

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

DEFENSE LOGISTICS AGENCY DEFENSE DISTRIBUTION DEPOT ANNISTON, ALABAMA  Respondent	
and  AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1945, AFL-CIO  Charging Party	Case No. AT-CA-04-0457

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 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 **MARCH 9, 2005**, 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: February 7, 2005  
Washington, DC

UNITED STATES OF AMERICA  
**FEDERAL LABOR RELATIONS AUTHORITY**  
Office of Administrative Law Judges

MEMORANDUM

DATE: February 7, 2005

TO: The Federal Labor Relations Authority

FROM: SUSAN E. JELEN  
Administrative Law Judge

SUBJECT: DEFENSE LOGISTICS AGENCY  
DEFENSE DISTRIBUTION DEPOT  
ANNISTON, ALABAMA

Respondent

and

Case No. AT-CA-04-0457

AMERICAN FEDERATION OF GOVERNMENT  
EMPLOYEES, LOCAL 1945, AFL-CIO

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.

DEFENSE LOGISTICS AGENCY DEFENSE DISTRIBUTION DEPOT ANNISTON, ALABAMA  <p style="text-align: center;">Respondent</p>	
and  AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1945, AFL-CIO  <p style="text-align: center;">Charging Party</p>	Case No. AT-CA-04-0457

Brent S. Hudspeth, Esq.  
For the General Counsel

Before: SUSAN E. JELEN  
Administrative Law Judge

**DECISION ON MOTION FOR SUMMARY JUDGMENT**

On September 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 Defense Logistics Agency, Defense Distribution Depot, Anniston, Alabama (the Respondent) violated section 7116(a) (1) and (5) of the Federal Service Labor-Management Relations Statute (the Statute), by unilaterally removing bargaining unit positions from the Alternate Work Schedule (AWS) without first notifying the American Federation of Government Employees, Local 1945, AFL-CIO (the Union) and providing it the opportunity to negotiate to the extent required by the Statute. The complaint was served on Respondent by certified mail. The complaint specified that, in accordance with the Authority's Rules and Regulations, the Respondent must file an Answer to the complaint no later than October 25, 2004, and that a failure to file an answer shall constitute an admission of the allegations of the complaint. A hearing was scheduled for December 9, 2004.

The Respondent did not file an answer, either in person or by mail, within the required period or at any time thereafter.

On November 17, 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 failed to file 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**

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.

The Rules and Regulations also explain how to calculate filing deadlines and how to request extensions of time for filing the required documents. See, e.g., sections 2429.21 through 2429.23.

In this case the Respondent has not filed an answer as required by the Regulations. In accordance with section 2423.20(b) of the Rules and Regulations, this failure constitutes an admission of each of the allegations of the Complaint. *Department of Veterans Affairs Medical Center, Asheville, North Carolina*, 51 FLRA 1572, 1594 (1996). Furthermore, the Respondent has not filed any response to the Motion for Summary Judgment. Accordingly, 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 consolidated unit of employees appropriate for collective bargaining at the Respondent.

3. The Union is an agent of AFGE for representing employees of the Respondent within the unit described in paragraph 2 above.

4. On or about July 4, 2003, the Respondent, through Lt. Colonel Kevin Kahley, Commanding Officer, removed bargaining unit positions from the Alternate Work Schedule.

4. This constituted a change in the conditions of employment of bargaining unit employees and it was effectuated by the Respondent without providing the Union with notice and the opportunity to negotiate to the extent required by the Statute.

#### **Discussion and Conclusions**

Section 7116(a)(5) of the Statute provides that it shall be an unfair labor practice for an agency to refuse to negotiate in good faith with a labor organization as required by the Statute. This duty to negotiate in good faith requires that prior to implementing a change in conditions of employment of bargaining unit employees, an agency is required to provide the exclusive representative with notice and an opportunity to bargain over those aspects of the change that are within the duty to bargain. The Authority has found that an agency's right to establish or terminate an established alternate work schedule is subject to bargaining. Thus, the establishment or termination of alternate work schedules is negotiable without regard to management's rights under section 7106 of the Statute. See *United States Department of Justice, Immigration and Naturalization Service, Los Angeles, California*, 59 FLRA 387 (2003) (*INS Los Angeles*) and *U.S. Environmental Protection Agency, Research Triangle Park, North Carolina*, 43 FLRA 87 (1991). Respondent has admitted by its failure to file an answer that the change in working conditions in this case is one that triggers the agency's duty to negotiate in good faith with the exclusive representative. Therefore, as admitted by its failure to answer the complaint, Respondent violated section 7116(a)(1) and (5) of the Statute when it removed bargaining unit positions from the Alternate Work Schedule.

#### **Remedy**

Counsel for the General Counsel proposed a recommended remedy requiring that the Respondent be ordered to restore the *status quo ante* by allowing employees occupying bargaining unit positions the opportunity to work the Alternate Work Schedule. 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. Therefore, I find the requested *status quo ante* remedy appropriate in this matter. *INS, Los Angeles.*

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 Defense Logistics Agency, Defense Distribution Depot, Anniston, Alabama, shall:

1. Cease and desist from:

(a) Unilaterally removing bargaining unit positions from the Alternate Work Schedule without first notifying the American Federation of Government Employees, Local 1945, AFL-CIO (the Union) and providing it the opportunity to bargain over the decision to change such conditions of employment.

(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) Allow all employees occupying bargaining unit positions the opportunity to work the Alternate Work Schedule.

(b) Give notice to, and upon request, negotiate with the Union over the decision to remove bargaining unit positions from the Alternate Work Schedule.

(c) Post at its facilities at the Defense Logistics Agency, Defense Distribution Depot in Anniston, Alabama, where bargaining unit employees represented by the American Federation of Government Employees, Local 1945, AFL-CIO, 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 Commanding Officer, 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 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, February 7, 2005.

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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 Defense Logistics Agency, Defense Distribution Depot, Anniston, Alabama, 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** unilaterally change working conditions of unit employees represented by the American Federation of Government Employees, Local 1945, AFL-CIO (the Union) by removing bargaining unit positions from the Alternate Work Schedule without first notifying the Union and providing it the opportunity to bargain over the decision to change such conditions of employment.

**WE WILL NOT** refuse to bargain with the Union over changes in working condition of unit employees.

**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** allow all employees occupying bargaining unit positions the opportunity to work the Alternate Work Schedule.

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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, GA 30303-1270, 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-04-0457, were sent to the following parties:

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**CERTIFIED MAIL & RETURN RECEIPT**

**CERTIFIED NOS:**

Brent S. Hudspeth, Esq.

7000 1670 0000 1175

**4809**

Federal Labor Relations Authority  
Marquis Two Tower  
285 Peachtree Center Ave., Suite 701  
Atlanta, GA 30303-1270

John Fritz

7000 1670 0000 1175 4823

Agency Representative  
Defense Distribution Center  
Attn: DDC-GC  
2001 Mission Drive  
New Cumberland, PA 17070-5001

**REGULAR MAIL:**

Everett Kelley  
President  
AFGE, Local 1945  
P.O. Box 367  
Bynum, AL 36253

President  
AFGE  
80 F Street, NW  
Washington, DC 20001

DATED: February 7, 2005  
Washington, DC