

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

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1061, AFL-CIO Respondent	
and CHRIS M. SARIA, An Individual Charging Party	Case No. SF-CO-60527

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. § 2423.26(b).

PLEASE BE ADVISED that the filing of exceptions to the attached Decision is governed by 5 C.F.R. §§ 2423.26(c) through 2423.29, 2429.21 through 2429.25 and 2429.27.

Any such exceptions must be filed on or before **FEBRUARY 18, 1997**, and addressed to:

Federal Labor Relations Authority
Office of Case Control
607 14th Street, NW, 4th Floor
Washington, DC 20424-0001

SAMUEL A. CHAITOVITZ

Chief Administrative Law

Judge

Dated: January 16, 1997
Washington, DC

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

MEMORANDUM

DATE: January 16, 1997

TO: The Federal Labor Relations Authority

FROM: SAMUEL A. CHAITOVITZ
Chief Administrative Law Judge

SUBJECT: AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 1061, AFL-CIO

Respondent

and Case No. SF-
CO-60527

CHRIS M. SARIA, An Individual

Charging Party

Pursuant to section 2423.26(b) of the Rules and Regulations, 5 C.F.R. § 2423.26(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
WASHINGTON, D.C. 20424-0001

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1061, AFL-CIO Respondent	
and CHRIS M. SARIA, An Individual Charging Party	Case No. SF-CO-60527

Arthur Galvan
For the Respondent

Katharina Arnhold, Esq.
Stephanie Arthur, Esq.
For the General Counsel
of the FLRA

Before: SAMUEL A. CHAITOVITZ
Chief 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 U.S. Code, 5 U.S.C. § 7101, *et seq.* (Statute) and the Rules and Regulations of the Federal Labor Relations Authority (FLRA or Authority), 5 C.F.R. § 2411, *et seq.*

Based upon an unfair labor practice charge, as amended, filed by the Charging Party Chris M. Saria against American Federation of Government Employees, Local 1061, AFL-CIO (AFGE Local 1061 or Union), a Complaint and Notice of

Hearing was issued on behalf of the General Counsel (GC) of the FLRA by the Regional Director for the San Francisco Region of the FLRA. The Complaint alleges that AFGE Local 1061 violated § 7116(b)(1) and (8) of the Statute by failing and refusing to furnish a form SF-1188 to Saria. AFGE Local 1061 filed an Answer denying it had violated the Statute.

A hearing was held in Los Angeles, California, at which all parties were afforded a full opportunity to be represented, to be heard, to examine and cross-examine witnesses, and to introduce evidence. AFGE Local 1061 and the GC of the FLRA filed post hearing briefs, which have been carefully 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

A. Background

The American Federation of Government Employees, AFL-CIO (AFGE), is the exclusive collective bargaining representative of a nationwide unit of employees of the Department of Veterans Affairs (VA), including employees at the VA facility in Loma Linda, California (VA Loma Linda). AFGE Local 1061 is AFGE's agent for the purpose of representing employees at VA Loma Linda and at two other VA facilities. At each of the three facilities is a vice-president of the Union who is responsible for dealing with problems raised by the employees at their respective VA facility. The Union vice-president at each location is responsible for receiving the SF 1188 forms for each vice-president's own location.

AFGE Local 1061 held elections during October 1995. The result of the election, tabulated and reported in early November 1995 was that Frank Barkley was elected Union President and Don Grenier was elected Union Vice-President for VA Loma Linda. Arthur Galvan served as Union Business Agent¹ and Philip Haynes served as Chief Steward at VA Loma Linda. The results of the election were announced and posted at VA Loma Linda during November 1995. A list of all officers and officials of the Union were published in the Union newsletter "AFGE Today", which is mailed to every member.

¹

Galvan became AFGE Local 1061 Business Agent in September 1995. In February 1995 he became an AFGE Vice-President for the VA Council.

At all times material herein Saria was employed at VA Loma Linda as a telephone operator, in the unit represented by AFGE Local 1061.

