cox completed typing the note, Perry read the document, agreed with its contents and voluntarily signed the statement. Perry distrusted the union based on prior dealings.

14. The meeting between Cox and Perry began at 10:45a.m. and ended at 11:00a.m. During the meeting, Perry signed the agreement resolving/settling his pending EEO complaint. There was no discussion of the terms of the settlement as both parties were in agreement. There were no other Respondent officials at the meeting; attendance was voluntary and no notes were taken during the session. Although paragraph 4c of the parties' settlement contains a confidentiality provision, no confidentiality agreement was executed. The Charging Party was not provided notification of the October 10, 2003 meeting nor was a copy of the Settlement Agreement provided to the Union based on the confidentiality provision.

15. The settlement provided, in part, that Perry would be placed in a newly created WG 6 position as a Maintenance Worker in Facilities Maintenance and Management Services. Perry was previously a GS 6 Patient Support Assistant within Administrative Services of the Facilities Maintenance and Management Service. Respondent prepared a SF 50 concerning Perry's position move.

16. Cox followed her typical EEO resolution format in connection with Perry's settlement matter.

17. Cox informed Local President Garrison on October 17, 2003 that a settlement had been reached with an employee and that the employee had been moved from a GS to

a WG position. The Union learned shortly thereafter that Perry was the employee reference in the October 17, 2003 email from Cox.

18. The parties agreed that a formal EEO complaint had been filed by Perry with Respondent prior to the October 10 EEO settlement session between Cox and Perry.

19. The parties stipulated that two issues were involved in this matter: (1) Whether Perry's objection to the Charging Party's presence during the EEO settlement discussion with Cox created a "direct" conflict between the rights of the exclusive representative under the Statute and the rights of Perry, the EEO complainant. (2) If a "direct" conflict did exist, should that conflict be resolved in favor of the complainant Perry or the exclusive representative in this matter.

Analysis and Conclusions

In order for a union to have the right to representation under §§7114(a)(2)(A), there must be (1) a discussion; (2) which is formal; (3) between a representative of the agency and a unit employee or the employee's representative; (4) concerning any grievance or any personnel policy or practice or other general condition of employment. *Luke Air Force Base, Arizona*, 54 FLRA 716 (1998), (herein "*Luke I*"); *General Services Administration*, 48 FLRA 1348, 1354 (1994) (*GSA*). The instant stipulation does not dispute that the Respondent engaged in a discussion within the meaning of §§7114(a)(2)(A), and, thus, it is unnecessary to address this requirement. Respondent also acknowledges the Authority's holding that EEO complaints filed under the EEOC's process are "grievances" under the Statute. *Luke Air Force Base, Arizona*, 58 FLRA 528 (2003) (*Luke II*); *Luke Air Force Base, Arizona*, 59 FLRA 16 (2003) (*Luke III*). It is also unnecessary to address this issue herein.

The basic issue in this case has been decided by the Authority and the Courts. *Luke I*, was reversed by the Ninth Circuit Court of Appeals in an unpublished decision, 208 F.3d 221 (9th Cir. 1999), cert. denied, 121 S.Ct. 60 (2000). Following *Luke II* the Authority decided a substantially similar case, *U.S. Department of the Air Force, 436th Airlift Wing, Dover Air Force Base, Dover, Delaware*, 57 FLRA 304 (2001), 316 F.3d 280 at 287, (*Dover*) (Chairman Cabaniss dissenting) and the majority adhered to its decision in *Luke I*, 54 FLRA at 716. As Respondent argues the 9th Circuit's decision "as to whether a complaint filed pursuant to EEOC procedures constitutes a "grievance"

under section 7114(a)(2)(A)" precludes a union's right to attend an EEO settlement meeting. To date the Authority has not adopted the 9th Circuit's position and in fact has reaffirmed its position on the issue. Accordingly, I am constrained to follow Authority law as it exists.

