

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

DEPARTMENT OF VETERANS AFFAIRS CARL VINSON MEDICAL CENTER DUBLIN, GEORGIA Respondent and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1985 Charging Party	Case No. AT-CA-00554

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 16, 2001**, and addressed to:

Federal Labor Relations Authority
Office of Case Control
607 14th Street, NW, 4th Floor
Washington, DC 20424

RICHARD A. PEARSON
Administrative Law Judge

Dated: March 15, 2001
Washington, DC

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
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WASHINGTON, D.C. 20424-0001

MEMORANDUM
2001

DATE: March 15,

TO: The Federal Labor Relations Authority

FROM: RICHARD A. PEARSON
Administrative Law Judge

SUBJECT: DEPARTMENT OF VETERANS AFFAIRS
CARL VINSON MEDICAL CENTER
DUBLIN, GEORGIA

Respondent

and

Case No. AT-CA-00554

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
LOCAL 1985

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 01-26
WASHINGTON, D.C.

DEPARTMENT OF VETERANS AFFAIRS CARL VINSON MEDICAL CENTER DUBLIN, GEORGIA Respondent and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1985 Charging Party	Case No. AT-CA-00554

Ruth P. Dow, Esquire
For the General Counsel

William M. Thigpen, Esquire
Ellen M. Hastings, Esquire
For the Respondent

Before: RICHARD A. PEARSON
 Administrative Law Judge

DECISION ON MOTION FOR SUMMARY JUDGMENT

On September 28, 2000, the Acting Regional Director of the Atlanta Region of the Federal Labor Relations Authority (FLRA), issued a Complaint and Notice of Hearing alleging that the Department of Veterans Affairs, Carl Vinson Medical Center, Dublin, Georgia (the Respondent), violated section 7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute (the Statute), by repudiating a portion of the collective bargaining agreement (CBA), between the Respondent and the American Federation of Government Employees, Local 1985 (the Union). A hearing was scheduled for January 30, 2001.

On October 20, 2000, Counsel for the Respondent filed an Answer to the Complaint in which the Respondent admitted all but one of the factual allegations and all of the legal allegations of the Complaint, including the allegations that it had repudiated a portion of the CBA and had thereby violated section 7116(a)(1) and (5) of the Statute.

Thereafter, on January 17, 2001, Counsel for the General Counsel filed a Motion for Summary Judgment based on the Respondent's admission of all material allegations of the Complaint. Counsel for the Respondent responded to the Motion for Summary Judgment on February 1, 2001, and stated that the Respondent "will not be opposing the General Counsel's Motion for Summary Judgment."

By Order of the Chief Administrative Law Judge, the hearing was indefinitely postponed. In accordance with the evidence and pleadings in this case, I make the following findings of fact, conclusions of law, and recommendations.

Findings of Fact

The American Federation of Government Employees (AFGE), is the exclusive representative of a bargaining unit at the Department of Veterans Affairs and AFGE Local 1985 (the Union) is an agent of AFGE for purposes of representing employees at the Respondent's Carl Vinson Medical Center in Dublin, Georgia.

The Respondent and AFGE are parties to a collective bargaining agreement which covers employees at the Dublin facility, among others.

Article 21, paragraph 10 of the CBA states, in pertinent part:

Section 2(B). The Department will inform the local union in advance of a formal administrative investigation when a bargaining unit employee is the subject of the investigation or inquiry.

Section 2(K). The participation of bargaining unit employees on an administrative investigating board will be with the consultation of the Union.

On or about February 16, 2000, the Respondent convened an Administrative Investigation Board to investigate allegations of misconduct against Stifanos Almedom, a bargaining unit employee. The Respondent appointed one management official (Gail Haley) and two bargaining unit employees (Don Farris and Lillian Werner) to the investigation board.

The Respondent did not notify the Union that it was investigating Mr. Almedom, and it did not consult with the Union before appointing Mr. Farris and Ms. Werner to the investigation board.

Discussion and Conclusions

In the Complaint, the General Counsel alleges that Respondent's failure to notify the Union of the Almedom investigation and to consult with the Union concerning the appointments of Mr. Farris and Ms. Werner to the board constituted a repudiation of Article 21 of the parties CBA.

