

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

MEMORANDUM

DATE: November 10, 2004

TO: The Federal Labor Relations Authority

FROM: SUSAN E. JELEN  
Administrative Law Judge

SUBJECT: U.S. DEPARTMENT OF THE AIR FORCE  
325<sup>TH</sup> MISSION SUPPORT GROUP SQUADRON  
TYNDALL AIR FORCE BASE, FLORIDA

Respondent

and

Case No. AT-CA-04-0207

AMERICAN FEDERATION OF GOVERNMENT  
EMPLOYEES, LOCAL 3240, 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 transcript, exhibits and any briefs filed by the parties.

Enclosures

UNITED STATES OF AMERICA  
**FEDERAL LABOR RELATIONS AUTHORITY**  
Office of Administrative Law Judges  
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U.S. DEPARTMENT OF THE AIR FORCE 325 <sup>TH</sup> MISSION SUPPORT GROUP SQUADRON TYNDALL AIR FORCE BASE, FLORIDA  Respondent	
and  AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 3240, AFL-CIO  Charging Party	Case No. AT-CA-04-0207

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 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 13, 2004**, and addressed to:

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

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SUSAN E. JELEN  
Administrative Law Judge

Dated: November 10, 2004  
Washington, DC



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

U.S. DEPARTMENT OF THE AIR FORCE 325 <sup>TH</sup> MISSION SUPPORT GROUP SQUADRON TYNDALL AIR FORCE BASE, FLORIDA  Respondent	
and  AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 3240, AFL-CIO  Charging Party	Case No. AT-CA-04-0207

Peter Hines, Esquire  
For the General Counsel

Major Lawrence Lynch, Esquire  
For the Respondent

George White  
For the Charging Party

Before: SUSAN E. JELEN  
Administrative Law Judge

**DECISION**

**Statement of the Case**

This case arose under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the United States Code, 5 U.S.C. § 7101, *et seq.* (the Statute), and the Rules and Regulations of the Federal Labor Relations Authority (hereinafter FLRA/Authority), 5 C.F.R. § 2411 *et seq.*

Based upon an unfair labor practice charge filed by the American Federation of Government Employees, Local 3240, AFL-CIO (Union or Charging Party), a complaint and notice of hearing was issued by the Acting Regional Director of the Atlanta Regional Office of the Authority. The complaint alleges that the U.S. Department of the Air Force, 325<sup>th</sup> Mission Support Group Squadron, Tyndall Air Force Base, Florida (Respondent), violated Section 7116(a)(1) and (5) of the Statute by repudiating the parties' collective bargaining agreement (CBA) by refusing to provide the Union

with copies of the recommendations for performance awards for non-appropriated fund employees. Respondent timely filed an Answer admitting in part and denying in part the allegations set forth in the Complaint.

A hearing was held in Panama City, Florida, on July 29, 2004, at which time all parties were afforded a full opportunity to be represented, to be heard, to examine and cross-examine witnesses, to introduce evidence and to argue orally. Both the General Counsel and the Respondent filed timely post-hearing briefs which have been fully considered.

Based upon the entire record, including my observation of the witnesses and their demeanor, I make the following findings of fact, conclusions and recommendations.

### **Findings of Fact**

The United States Department of the Air Force is an agency under 5 U.S.C. § 7103(a)(3). Tyndall Air Force Base, 325<sup>th</sup> Mission Support Group Squadron is an activity of the United States Air Force. (G.C. Ex. 1(c) and (d))

The American Federation of Government Employees, Local 3240, AFL-CIO is a labor organization under 5 U.S.C. § 7103(a)(4) and is the exclusive representative of a unit of non-appropriated fund employees appropriate for collective bargaining. There are more than 300 non-appropriated fund employees who are represented by the Union. They work in various flights or services throughout Tyndall AFB, such as lodging, bowling center, child care and officers' club. George White is President of Local 3240 and has held this position for approximately 18 years. He also works in the lodging flight. (Tr. 13, 23, 37)