Respondent acknowledges that neither the Authority nor the D.C. Circuit found a "direct" conflict between an individual employee and a Union in these EEO cases. Respondent argues nonetheless, that an exception to the Union's entitlement to representation at a formal discussion exists when an EEO complainant objects to the Union's presence, "as such objection raises a direct conflict between the complainant's individual rights and those of the Union under the Statute." Respondent thus believes that its failure to notify the Union of the meeting was justified.

Respondent maintains that Perry's specific objection to the Union's presence at his settlement discussions because "he distrusted the union based on his prior dealings" created a "direct" conflict. Respondent urges that this case does not present the "hypothetical" situation of "direct" conflict that has been previously rejected by the Authority and the Court. Respondent asserts that this matter presents a "direct" conflict that should be resolved in favor of the individual employee.

The General Counsel asserts that the Union's presence would not have created a "direct" conflict between the Union's rights and those of Perry, thereby making Respondent's failure to notify the Union of the meeting a violation of the Statute.

A. The Presence of a Union Representative at a Mediation or Settlement Discussion of an EEO Complaint Would Not Conflict with EEOC Regulations or the Confidentiality Provisions of the ADR Act and Other Statutes.

Respondent believes that allowing a union representative to attend the mediation or settlement discussion of an EEO complaint would conflict with EEOC regulations and the confidentiality provisions of the ADR Act and other statutes. Respondent argues that this case does not involve a hypothetical situation as was found in previous cases, but that Perry's written objection offers the kind of evidence that actually presents a "direct" conflict between the interests of the union representative and those of the employee complainant. I disagree. The stipulation clearly reveals that Perry did not want the Union to attend the session and he took part in preparing a document stating this position. His reason, however, did

not concern confidentiality but, distrust for the Union. Thus Perry never raised the issue of confidentiality and apparently was more concerned that the Union might disagree with his settlement with Respondent. This concern was clearly in play since the Union represented Perry beforehand on the very same issue in a grievance and there it opposed the remedy Perry was seeking. Garrison, the Union President representing Perry thought, based on the results of a desk audit, that the remedy sought by Perry was an inappropriate remedy for the grievance. Accordingly, Perry had every reason to be concerned that the Union would disagree that the EEO remedy was correct.

The Authority has previously rejected similar arguments regarding a "direct" conflict. *Dover* at 310; *Luke I* at 732-33. First, the Authority held that the presence of a union representative at a mediation session of an EEO complaint would not conflict with EEO Regulations or the ADR Act. Second, the Authority has refused to address hypothetical problems arising in other cases. *Dover* at 310. As already noted, however, Respondent contends that this case warrants application of a "direct" conflict test that was suggested by Member Armenderiz and the D.C. Circuit. Even considering this language, it is still clear that the circumstances must show a "direct" and not "hypothetical" conflict. Neither Perry nor Respondent is claiming that the Union's presence would constitute a breach of confidentiality of the process. In *Luke II* the Authority plainly stated that the facts of that case did "not present any conflict, let alone a direct conflict, between the Union's institutional rights and the employee's right to confidentiality in mediation and settlement discussion. . ." In my view, this case is similar in that there is no showing in this record that the Union "would have objected to or failed to comply with any confidentiality requirements . . ." *Dover AFB v FLRA*, 316 F.3d at 287. While the undersigned does not disagree with Member Armenderiz and the Court that "where a direct conflict exists between a union's institutional rights and an employee's right to confidentiality in mediation and settlement discussions exists . . . the rights of the employee should presumably prevail", *Luke II*, confidentiality is not the question in this matter, however.

In this case the Union already had direct knowledge of Perry's case based on its representation of him during the grievance process. It was already privy to a desk audit, a questionnaire that was completed by Perry, Perry's performance standards and prior appraisal and the Grading Standards for a Sign Painter. In all that time, the Union

had not revealed any confidential information regarding Perry.

