

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

DEPARTMENT OF VETERANS AFFAIRS VETERANS AFFAIRS MEDICAL CENTER DECATUR, GEORGIA  Respondent	
and  AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 2778  Charging Party	Case No. AT-CA-04-0334

NOTICE OF TRANSMITTAL OF DECISION

The above-entitled case having been submitted to 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. §§ 2423.40-2423.41, 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, Suite 201  
Washington, DC 20005

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SUSAN E. JELEN  
Administrative Law Judge

Dated: November 9, 2004  
Washington, DC

UNITED STATES OF AMERICA  
**FEDERAL LABOR RELATIONS AUTHORITY**

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

MEMORANDUM

DATE: November 9, 2004

TO: The Federal Labor Relations Authority

FROM: SUSAN E. JELEN  
Administrative Law Judge

SUBJECT: DEPARTMENT OF VETERANS AFFAIRS  
VETERANS AFFAIRS MEDICAL CENTER  
DECATUR, GEORGIA

Respondent

and

Case No. AT-CA-04-0334

AMERICAN FEDERATION OF GOVERNMENT  
EMPLOYEES, LOCAL 2778

Charging Party

Pursuant to section 2423.27(c) of the Final 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 is a Motion for Summary Judgment and other supporting documents filed by the parties.

Enclosures

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

DEPARTMENT OF VETERANS AFFAIRS VETERANS AFFAIRS MEDICAL CENTER DECATUR, GEORGIA  Respondent	
and  AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 2778  Charging Party	Case No. AT-CA-04-0334

Peter Hines  
For the General Counsel

Charles T. Bell, Jr.  
For the Respondent

Elijah J. Williams, Jr.  
For the Charging Party

Before: SUSAN E. JELEN  
Administrative Law Judge

**DECISION ON MOTION FOR SUMMARY JUDGMENT**

On July 30, 2004, 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, Veterans Affairs Medical Center, Decatur, Georgia (the Respondent) violated section 7116(a)(1) and (8) of the Federal Service Labor-Management Relations Statute (the Statute) by refusing to allow a union representative to represent an employee in an investigatory examination when the employee requested union representation. A hearing was scheduled for December 9, 2004.

On August 20, 2004, the Respondent filed an Answer which admitted each and every allegation of the Complaint.

On October 13, 2004, Counsel for the General Counsel filed a Motion for Summary Judgment, asserting that since there are no factual or legal issues in dispute, the

December 9, 2004, hearing is unnecessary and summary judgment is appropriate in finding that the Respondent has violated the Statute as alleged. *Department of Veterans Affairs Medical Center, Asheville, North Carolina*, 51 FLRA 1572, 1594 (1996).

The Respondent has not filed any response to the General Counsel's Motion for Summary Judgment within the time period provided by Regulations. See 5 C.F.R. § 2423.27 (b).

### **Discussion of Motion for Summary Judgment**

As the Respondent has admitted to each and every allegation in the complaint, there are no disputed factual or legal issues in this case 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**

1. The Respondent is an agency as defined by 5 U.S.C. § 7103(a)(3).

2. The American Federation of Government Employees, AFL-CIO (AFGE) is a labor organization as defined by 5 U.S.C. § 7103(a)(4) and is the exclusive representative of a unit of employees appropriate for collective bargaining at the Respondent.

3. The American Federation of Government Employees, Local 2778 (Charging Party) is an agent of AFGE for representing employees at the Respondent's facility in Decatur, Georgia.

4. On or about April 9, 2004, the Respondent, through Bruce N. Rooney, Social Work Executive Chair, Administrative Investigation Board, conducted an examination of Alvin Chatmon, a bargaining unit employee, concerning an allegation that Chatmon had threatened a patient.

5. The examination described in paragraph 4 was in connection with an investigation.

6. Chatmon reasonably believed that the examination described in paragraph 4 could result in disciplinary action.

7. Chatmon was accompanied to the examination described in paragraph 4 by union representative Elijah J. Williams, Jr.

8. The Respondent, through Rooney, advised Williams that he was to only act as an observer at the examination described in paragraph 4.