Mary D. Jenkins works in the Human Resources Office (HRO) for non-appropriated fund employees at Tyndall AFB. She is the designated contact for the Respondent with Local 3240 and regularly works with George White in his capacity as President of the Union. (Tr. 29, 40, 41)

Aleck Biehl is the Deputy Chief of Services for the 325<sup>th</sup> Service Squadron and has held this position for several years. In January 2004 Biehl was temporarily serving as the Acting Director while the Squadron Commander was deployed to Iraq. (Tr. 68, 69)

The parties' current collective bargaining agreement has been in effect since 1999 and expires in 2005. Article 25 deals with Awards and Recommendations. Section 1

of Article 25 states: "All NAF employees with a satisfactory performance rating are eligible for consideration for cash and honorary awards. Supervisors recommend NAF employees for awards using AF Form 1768 Staff Summary Sheet." The specific section at issue in this matter is Section 7, which states, in full, "Copies of recommendations for performance awards for Bargaining Unit employees will be furnished to the Union." (R. Ex. 1; Tr. 26)

Section 7 of the previous collective bargaining agreement was more detailed and stated, in full, "Copies of recommendations for performance awards for bargaining unit employees will be furnished to the union for their comment prior to being sent to the Support Group Commander for approval. Any comments furnished by the union will be included with the recommendation and forwarded to the Support Group Commander." (R. Ex. 3; Tr. 27-28)

The parties were in general agreement regarding the performance award procedure. The appraisal year ends on September 30 and award recommendations are generally processed within 30 days.<sup>1</sup> The immediate supervisor makes a recommendation for an employee or group of employees and then forwards same to the Squadron Commander for approval. The recommendations are then sent to the Mission Support Group Commander (MSC) for final approval. Apparently HRO is supposed to receive a copy of the recommendations to check for regulation compliance before being sent to MSC. At that time HRO would also forward copies to the Union. HRO also receives a copy of the final approval from MSC and sends a copy of that information to the Union. (Tr. 14, 61)

According to both parties, Jenkins contacted White in mid-October 2003 and furnished him with several documents relating to award recommendations, all of which are dated late September or early October 2003. White identified G.C. Exs. 2 through 12 as the documents that he received in mid-October. Although not specifically identified by White, G.C. Exs. 3 through 6 all relate to a group award recommendation for the Bowling Center. G.C. Exs. 7 through 9 concern individual award recommendations for accounting technicians. G.C. Ex. 10 through 12 contain the names of

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There was a delay for the FY 2003 awards apparently due to the Squadron Commander's deployment to Iraq for 120 days in November 2003. According to Biehl, he was charged with completing the awards process initiated by the Squadron Commander and on November 4, 2003, sent the award recommendations to the Mission Support Group Commander for final approval. The awards were approved and returned to HRO on December 15, 2003. (Tr. 73)

employees by rating and the percentage of awards they would receive, *i.e.*, G.C. Ex. 10 lists employees with a rating of 23 who will receive a 1.75% performance award; G.C. Ex. 11 lists employees with a rating of 24 who will receive a 2.5% performance award, and G.C. Ex. 12 lists employees with a rating of 25 who will receive a 3.5% performance award. (G.C. Exs. 2-12; Tr. 16-21) Jenkins identified employees listed in G.C. Ex. 10 through 12 as working in lodging, the largest NAF service. (Tr. 44, 60) G.C. Exs. 2 through 12 cover award recommendations for 68 bargaining unit employees.