Based on the stipulation, it would be difficult to conclude that the Union would not keep confidences, if allowed to attend the EEO mediation session. Again any argument by Respondent that the Union's attendance would have any effect on the parties settlement discussions, would, based on the stipulation, be nothing more than conjecture. The stipulation reveals that Perry did not want the Union intruding in his settlement of the EEO claim because he did not trust the Union. This claim that Perry's written objection to the Union's presence does not, in my opinion, create a "direct" conflict sufficient to excuse Respondent from notifying the Union of the impending mediation session with Perry. Thus the circumstances presented by the stipulation do not warrant a finding that the Union's presence at this session would conflict with either EEO regulations or the ADR Act. Furthermore, it should be noted that Perry's EEO claim based on discrimination presented a different claim than the grievance pursued for him by the Union. In short, the confidentiality considerations were clearly eclipsed based on Perry's prior grievance and the Union's involvement in that grievance. It is also not clear whether any statutorily protected information was discussed during the mediation but, it is clear that if the Union had been present, it would have been bound by the confidentiality provision in Paragraph 4.c. of the Settlement Agreement.

It is concluded, therefore, that the presence of a Union Representative at the mediation or settlement discussion in this case would not conflict with EEOC regulations or the confidentiality provisions of the ADR act and other statutes.

B. Whether Perry's objection to the Charging Party's presence during the EEO settlement discussion with Cox created a "direct" conflict between the rights of the exclusive representative under the Statute and the rights of Perry, the EEO complainant.

The Court of Appeals in the *Dover* case stated as follows: "We do not foreclose the possibility that an employee's objection to the union presence could create a 'direct' conflict that should be resolved in favor of the employee as described in footnote 12, NTEU v FLRA, 774 F.2d 1189 n.12." There the Court said:

> Congress has explicitly decided that a conflict between the rights of identifiable victims of

> discrimination and the interests of the bargaining unit must be resolved in favor of the former. Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, provides that the right of an aggrieved employee to complete relief takes priority over the general interests of the bargaining unit. See, e.g. *Franks v. Bowman Transp. Co.* 424 U.S. 747, 96 S.Ct. 1251, 47 L.Ed.2d 444 (1976).

In *Dover* the question of a direct conflict was never reached because the Respondent failed to show a conflict with the Authority's construction of section 7114(a)(2)(A). It appears that objective evidence is necessary to support any unsubstantiated concerns over a union's presence at a mediation session such as here. The question in this case then becomes whether Perry's written objection to the Union's presence is sufficient to create a direct conflict, thereby, justifying Respondent's failure to provide the Union with advance notice and an opportunity in this case to attend the mediation session.

A union is obligated under the Statute to represent the institutional interests of the bargaining unit. *Dover* at 309. In accordance with the ADR Act, a party includes those entitled as a matter of right to be admitted. *Id.* at 310. Also in *Dover* the Authority determined that the mediation session at issue was a formal discussion under section 7114(a)(2)(A) and therefore, the union had a statutory right to be admitted. *Id.* Alternatively, the Authority concluded, even if the union is not a party, the ADR Act contemplated the participation of nonparty participants in mediation sessions. *Id.* Since the right to be present at formal discussions under the Statute is a union right and is not dependent on the wishes of the employee, the Union, in this case, was a party to the mediation session and should have been afforded an opportunity to attend.

Under the circumstances, Perry's written objection to the Union's presence during the mediation session did not, in my opinion, create a "direct" conflict sufficient to exclude the Union from the meeting in this matter.

C. If a "direct" conflict did exist, should that conflict be resolved in favor of the complainant Perry or the Union in this matter.

The General Counsel argues that even if a direct conflict exists in this case, it should be resolved in favor of the Union. In this regard, it is argued: that the Union

has an interest in the fair treatment of all unit employees and any allegation of unfair treatment triggers that interest; the resolution of an individual discrimination complaint may well have an effect on other employees; and, finally that determinations with respect to what constitutes an unjust employment action in one case may affect the rights and expectations of other employees in similar circumstances.

