

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

DEPARTMENT OF HEALTH AND HUMAN SERVICES PUBLIC HEALTH SERVICE INDIAN HEALTH SERVICE STANDING ROCK PUBLIC HEALTH SERVICE HOSPITAL, FORT YATES, NORTH DAKOTA Respondent and	Case No. CH-CA-00693
LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 580, AFL-CIO Charging Party	

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
NOVEMBER 13, 2001, and addressed to:

Federal Labor Relations Authority
Office of Case Control
607 14th Street, NW., Suite 415
Washington, DC 20424-0001

SUSAN E. JELEN
Administrative Law Judge

Dated: October 9, 2001
 Washington, DC

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

MEMORANDUM

DATE: October 9, 2001

TO: The Federal Labor Relations Authority

FROM: SUSAN E. JELEN
Administrative Law Judge

SUBJECT: DEPARTMENT OF HEALTH AND HUMAN SERVICES
PUBLIC HEALTH SERVICE, INDIAN HEALTH SERVICE
STANDING ROCK PUBLIC HEALTH SERVICE HOSPITAL
FORT YATES, NORTH DAKOTA

Respondent

and Case No. CH-
CA-00693

LABORERS' INTERNATIONAL UNION OF NORTH
AMERICA, LOCAL 580, 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 other supporting documents filed by the parties.

Enclosures

FEDERAL LABOR RELATIONS AUTHORITY

Office of Administrative Law Judges

OALJ

02-03

WASHINGTON, D.C.

DEPARTMENT OF HEALTH AND HUMAN SERVICES PUBLIC HEALTH SERVICE INDIAN HEALTH SERVICE STANDING ROCK PUBLIC HEALTH SERVICE HOSPITAL, FORT YATES, NORTH DAKOTA Respondent and	Case No. CH-CA-00693
LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 580, AFL-CIO Charging Party	

John F. Gallagher, Esquire
For the General Counsel

Before: SUSAN E. JELEN
Administrative Law Judge

DECISION ON MOTION FOR SUMMARY JUDGEMENT

On July 20, 2001, the Regional Director for the Chicago 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 the Department of Health and Human Services, Public Health Service, Indian Health Service, Standing Rock Public Health Service Hospital, Fort Yates, North Dakota (herein called 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 unilaterally implementing a housing rental rate increase affecting employees represented by the Laborers' International Union of North America, Local 580, AFL-CIO (herein called Union), without providing the Union with

notice and opportunity to negotiate over this change to the extent required by the Statute. Further the complaint alleges that the Union requested Respondent to negotiate concerning the above change on August 18, 2000 and that the Respondent failed to respond to the Union's request to negotiate. A hearing was scheduled for December 11, 2001 in Bismarck, North Dakota.

The Complaint specifically advised the Respondent that an answer must be filed "no later than August 14, 2001" 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.

Since Respondent failed to answer the instant Complaint, Counsel for the General Counsel filed a Motion for Summary Judgement on September 17, 2001. Respondent also failed to file any response to the General Counsel's Motion for Summary Judgement within the 5 day time period provided for in the Regulations. See 5 C.F.R. § 2423.27(b).

No answer was received from the Respondent nor has the 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).

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 the Respondent has not filed an answer as required by the Regulations. Furthermore, Respondent has not filed any response to the Motion for Summary Judgement. Accordingly, there are not disputed factual or legal issues in this case.

Consequently, it can only be found that the Respondent has admitted that it implemented a housing rental rate increase affecting bargaining unit employees represented by the Union, without providing the Union with notice and an opportunity to bargain over the change. Further Respondent has admitted that it did not respond to the Union's August 18, 2000 request to negotiate. Thus, Respondent violated section 7116(a)(1) and (5) of the Statute as alleged.

Counsel for the General Counsel proposed a recommended remedy requiring the Respondent to rescind the increase in rents; to effect a further decrease in rental rates charged to unit employees for a period of time necessary to offset the difference between the unlawfully implemented rental increase and the former rents until such time as the effected employees have been made whole; to notify and, upon request, negotiate with the Union concerning any proposed change in rental rates to the extent required by the Statute and to post an appropriate Notice To All Employees signed by the Director, Indian Health Service, Standing Rock Public Health Service Hospital, Fort Yates, North Dakota. It is noted that this issue was recently litigated in *Department of Health and Human Services, Public Health Service, Indian Health Service, Quentin N. Burdick Memorial Health Care Facility, Belcourt North Dakota*, OALJ 01-38, CH-CA-00465 (June 20, 2001) (exceptions pending before the Authority) and a similar remedy was recommended by the Administrative Law Judge. Under 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 Judgement 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 Health and Human Services, Public Health Service, Indian Health Service, Standing Rock Public Health Service Hospital, Fort Yates, North Dakota, shall:

1. Cease and desist from:

(a) Failing to give notice and refusing to bargain with the Laborers' International Union of North America, Local 580, AFL-CIO, concerning the increase in rents that it charged unit employees beginning March 12, 2000.