Jenkins denied, however, that G.C. Exs. 2 through 12 were the documents that she furnished to the Union in mid-October 2003, stating that she had received the recommendations from lodging and maybe the youth center and those were documents she furnished to the Union. (Tr. 43-45, 51, 54) Respondent did not put any additional recommendations into the record.<sup>2</sup>

According to Jenkins, she received the approved awards on December 15, 2003 and faxed the relating memorandum and its seven attachments to the Union on the same date. She believed she would have faxed the entire package and would have no reason not to send everything to the Union. These documents were faxed to the Union since White was on annual leave for the month of December and did not return to work until January 5 or 6, 2004. (R. Ex. 2; Tr. 46, 47)

White testified that when he returned to work, he found only the first page of R. Ex. 2. He did not contact Jenkins or Biehl regarding the missing pages.<sup>3</sup> (Tr. 20-21)

The seven pages attached to R. Ex. 2 contain the following information:

1. Page 2 of 8 - Award approvals for 7 employees, including the three employees named in G.C. Exs. 7, 8 and 9;
2. Page 3 of 8 - Award approvals for 25 employees of the Family Member Support Flight;

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I therefore credit White's testimony that he received G.C. Exs. 2 through 12 in mid-October 2003.

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Jenkins testified that she was not aware that White believed he had not received the attachments until a few days before the hearing scheduled in this matter. She immediately furnished the entire package. (Tr. 48)

3. Page 4 of 8 - Award approvals for employees of the Business Operation Flight (the same names for the Bowling Center found in G.C. Exs. 5 and 6, except for one employee not on the approved list);

4. Page 5 of 8 - Award approvals for employees with ratings of 22;

5. Page 6 of 8 - Award approvals for employees with ratings of 23, with the same names as found in G.C. Ex. 10, although different award amounts are stated;

6. Page 7 of 8 - Award approvals for employees with ratings of 24, with the same names as found in G.C. Ex. 11, although different award amounts are stated, and

7. Page 8 of 8 - Award approvals for employees with ratings of 25, with the same names as found in G.C. Ex. 12, although different award amounts are stated.

(R. Ex. 2)

Sometime in January 2004, White requested a meeting with Biehl, although White did not tell him the purpose of the meeting. Two meetings were actually held on January 28 and January 29, 2004. White, Biehl and Jenkins participated in both meetings. (Tr. 20-22) Jenkins was unable to recall the meetings at all and found no notes of the meetings. (Tr. 47) Biehl remembered that two meetings were held concerning various labor-management issues but does not have any recollection of a discussion regarding award recommendations. He denied any knowledge of a problem with the award recommendations until the unfair labor practice charge in this case was filed on February 5, 2004. He asserts, however, that if White had requested information about the award recommendations, he would have directed Jenkins to furnish them, although he believed the information had already been furnished in December 2003. (Tr. 70, 71)

White's recollection of the two meetings was not much more detailed than Biehl's. He asserts that he asked why he did not receive a copy of the award recommendations and Biehl and Jenkins did not respond at all. He thought other issues were also discussed during the two meetings but could not recall the topics. (Tr. 22-24)

White asserts that he received only limited award recommendations, in October 2003, and only one page of the

fax on December 15, 2003.4 (Tr. 25) White had received between 50 and 100 award recommendations in previous years. (Tr. 15)

Jenkins asserts that she furnished all of the recommendations that she received to White and that she faxed him the entire package regarding the final award approvals on December 15, 2003. She did admit there could have been award recommendations that were not furnished to her by the recommending supervisor or the Squadron Commander. (Tr. 64)

### **ISSUE**

Whether or not the Respondent violated section 7116(a) (1) and (5) of the Statute by repudiating Article 25, Section 7 of the parties' CBA by failing and refusing to provide to the Union the recommendations for performance awards for NAF employees for FY 2003.

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The attachments to the December 15, 2003 fax were not on AF Form 1001, as had been furnished in prior years. Rather the attachments were on AF Form 1768, a staff summary sheet. (Tr. 15, 30)

## **POSITIONS OF THE PARTIES**

### **GENERAL COUNSEL**

The General Counsel asserts that the Respondent violated section 7116(a)(1) and (5) of the Statute when it refused to provide the Union with copies of recommendations for performance awards for bargaining unit employees pursuant to Article 25, Section 7 of the parties' current collective bargaining agreement. Such conduct amounts to a repudiation of the CBA.