Even assuming that a direct conflict exists in this matter, it is my view, such a conflict should be resolved in favor of the Union. Again, I am not unmindful of the D.C. Circuit's and Member Armendariz' position that: ". . . a determination as to whether there is a direct conflict between the rights of an employee and the rights of a union requires an assessment of the facts presented in each case." Clearly, the totality of the facts and circumstances in each case must be considered in the context of formal discussions under section 7114(a)(2)(A). See *U.S. Department of Justice, Immigration and Naturalization Service, New York Office of Asylum, Rosedale, New York*, 55 FLRA 1032, 1038 (1999). When all the circumstances in this case are considered, it does not appear to the undersigned that Perry's desire not to have the Union attend this session did not amount to a "direct" conflict of the confidentiality provisions and therefore does not rise to the level of a "direct" conflict.

Several factors need to be considered when deciding whether a "direct" conflict should be resolved in favor of a Union. Clearly, the Union has a fundamental interest in the fair treatment of all bargaining unit employees and any allegation of unfair treatment triggering that interest. Further, the resolution of an individual discrimination complaint, such as here, may well have an effect on other employees. In this case, the Union believed that the remedy was inappropriate for the grievance based on the results of a desk audit. This remedy had the potential of decreasing opportunities for other employees, and is precisely the type of institutional problem in which an exclusive representative would have an interest. Additionally, determination regarding what constitutes an unjust employment action in one case may affect the rights and expectations of other employees in similar circumstances. Unions have an established interest in how allegations of discrimination are dealt with and resolved, regardless of the forum in which the employee chooses to lodge the complaint. See *NTEU v FLRA*, 774 F.2d at 1188.

Finally, the Union's presence during the EEO mediation session helps ensure that any settlement does not violate provisions of the parties' collective bargaining agreement.

For example, an alleged discriminatee could receive preferential leave or shift assignment in violation of the seniority provisions of the agreement. Furthermore, the Union has the right to negotiate prior to implementation of a settlement agreement affecting bargaining unit employees. See *March AFB* at 396-397. Accordingly, the Union's attendance could possibly prevent subsequent implementation problems.

Here Perry was the only alleged victim of discrimination as opposed to a number of individual employee victims. Compare *Bowman Transportation*.

In *Dover* the Authority observed that:

> Both the United States Court of Appeals for the District of Columbia and the Authority have recognized that an appropriate resolution is required in the event of a direct conflict between individual and institutional rights. *NTEU v. FLRA*, 774 F.2d at 1189 n.12; *see U.S. Dep't of Justice (Ray Brook, NY)*, 29 FLRA 584, 590 (1987) (if there is a conflict between rights under section 7114(a)(2)(A) and those under other statutes, we will consider that conflict in determining whether section 7114(a)(2)(A) has been violated), *aff'd sub nom. AFGE, Local 3882 v. FLRA*, 865 F.2d 1283 (D.C. Cir. 1989). Here, the Respondent does not assert that such a direct conflict exists.

Respondent differs in this case by asserting that a "direct" conflict does exist. It is my opinion, however, that the stipulation does not present sufficient reason or facts to persuade the undersigned that Perry's written statement created a "direct" conflict precluding the Union's presence in the mediation session.

In *Dover* the Authority agreed with the administrative law judge's finding that the facts of that case did not present any conflict, let alone a "direct" conflict between the union's institutional right and the employee's rights to confidentiality and settlement discussions. This is exactly the case here. Moreover, the Authority in all the cases it has examined on this issue has specifically concluded that the presence of a union representative at the mediation of an EEO complaint was not inconsistent with either the EEO regulations or the ADR Act, and therefore, no conflict existed. Finally, in *Luke II* the Authority rejected a claim that the union's presence at an EEO mediation session would violate the Privacy Act and therefore, found that it did not

pose a "direct" conflict. Based on the foregoing, it is clear that the Authority does not consider claims of "direct" conflict as a defense in these EEO cases. Even if the Authority considered such defenses, it would be necessary to establish through specific evidence that such a conflict existed. The evidence in this case, in my view, is insufficient to support Respondent's assertion that it did not have to notify the Union that a discussion to mediate settlement of a formal EEO complaint filed by bargaining unit employees was about to take place.