The Authority has long held that when an agency's interpretation of a provision of its collective bargaining agreement is arguably within the terms of the agreement, disputes over the interpretation should be resolved through the parties' grievance and arbitration process, rather than as an unfair labor practice. On the other hand, when an agency's interpretation of the negotiated agreement is such that it results in a "clear and patent breach of the terms of the agreement," an unfair labor practice has been committed. See, e.g., *Iowa National Guard and National Guard Bureau*, 8 FLRA 500, 510-11 (1982). As clarified by the Authority in *Department of Defense, Warner Robins Air Logistics Center, Robins Air Force Base, Georgia*, 40 FLRA 1211 (1991), and *Department of the Air Force, 375th Mission Support Squadron, Scott Air Force Base, Illinois*, 51 FLRA 858 (1996), this policy requires an examination of both the nature and scope of the alleged breach of the CBA and the nature of the contract provision allegedly breached. If the agency's interpretation of the contract is reasonable, or if the contract provision does not go to the heart of the CBA, then the agency has not committed an unfair labor practice.

In the current case, the Respondent has not raised any defenses to its alleged breach of Article 21 of the CBA, nor has it articulated any reasonable interpretation of the CBA as a basis for its failure to advise the Union of the Almedom investigation or to consult with the Union concerning the appointment of two bargaining unit employees to the investigative board. While the Respondent denied in its Answer that Ms. Werner was a member of the Union, it did not dispute the fact that both Ms. Werner and Mr. Farris were bargaining unit employees, and the language of Article 21, Section 2(K) of the CBA clearly requires consultation with the Union concerning the participation of "bargaining unit employees" on an administrative investigating board. Thus, the facts demonstrate a clear and patent breach of the CBA by the Respondent.

Although the determination of whether a contract breach "goes to the heart of the parties' collective bargaining

agreement" may vary, depending on the facts of each case and the context of a contractual provision within the agreement as a whole, the Respondent here has admitted that its conduct "repudiated the agreement" and that it violated section 7116(a)(1) and (5) of the Statute. I therefore conclude that the General Counsel has met its burden of proof that Respondent's failure to notify the Union of the investigation or to consult with the Union concerning the appointment of bargaining unit employees to the investigative board repudiated the CBA and thereby violated section 7116(a)(1) and (5) of the Statute.

Based on the above findings and conclusions, 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, Carl Vinson Medical Center, Dublin, Georgia, shall:

1. Cease and desist from:

(a) Convening Administrative Investigation Boards when a bargaining unit employee is the subject of the investigation or inquiry, without first notifying the local union, pursuant to the parties' collective bargaining agreement.

(b) Appointing bargaining unit employees as members of an Administrative Investigation Board without first consulting with the local union, pursuant to the parties' collective bargaining agreement.

(c) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of rights assured them 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 facilities at the Carl Vinson Medical Center, Dublin, Georgia, where employees represented by the American Federation of Government Employees, Local 1985 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 Director, Carl Vinson Medical Center, 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 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 15, 2001.

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, Carl Vinson Medical Center, Dublin, 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 inform the local union, in advance of a formal administrative investigation when a bargaining unit employee is the subject of the investigation or inquiry, pursuant to the master agreement.

WE WILL NOT appoint bargaining unit employees to Administrative Investigation Boards without first consulting with the Union, pursuant to the master agreement.

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 Federal Service Labor-Management Relations Statute.

(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 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) 331-5212.

CERTIFICATE OF SERVICE

I hereby certify that copies of the **DECISION** issued by RICHARD A. PEARSON, Administrative Law Judge, in Case No. AT-CA-00554, were sent to the following parties:

CERTIFIED MAIL & RETURN RECEIPT

CERTIFIED NOS:

Ruth Pippin Dow, Esquire
Federal Labor Relations Authority
Marquis Two Tower, Suite 701
285 Peachtree Center Avenue, NE
Atlanta, GA 30303

P168-060-276

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Janice Stewart, President
AFGE, Local 1985
P.O. Box 1874
Dublin, GA 31021

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REGULAR MAIL:

President
AFGE, AFL-CIO
80 "F" Street, NW.
Washington, DC 20001

CATHERINE L. TURNER, LEGAL TECHNICIAN

DATED: MARCH 15, 2001
WASHINGTON, DC