The General Counsel asserts that for the last ten years, the Respondent has furnished the Union an AF Form 1001 for every employee recommended for a performance award at the end of the rating period. AF Form 1001 identified the individual employee, the recommended amount of the award, as well as the written justification for the award. These forms allowed the Union to compare the recommended amounts and the justifications to determine if any employee was being treated unfairly.

In October 2003 President White was only given a few AF Form 1001s, along with a list of other employees recommended to receive awards for FY 2003. According to the General Counsel, the list of 52 employees who were to receive awards (G.C. Ex. 10-12) was not on any AF Form contemplated by Article 25 of the CBA and did not indicate what the recommendations were for these employees, but only identified the amount to be awarded. Thus the General Counsel argues that this listing by Respondent did not in any way comply with Article 25. White attempted to resolve this issue in January 2004 but the Respondent refused to give him the remainder of the forms and offered no explanation for its refusal to do so.

The General Counsel further argues that Article 25 of the CBA contains several provisions regarding performance awards and Section 7 unambiguously states that the Respondent will tender recommendations of performance awards to the Union. Respondent's refusal to provide the great majority of the award recommendations, coupled with its refusal to even discuss providing the missing documents to the Union, goes to the heart of this article and section of the CBA, because it effectively amounts to a rejection of the same. The purpose of Article 25 is to ensure that employees are being treated fairly with respect to employee awards. Therefore, by refusing to tender to the Union the recommendations for performance awards, the Respondent defeats completely the Union's ability to administer this section of the CBA.

## **RESPONDENT**

The Respondent asserts that the General Counsel failed to prove that there has been any repudiation of the CBA in this matter. Rather the evidence proved that the Respondent met its obligations under the CBA, by its good faith effort to provide the Union with the documents it was obligated to provide. The CBA does require the Respondent to provide copies of performance award recommendations for bargaining unit employees to the Union, but does not require any specific timing or any specific format. Article 25 of the current CBA (R. Ex. 1) does not even reference AF Form 1001, unlike Article 25 in the previous agreement (R. Ex. 2). Article 25, Section 1 of the current CBA does require that supervisors use AF Form 1768 to recommend employees for performance awards. (R. Ex. 1)

### **Analysis and Conclusion**

In *Department of the Air Force, 375<sup>th</sup> Mission Support Squadron, Scott Air Force Base, Illinois*, 51 FLRA 858 (1996) (*Scott AFB*), the Authority clarified the analytical framework it will follow for determining whether a party's failure or refusal to honor an agreement constitutes a repudiation of a collective bargaining agreement. Consistent with the framework that was set forth in *Department of Defense, Warner Robins Air Logistics Center, Robins Air Force Base, Georgia*, 40 FLRA 1211 (1991), the Authority held that it will examine two elements in analyzing an allegation of repudiation: (1) the nature and scope of the alleged breach of an agreement (*i.e.*, was the breach clear and patent?); and (2) the nature of the agreement provision allegedly breached (*i.e.*, did the provision go to the heart of the parties' agreement?) The examination of either element may require an inquiry into the meaning of the agreement provision allegedly breached.

With regard to the first element, the Authority held that it is necessary to show that a respondent's action constituted a clear and patent breach of the terms of the agreement. If the meaning of a particular agreement term is unclear and a party acts in accordance with a reasonable interpretation of that term, that action will not constitute a clear and patent breach of the terms of the agreement. 51 FLRA at 862. In such a case it is not necessary to examine the second element. 51 FLRA at 864.

With regard to the second element, the Authority stated that if a provision is not of a nature that goes to the heart of the parties' CBA, a breach of the provision could

not amount to a repudiation and, therefore, would not constitute an unfair labor practice. 51 FLRA at 862. See also *U.S. Penitentiary, Florence, Colorado*, 54 FLRA 30 (1998) (*USP Florence*) and *Federal Aviation Administration*, 55 FLRA 1271 (2000) (*FAA*).

