

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 HEALTH CARE SYSTEM BILOXI, MISSISSIPPI Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1045, AFL-CIO Charging Party	Case No. AT-CA-03-0780

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 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 26, 2004**, 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, 2004
Washington, DC

UNITED STATES OF AMERICA

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

MEMORANDUM

DATE: March 25, 2004

TO: The Federal Labor Relations Authority

FROM: RICHARD A. PEARSON
Administrative Law Judge

SUBJECT: DEPARTMENT OF VETERANS AFFAIRS
GULF COAST VETERANS AFFAIRS
HEALTH CARE SYSTEM
BILOXI, MISSISSIPPI

Respondent

and

Case No. AT-
CA-03-0780

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 any supporting documents filed by the parties.

Enclosures

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

DEPARTMENT OF VETERANS AFFAIRS GULF COAST VETERANS AFFAIRS HEALTH CARE SYSTEM BILOXI, MISSISSIPPI Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1045, AFL-CIO Charging Party	Case No. AT-CA-03-0780

Paige A. Sanderson
For the General Counsel

Before: RICHARD A. PEARSON
Administrative Law Judge

DECISION ON MOTION FOR SUMMARY JUDGMENT

On December 31, 2003, the Regional Director of the Atlanta Region of the Federal Labor Relations Authority issued a Complaint and Notice of Hearing alleging that the Department of Veterans Affairs, Gulf Coast Veterans Affairs Health Care System, Biloxi, Mississippi (the Respondent), violated section 7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute (the Statute), by unilaterally changing employees' conditions of employment without negotiating with the American Federation of Government Employees, Local 1045, AFL-CIO (the Union) to the extent required by the Statute. The complaint was served on the Respondent by certified mail; it specified that Respondent's answer must be filed by January 26, 2004, and that a failure to file an answer shall constitute an admission of the allegations of the complaint. A hearing was scheduled for April 1, 2004.

The Respondent did not submit any response to the complaint.

On March 5, 2004, Counsel for the General Counsel filed a Motion for Summary Judgment, asserting that by its failure to answer the complaint, the Respondent has admitted all of the allegations therein. Since no facts are in dispute, the General Counsel submits that the record demonstrates that the Respondent violated section 7116(a)(1) and (5) of the Statute.

The Respondent has 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 has the Respondent failed to deny, explain or otherwise answer the allegations of the complaint, but it has neither made any showing of good cause for such failure nor responded to the Motion for Summary Judgment. By its inaction, it has 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, AFL-CIO (AFGE) is the exclusive representative of a bargaining unit at the Department of Veterans Affairs, and the Union is an agent of AFGE for purposes of representing employees at the Respondent's facility in Biloxi, Mississippi.

On or about August 27, 2003, the Respondent, through Peggy

Favre, Acting Clinical Coordinator, implemented a practice of placing patients who had minor surgery in the domiciliary. This constituted a change in the conditions of employment of employees in the bargaining unit represented by the AFGE and the Union, and it was effectuated by the Respondent without negotiating with the Union to the extent required by the Statute.

Discussion and Conclusions

Before implementing a change in conditions of employment affecting bargaining unit employees, an agency is required to provide the exclusive representative with notice of, and an opportunity to bargain over, those aspects of the change that are within the duty to bargain. *Federal Bureau of Prisons, Federal Correctional Institution, Bastrop, Texas*, 55 FLRA 848, 852 (1999). It is not clear in this case whether the Respondent was obligated to bargain over the substance of the change or simply over the "impact and implementation" of the change, but it is not necessary to resolve that issue here, because the Respondent has admitted that it did not bargain to the extent required by the Statute. Similarly, the Respondent has not asserted that its obligation to bargain was negated by any provision in 38 U.S.C. § 7422(b). Therefore, I conclude that the Respondent committed an unfair labor practice, in violation of section 7116(a)(1) and (5) of the Statute, by making this change unilaterally.

As a remedy, the General Counsel asks, among other things, that the Respondent be ordered to restore the *status quo ante* by terminating the practice of requiring Domiciliary Assistants to be responsible for patients who have recently undergone minor surgery. A *status quo ante* remedy is not always appropriate when an agency has unilaterally implemented a change in conditions of employment, but by failing to respond to the Motion for Summary Judgment and by failing to offer any evidence demonstrating the inappropriateness of such a remedy, the Respondent has waived any objection to the remedy proposed by the General Counsel.

Accordingly, I 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, shall:

1. Cease and desist from:

(a) Unilaterally changing the working conditions of bargaining unit employees exclusively represented by American Federation of Government Employees, Local 1045 (the Union), by requiring Domiciliary Assistants to be responsible for patients who have recently undergone minor surgery, without first completing bargaining with the Union to the extent required by the Statute.

(b) 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) Terminate the practice of requiring bargaining unit employees, specifically Domiciliary Assistants, to be responsible for patients who have recently undergone minor surgery.

(b) Before implementing such a practice, notify and, upon request, negotiate in good faith with the Union to the extent required by the Statute.

(c) Post at its facilities at the Gulf Coast Veterans Affairs Medical Center, 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, 2004.

—
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 unilaterally change the working conditions of bargaining unit employees exclusively represented by American Federation of Government Employees, Local 1045 (the Union), by requiring Domiciliary Assistants to be responsible for patients who have recently undergone minor surgery, without first completing bargaining with the Union to the extent required by the Statute.

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

WE WILL terminate the practice of requiring bargaining unit employees, specifically Domiciliary Assistants, to be responsible for patients who have recently undergone minor surgery.

WE WILL notify and, upon request, negotiate in good faith with the Union, to the extent required by the Statute, before implementing such a practice.

(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: Marquis Two Tower, 285 Peachtree Center Avenue, Suite 701, Atlanta, GA 30303, and whose telephone number is: 404-331-5200.

CERTIFICATE OF SERVICE

I hereby certify that copies of the **DECISION** issued by RICHARD A. PEARSON, Administrative Law Judge, in Case No. AT-CA-03-0780, were sent to the following parties:

CERTIFIED MAIL & RETURN RECEIPT

CERTIFIED NOS:

Paige A. Sanderson
3581

7000 1670 0000 1175

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Executive Vice President
AFGE, Local 1045
P.O. Box 9081
Gulfport, MS 39506

REGULAR MAIL

President
AFGE
80 F Street, NW
Washington, DC 20001

Dated: March 25, 2004
Washington, DC