9. The Respondent, through Rooney did not allow Williams to ask questions on the record at the examination described in paragraph 4.

10. By the conduct described in paragraphs 4 through 9 above, the Respondent failed to comply with 5 U.S.C. § 7114(a)(2)(B).

11. By the conduct described in paragraph 4 through 10, the Respondent committed an unfair labor practice in violation of 5 U.S.C. § 7116(a)(1) and (8).

#### **Discussion and Conclusions**

Section 7114(a)(2)(B) of the Statute provides that:

An exclusive representative of an appropriate unit in an agency shall be given the opportunity to be represented at -

\* \* \*

(B) any examination of an employee in the unit by a representative of the agency in connection with an investigation if -

(i) the employee reasonably believes that the examination may result in disciplinary action against the employee; and

(ii) the employee requests representation.

In this case, the Respondent admitted that it advised the union representative that he was to only act as an observer at the examination. The Authority has long held that for the right to representation to be meaningful, the representative must have freedom to assist, and consult with, the affected employee. Precluding the union representative from speaking or otherwise participating on

the record in the formal proceedings does not equate to meaningful representation. *Department of Veterans Affairs, Veterans Affairs Medical Center, Hampton, Virginia*, 51 FLRA 84 (1995); *United States Department of Justice, Bureau of Prisons, Safford, Arizona*, 35 FLRA 431, 440 (1990).

Therefore, as admitted in its answer to the complaint, Respondent violated section 7116(a)(1) and (8) of the Statute when it refused to allow a union representative to represent an employee in an investigatory interview when the employee requested union representation.

### **Remedy**

Counsel for the General Counsel proposed a recommended remedy requiring a cease and desist order and a posting of a notice to all employees signed by the Respondent's Medical Center Director. The Respondent has not offered any evidence demonstrating the inappropriateness of this requested remedy.

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, it is hereby ordered that the Department of Veterans Affairs, Veterans Affairs Medical Center, Decatur, Georgia, shall:

1. Cease and desist from:

(a) Requiring any bargaining unit employee to take part in an examination in connection with an investigation without the assistance of his or her union representative where such representation has been requested by the employee, and if the employee reasonably believes that the examination may result in disciplinary action against him or her.

(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) Post at its Decatur, Georgia facility, where bargaining unit employees represented by the American Federation of Government Employees, Local 2778, 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 Medical 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.

(b) Pursuant to section 2423.41(e) of the Authority's Rules and Regulations, notify the Regional Director, Atlanta 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 9, 2004.

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SUSAN E. JELEN  
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, Decatur, Georgia, 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** require any bargaining unit employee to take part in an examination in connection with an investigation without the assistance of his or her union representative where such representation has been requested by the

employee, and if the employee reasonably believes that the examination may result in disciplinary action against him or her.

**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.

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(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, Atlanta Regional Office, Federal Labor Relations Authority, whose address is: Marquis Two Tower, 285 Peachtree Center Avenue, Suite 701, Atlanta, Georgia 30303, and whose telephone number is: 404-331-5380.

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the **DECISION** issued by SUSAN E. JELEN, Administrative Law Judge, in Case No. AT-CA-04-0334, were sent to the following parties:

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**CERTIFIED MAIL & RETURN RECEIPT**

**CERTIFIED NOS:**

Peter Hines  
Counsel for the General Counsel  
Federal Labor Relations Authority  
Marquis Two Tower, Suite 701  
285 Peachtree Center Avenue  
Atlanta, GA 30303-1270

7000 1670 0000 1175 4656

Charles T. Bell, Jr.  
U.S. Dept of Veterans Affairs

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VAMC Office of Regional Counsel  
1700 Clairmont Road  
Decatur, GA 30033-4032

Elijah J. Williams, Jr.  
AFGE, Local 2778  
1670 Clairmont Road  
Decatur, GA 30033

**7000 1670 0000 1175 4632**

**REGULAR MAIL**

President  
AFGE  
80 F Street, NW  
Washington, DC 20001

DATED: November 9, 2004  
Washington, DC