

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

DEPARTMENT OF DEFENSE DEPARTMENT OF DEFENSE EDUCATION ACTIVITY Respondent and FEDERAL EDUCATION ASSOCIATION Charging Party	Case No. WA-CA-02-0174

NOTICE OF TRANSMITTAL OF DECISION

The above-entitled case having been heard before the undersigned Administrative Law Judge pursuant to the Statute and the Rules and Regulations of the Authority, the undersigned herein serves his/her 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 **DECEMBER 30, 2002**, and addressed to:

Office of Case Control
Federal Labor Relations Authority
607 14th Street, N.W., Suite 415
Washington, D.C. 20424

PAUL B. LANG
Administrative Law Judge

Dated: November 29, 2002
Washington, DC

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY

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

MEMORANDUM

DATE: November 29, 2002

TO: The Federal Labor Relations Authority

FROM: PAUL B. LANG
Administrative Law Judge

SUBJECT: DEPARTMENT OF DEFENSE
DEPARTMENT OF DEFENSE EDUCATION ACTIVITY

Respondent

and

Case No. WA-CA-02-0174

FEDERAL EDUCATION ASSOCIATION

Charging Party

Pursuant to section 2423.27(c) of the 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 are the Motions for Summary Judgment and other supporting documents filed by the parties.

Enclosures

answer or respond to any allegation would constitute an admission of the allegations of the complaint.

On November 7, 2002, pursuant to §2423.27 of the Authority's Rules and Regulations, the General Counsel filed a Motion for Summary Judgment on the grounds that the Respondent failed to answer the complaint. In addition, the Respondent did not file a response to the motion for summary judgment.

Discussion and Analysis

The Authority has stated clearly that parties appearing before it 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). §2423.20(b) of the Rules and Regulations provides that the Respondent shall 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. §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.

In view of the Respondent's failure to answer the complaint or respond to the motion for summary judgment and in accordance with §2423.20(b) of the Rules and Regulations, the Respondent is deemed to have admitted the allegations of the complaint.

Findings and Conclusions

The following findings are as set forth in the Complaint:

- The Department of Defense, Department of Defense Education Activity (Respondent) is an agency under 5 U.S.C. §§ 7103(a) (3).
- The Federal Education Association (Charging Party) 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 at the Respondent.
- The charge was filed by the Charging Party with the Washington Regional Director on December 19, 2001.
- A copy of the charge described in paragraph 4 was served on the Respondent.

- During the period covered by this complaint, Joseph D. Tafoya (Tafoya) occupied the position of Director, Department of Defense Education Activity.
- During the period covered by this complaint, the person named in paragraph 6 was an agent of the Respondent.
- During the period covered by this complaint, the person named in paragraph 6 was acting on behalf of the Respondent.
- The Charging Party and the Respondent are parties to a collective bargaining agreement covering employees in the bargaining unit described in paragraph 3.
- On June 26, 2002, Arbitrator Eric W. Lawson, Jr., issued a Decision and Award in an arbitration between the Respondent and the Charging Party.
- In the award described in paragraph 10, Arbitrator Lawson directed that the grievant's claim for a waiver of overpayment pursuant to 5 U.S.C. § 5584 be presented to the Comptroller General or the Defense Office of Hearings and Appeals.
- In paragraph 3 of the award described in paragraph 10, Arbitrator Lawson declared that "the Grievant did not have reason to question her entitlement" to the monies disputed in the grievance.
- On October 25, 2001, Arbitrator Lawson clarified his award by stating, in part, "While it is expected that the parties will argue for and against the waiver being sought, this Award requires that they not oppose or disagree with the findings set forth in paragraphs one through four and six through eight."
- No exceptions to the award described in paragraphs 10 through 13 were filed with the Authority.
- On or about December 7, 2001, the Respondent, through Tafoya, forwarded the grievant's claim for a waiver of overpayment to the Defense Office of Hearings and Appeals asserting that the grievant had reason to question her entitlement to the monies at issue in the grievance.
- By the conduct described in paragraph 15, the Respondent failed to comply with the Arbitrator's

award described in paragraphs 10 through 13 as required by 5 U.S.C. §§ 7121 and 7122.

By the conduct described in paragraphs 15 and 16, the Respondent committed an unfair labor practice in violation of 5 U.S.C. § 7116(a) (1) and (8).

In view of the foregoing findings and conclusions, the General Counsel's Motion for Summary Judgment is hereby Granted.

I further find that, by its failure to comply with the Arbitrator's award, the Respondent has failed to comply with §7122(b) of the Federal Service Labor-Management Relations Statute (the Statute), and has committed an unfair labor practice in violation of §7116(a) (1) and (8) of the Statute.

Accordingly, I recommend that the Authority adopt 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 Defense, Department of Defense Education Activity, shall:

1. Cease and desist from:

(a) Failing and refusing to comply with the final and binding award of Arbitrator Eric W. Lawson, Jr., issued on June 26, 2002, by asserting in proceedings seeking a waiver of the obligation to repay an overpayment of a housing allowance that the employee/grievant had reason to question her entitlement to the allowance she received.

(b) 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) Withdraw the written argument presented to the Defense Office of Hearings and Appeals opposing the waiver sought by the employee/grievant affected by the arbitration award of Arbitrator Eric W. Lawson, Jr., issued on June 26, 2002.

(b) Request that the Defense Office of Hearings and Appeals reconsider the waiver sought by the employee/grievant affected by the arbitration award of Arbitrator Eric W. Lawson, Jr., issued on June 26, 2002.

(c) Post at all facilities where bargaining unit employees represented by the Federal Education Association 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, Dallas 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, November 29, 2002.

PAUL B. LANG
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 Defense, Department of Defense Education Activity, 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 fail and refuse to comply with the final and binding award of Arbitrator Eric W. Lawson, Jr., issued on June 26, 2002.

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 withdraw the written argument presented to the Defense Office of Hearings and Appeals opposing the waiver sought by the employee/grievant affected by the arbitration award of Arbitrator Eric W. Lawson, Jr., issued on June 26, 2002.

WE WILL refrain from asserting in proceedings before the Defense Office of Hearings and Appeals that a waiver from the obligation to repay an excess housing allowance sought by the employee/grievant affected by the arbitration award should be denied because she had reason to question her entitlement to the excess amount.

WE WILL request that the Defense Office of Hearings and Appeals reconsider the waiver sought by the employee/grievant without considering our previous argument presented in opposition to the request and without considering the previous decision to deny the request.

(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, Washington Regional Office, Federal Labor Relations Authority, whose address is: 800 K Street, NW., Suite 910, Washington, D.C. 20001, and whose telephone number is: (202)482-6700.

CERTIFICATE OF SERVICE

I hereby certify that copies of the **DECISION** issued by PAUL B. LANG, Administrative Law Judge, in Case No. WA-CA-02-0174, were sent to the following parties:

CERTIFIED MAIL:

_____ **CERTIFIED NOS:**

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Agnes D'Alessandro, Director
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CATHERINE L. TURNER, LEGAL TECHNICIAN

DATED: NOVEMBER 29, 2002
WASHINGTON, DC