The record evidence clearly shows that the Respondent furnished certain award recommendations to the Union in October 2003, which covered 68 bargaining unit employees. Information relating to a group award for the Bowling Center employees (G.C. Exs. 3-6) was furnished using both AF Forms 1001 and 1768. AF Form 1001 was used for G.C. Exs. 2, 7, 8 and 9. No specific form was used for G.C. Ex. 10, 11, and 12, although the forms only listed the individual employees by rating, but no recommending or approving officials' signatures. Contrary to the position of the General Counsel, these exhibits clearly set forth the rationale for the individual awards, *i.e.*, based on specific performance ratings for employees. There is no evidence that the Union expressed concerns to the Respondent regarding any of these specific documents.

The Union did not receive any further award recommendation data from the Respondent until December 2003, when documents relating to the final award approvals were faxed to the Union.<sup>5</sup> However, the complaint is not concerned with the actual final awards, but rather with the recommendations for awards.

The General Counsel spent considerable effort explaining that the Union had received AF Form 1001 for about ten years. While the prior CBA specifically states that the Union would be provided AF Form 1001, Article 25, Section 7 of the current CBA merely refers to recommendations. Further, Article 25, Section 1 of the current CBA specifically states that recommendations will be accomplished using AF Form 1768. Thus, the General Counsel and the Union appear to complain that the Union did not receive individual AF Form 1001 for each employee who was

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I credit Jenkins' assertion that she faxed the entire document, including the cover sheet and the seven attachments to the Union in December 2003. Her testimony regarding her practice with regard to her dealings with White was logical and consistent. I find White's testimony regarding these December documents to not be credible. It makes no sense that he would not complain to Jenkins about the failure to receive the entire package, either when faxed to the Union office, when he returned to work in January 2004, or during the meetings in late January 2004.

recommended for a performance award. However, I do not find that the CBA requires such a specific form.<sup>6</sup>

In reviewing the evidence in its totality, I do not find that the Respondent repudiated Article 25, Section 7 of the CBA. Certain award recommendations were furnished to the Union in October 2003. While the Respondent may not have furnished all of the recommendations in a form acceptable to the Union, examining the nature and scope of the alleged breach of the agreement, I conclude that a preponderance of the evidence does not demonstrate that the Respondent's breach was so clear and patent as to constitute a repudiation or rejection of the agreement itself. *Scott AFB*, 51 FLRA 858. I find no evidence that the Respondent deliberately failed to furnish the recommendation documents, even though there may, in fact, be some recommendations that were not furnished to the Union. Further I cannot credit White's assertion that at the January 2004 meetings, Respondent's representatives Biehl and Jenkins sat silently when he told them he had not received all of the recommendations. Both Biehl and Jenkins appeared to be competent, professional individuals and the assertion that they would not even respond to such a Union request is not reasonable in the totality of the circumstances. Again there is no evidence of deliberate conduct on the part of the Respondent and no evidence that the Respondent ever disowned, rejected or refused to honor its obligations in this regard. Under these circumstances, I find the record evidence does not meet the standards as set forth by the Authority. Since Respondent's action does not constitute a clear and patent breach of the terms of the agreement, it is not necessary to examine the second element of the Authority's framework.

Having found that the evidence does not support the allegation that the Respondent repudiated the parties' collective bargaining agreement, it is therefore recommended that the Authority adopt the following Order:

#### **ORDER**

It is ordered that the complaint be, and hereby, is dismissed.

Issued, Washington, DC, November 10, 2004.

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The General Counsel did not argue, and the complaint does not allege, a violation of a past practice with regard to furnishing the Union with AF Form 1001.

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SUSAN E. JELEN  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the **DECISION** issued by SUSAN E. JELEN, Administrative Law Judge, in Case No. AT-CA-04-0207, were sent to the following parties:

**CERTIFIED MAIL & RETURN RECEIPT**

**CERTIFIED NOS:**

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DATED: November 10, 2004  
Washington, DC