(b) Unilaterally implementing changes in working conditions of its unit employees government-provided housing without first providing the Laborers' International Union of North America, Local 580, AFL-CIO, with notice of the change and an opportunity to bargain over the change to the extent required by the Federal Service Labor-Management Relations Statute.

(c) Failing to respond to the Laborers' International Union of North America, Local 580, AFL-CIO, request to negotiate over the increase in housing rental rates for bargaining unit employees.

(d) 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) Rescind the March 12, 2000 increase in rental rates for bargaining unit employees.

(b) Effect a further decrease in rental rates charged bargaining unit employees for a period of time necessary to offset the difference between the unlawfully implemented rate and the former rate until such time as the affected employees have been made whole.

(c) Notify, and upon request, negotiate with the Laborers' International Union of North America, Local 580, AFL-CIO, concerning any proposed change in rental rates.

(d) Post at the Standing Rock Public Health Service Hospital, Fort Yates, North Dakota, 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, Standing Rock Public Health Service Hospital, Fort Yates, North Dakota, 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 Notice are not altered, defaced or covered by any other material.

(e) 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, D.C., October 9, 2001.

Judge

SUSAN E. JELEN
Administrative Law

NOTICE TO ALL EMPLOYEES
POSTED BY ORDER OF THE
FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the Department of Health and Human Services, Public Health Service, Indian Health Service, Standing Rock Public Health Service Hospital, Fort Yates, North Dakota 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 fail to provide the Laborers' International Union of North America, Local 580, AFL-CIO, the exclusive representative of our employees, with notice concerning increases in rental rates that were implemented/charged on March 12, 2000.

WE WILL NOT unilaterally implement changes in working conditions of unit employees' government-provided housing without first providing the Laborers' International Union of North America, Local 580, AFL-CIO, with notice of the change and an opportunity to bargain over the change to the extent required by the Federal Service Labor-Management Relations Statute.

WE WILL NOT fail to respond to the Laborers' International Union of North America, Local 580, AFL-CIO, request to negotiate over the increase in housing rental rates for bargaining 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 rescind the March 12, 2000 increase in rental rates for government-owned housing rented by bargaining unit employees.

WE WILL effect a further decrease in rental rates charged bargaining unit employees for a period of time necessary to offset the difference between the unlawfully implemented rate and the former rate until such time as the affected employees have been made whole.

WE WILL notify, and upon request, negotiate with the Laborers' International Union of North America, Local 580, AFL-CIO, concerning any proposed change in rental rates for bargaining unit employees.

(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 with the Regional Director, Chicago Regional Office, 55 W. Monroe, Suite 1150, Chicago, Illinois 60603, and whose telephone number is (312)353-6306.

CERTIFICATE OF SERVICE

I hereby certify that copies of this **DECISION** issued by SUSAN E. JELEN, Administrative Law Judge, in Case No. CH-CA-00693, were sent to the following parties:

CERTIFIED MAIL:

CERTIFIED NUMBERS:

John Gallagher, Esquire
7000-1670-0000-1176-3320
Federal Labor Relations Authority
55 West Monroe, Suite 1150
Chicago, IL 60603

E. Denise Goodface
7000-1670-0000-1176-3337
AA, Indian Health Service
115 4th Avenue, SE., Rm. 309
Aberdeen, SD 57401

Gerald Schmitt, Business Manager
7000-1670-0000-1176-3467
LIUNA, Local 580
1323 E. Front Avenue, #8
Bismarck, ND 58504

Shelly Harris, Chief Steward
7000-1670-0000-1176-3429
LIUNA, Local 580
P.O. Box 915
Belcourt, ND 58316

CATHERINE L. TURNER, LEGAL TECHNICIAN

DATED: OCTOBER 9, 2001
WASHINGTON, DC