Accordingly, it is concluded that the October 10, 2003 meeting between Cox and Perry concerned a "grievance" within the meaning of section 7114(a)(2)(A) of the Statute and by its failure to notify the Union and provide the Union an opportunity to be represented at this meeting, Respondent violated section 7116(a)(1) and (8) of the Statute and it is recommended that the Authority adopt the following:

ORDER

Pursuant to §2423.41(c) of the Rules and Regulations of the Federal Labor Relations Authority, 5 C.F.R. §2423.41(c), and section 7118 of the Federal Service Labor-Management Relations Statute, 5 U.S.C. §7118, the Department of Veterans Affairs, Northern Arizona Veterans Affairs Healthcare, Prescott, Arizona shall:

1. Cease and desist from:

(a) Failing or refusing to provide the American Federation of Government Employees, Local 2401, AFL-CIO, advance notice and the opportunity to be represented at formal discussions with bargaining unit employees concerning any grievance or any personnel policy or practices or other general conditions of employment, including discussions to mediate settlement of formal EEO complaints filed by bargaining unit employees.

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

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

(a) Provide the American Federation of Government Employees, Local 2401, AFL-CIO advance notice and the opportunity to be represented at formal discussions with bargaining unit employees concerning any grievance or any personnel policy or practices or other general conditions of

employment, including discussions to mediate settlement of formal EEO complaints filed by bargaining unit employees.

(b) Post at facilities at the Department of Veterans Affairs, Northern Arizona Veterans Affairs Healthcare, Prescott, Arizona, where bargaining unit employees represented by the American Federation of Government Employees, Local 2401, AFL-CIO, are located, copies of the attached Notice on forms to be furnished by the Federal Labor Relations Authority. Upon receipt, such forms shall be signed by the Director, the Department of Veterans Affairs, Northern Arizona Veterans Affairs Healthcare, Prescott, Arizona, and shall be posted and maintained for 60 consecutive days thereafter, in conspicuous places, including all 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.

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

Issued, Washington, DC, January 31, 2005.

_____

ELI NASH
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, Northern Arizona Veterans Affairs Healthcare, Prescott, Arizona, has violated the Federal Service Labor-Management Relations Statute and has ordered us to post and abide by this notice.

We hereby notify employees that:

WE WILL NOT fail or refuse to provide the employees' exclusive representative, American Federation of Government Employees, Local 2401, AFL-CIO, advance notice and the opportunity to be presented at formal discussions with bargaining unit employees concerning any grievance or any personnel policy or practices or other general conditions of employment, including discussions to mediate settlement of formal EEO complaints filed by bargaining unit employees.

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

WE WILL provide the American Federation of Government Employees, Local 2401, AFL-CIO advance notice and the opportunity to be represented at formal discussions with bargaining unit employees concerning mediation of formal EEO complaints.

_____
_
(Agency)

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, San Francisco Regional Office, whose address is: Federal Labor Relations

Authority, 901 Market Street, Suite 220, San Francisco, CA 94103-1791, and whose telephone number is: 415-356-5002.

CERTIFICATE OF SERVICE

I hereby certify that copies of the **DECISION** issued by ELI NASH, Chief Administrative Law Judge, in Case No. DE-CA-04-0034, were sent to the following parties:

_____

_

CERTIFIED MAIL & RETURN RECEIPT **CERTIFIED NOS:**

John R. Pannozzo, Jr. **7000 1670 0000 1175 5011**
Federal Labor Relations Authority
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REGULAR MAIL:

President
AFGE
80 F Street, NW
Washington, DC 20001

DATED: January 31, 2005
Washington, DC