

**FEDERAL LABOR RELATIONS AUTHORITY**

Office of Administrative Law Judges

WASHINGTON, D.C.

DEPARTMENT OF VETERANS AFFAIRS

VETERANS AFFAIRS MEDICAL CENTER

NEW ORLEANS, LOUISIANA

Respondent

and

AMERICAN FEDERATION OF GOVERNMENT

Case No. DA-CA-00313

EMPLOYEES, LOCAL 3553

Charging Party

Susanne S. Matlin, Esquire

For the General Counsel

Before: Eli Nash, Jr.

Administrative Law Judge

**DECISION ON MOTION FOR SUMMARY JUDGMENT**

On September 1, 2000 the Regional Director for the Dallas Region of the Federal Labor Relations Authority (FLRA), issued a Complaint and Notice of Hearing which was duly served by certified mail upon the named Respondent. The Complaint alleged that Respondent violated section 7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute (the Statute), 5 U.S.C. § 7116(a)(1) and (5), by reassigning bargaining unit employee Lionel Washington from his position as a Pharmacy Assistant to a Consult/Coordinator without providing the American Federation of Government Employees, Local 3553 (the Union), with notice and an opportunity to negotiate over the reassignment, as requested. A hearing was scheduled for January 8, 2001.

The Complaint specifically advised the Respondent that an answer must be filed "no later than September 26, 2000" and that a failure to file an answer or respond to any allegation of this complaint will constitute an admission. See 5 C.F.R. § 2423.20(b). Respondent did not file an answer, either in person or by mail, within the required period or at any time thereafter.

An Order Transferring the Case dated September 8, 2000, was served by regular mail on Respondent, indicating that the case had been transferred to the Chicago Regional Office of the FLRA.

No answer was received from Respondent nor has Respondent acknowledged receipt of any of the above-mentioned documents. Accordingly, Respondent has admitted all of the allegations of the Complaint. *Department of Veterans Affairs Medical Center, Asheville, North Carolina*, 51 FLRA 1572, 1594 (1996).

Since Respondent failed to answer the instant Complaint, Counsel for the General Counsel filed a Motion for Summary Judgment on November 6, 2000. Respondent also failed to file any response to the General Counsel's Motion for Summary Judgment within the 5 day time period provided for in the Regulations. See 5 C.F.R. § 2423.27(b).

### **Conclusions**

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 . . . . Absent a showing of good cause to the contrary, failure to file an answer or respond to any allegation shall constitute an admission.

In this case, Respondent has not filed an answer as required by the Regulations. Furthermore, Respondent filed no response to the Motion for Summary Judgment. Accordingly, there are no disputed factual or legal issues in this case.

Consequently, it can only be found that Respondent has admitted that it reassigned Lionel Washington without providing the Union with notice and an opportunity to negotiate over the impact and implementation of the reassignment. Thus, Respondent violated section 7116(a)(1) and (5) of the Statute, as alleged.

Additionally, Counsel for the General Counsel proposed a recommended remedy requiring Respondent to negotiate over the reassignment of Lionel Washington to the extent required by the Statute and the posting of an appropriate Notice to All Employees signed by the Medical Center Director, Department of Veterans Affairs, Veterans Affairs Medical Center, New Orleans, Louisiana. In the circumstances of this case, it is found that the proposed remedy does effectuate the purposes and policies of the Statute.

Accordingly, it is recommended 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, Veterans Affairs Medical Center, New Orleans, Louisiana, shall:

- Cease and desist from:

(a) Reassigning bargaining unit employees without providing the American Federation of Government Employees, Local 3553, the exclusive representative of bargaining unit employees, with notice and an opportunity to negotiate over reassignments, to the extent required by the Federal Service Labor-Management Relations Statute.

(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.

- Take the following affirmative action in order to

effectuate the purposes and policies of the Federal Service Labor-Management Relations Statute:

(a) Upon request, negotiate with the American Federation of Government Employees, Local 3553, over the reassignment of Lionel Washington, to the extent required by the Federal Service Labor-Management Relations Statute.

(b) Post at the Department of Veterans Affairs, Veterans Affairs Medical Center, New Orleans, Louisiana, where bargaining unit employees represented by the American Federation of Government Employees, Local 3553 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, Department of Veterans Affairs, Veterans Affairs Medical Center, New Orleans, Louisiana, 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.

(c) Pursuant to section 2423.41(e) of the Authority's Rules and Regulations, notify the Regional Director, Chicago 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, November 30, 2000.

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ELI NASH, JR.

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, New Orleans, Louisiana, 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 reassign bargaining unit employees without providing the American Federation of Government Employees, Local 3553, the exclusive representative of bargaining unit employees, with notice and an opportunity to negotiate over reassignments, to the extent required by the Federal Service Labor-Management Relations Statute.

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, upon request, provide the American Federation of Government Employees, Local 3553, an opportunity to negotiate over the reassignment of Lionel Washington to the extent required by the Federal Service Labor-Management Relations Statute.

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(Respondent/Activity)

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, Chicago Regional Office, Federal Labor Relations Authority, whose address is: 55 West Monroe Street, Suite 1150, Chicago, Illinois 60603, and whose telephone number is: (312)353-6306.