The Master Agreement (MA) between VA and AFGE that was in effect at all material times provides in Article 31 Section 6 ("Revocation") A:

A. Employees may revoke their dues withholding only once a year, on the anniversary date of their original allotment, by submitting a timely SF 1188 to the union representatives designated for such purpose. The union representative must certify by date and signature the date the 1188 is given to the union representative or by some appropriate date stamping device. In order for the SF 1188 to be timely, it must be submitted to the Union between the anniversary date of the effective date of the dues withholding and 30 calendar days prior to the anniversary date.²

Saria joined the Union in March 1994 and executed a dues check-off authorization form SF-1187 on March 11, 1994. Her anniversary date for check-off purposes is March 20, 1994. Form SF 1187 states, in part, "I further understand that Standard Form 1188, Cancellation of Payroll Deductions for Labor Organization Dues, is available from my employing agency, and that I may cancel this authorization by filing Standard Form 1188 ... with the payroll office of my employing agency."

If the employee is unable to secure an SF 1188 form from the Union, the employee can obtain one from the employer's personnel office at each VA facility. Other than the MA, there are no Union written procedures for an employee to withdraw from the Union or describing the 30 day window. There is nothing posted instructing the employees were to obtain an SF 1188 or stating that the form was available at the facility personnel office.

B. Incidents beginning December 1995

A shift change was instituted among the telephone operators at VA Loma Linda. Some of the telephone

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The Union negotiated this clause because it did not want to be responsible for receiving SF 1188 forms more than 30 days before an employee's anniversary date.

operators, including Saria, were displeased with the shift change. The assistance of the Union was sought.

With respect to the following telephone conversations, conversations and meetings involving Saria, Galvan, and Barkley, I credit Barkley's and Galvan's versions of the occurrences and not Saria's, when they are in conflict. I find Galvan's and Barkley's testimony to be relatively clear and consistent, and their memories seemed very reliable. Saria's testimony seemed confused, her memory seemed less reliable and she was less forthcoming.

One evening in January 1996, at about 8:00 pm, Galvan, while in the Union office, received a telephone call from Saria. Galvan told Saria that if she had a complaint or problem she would have to contact Don Grenier, the Vice-President for VA Loma Linda, and that Galvan was the Business Agent and that he was not in the office to do Union business, but that he was there to prepare a newsletter. Saria called back at about 9:00 pm to ask how to get in touch with Grenier. Galvan advised her that if she could not get in touch with Grenier she should contact Frank Barkley, and he gave her Barkley's 800 number. She stated she would contact Barkley. She did not, in either call, mention any desire to quit the Union, nor did she request Galvan to provide her with an SF 1188.

Saria called Barkley in January 1996, and through his paging service left him extensive messages about her dissatisfaction with the Union's representation. She did not state that she wished to withdraw from the Union.

Saria called Barkley on a Thursday in January 1996 and told him they were having a problem concerning the shift change and she wanted Barkley at a meeting. She said the VA was treating her badly and she was trying to get help and no one was helping her. She did not mention any desire to withdraw from the Union, ask for any form SF 1188 or express any desire to revoke her union dues check-off.

On the following Monday, Barkley was at a meeting in San Diego, with Grenier, and they drove back to attend a meeting at VA Loma Linda. The meeting occurred in mid to late January 1996, on Monday, at about 3:00 pm in the trailer park at VA Loma Linda. In addition to Barkley and Grenier, Chief Steward Todd Haynes was present at the meeting with all the VA telephone operators at VA Loma Linda, including Saria.

The meeting dealt with the shift change problem. At the meeting, Barkley told the assembled telephone operators

that if there was a problem at the facility they should contact the local Union Vice-President, in this case Grenier, and the facility Chief Steward Haynes. Barkley told those assembled that only if the Union officials at VA Loma Linda could not help them should they call him. Barkley also gave them the Union's 800 number, which is also posted at the facility. Galvan advised the meeting that as Business Agent, he worked for the Union and the only way he could be utilized was to go through Barkley or the VA Loma Linda Vice-President. At no time during the meeting was there a request by Saria for an SF 1188 or any discussion of her desire to revoke her dues deduction.³

In January Saria called the Union office and spoke to Grenier. She told Grenier that Galvan had promised to give her a signed release from her dues. Grenier said he knew nothing about it, but he would get in touch with Galvan and then would get back in touch with Saria. He never got back to Saria. I credit Saria's undenied testimony as to this conversation, noting that Grenier was not called as a witness by the Union.

Chief Steward Haynes, apparently also during January, called Saria and asked her for her anniversary date. Saria replied that he had all the records and why would he ask her that question. He said he would get back to her in a couple of days and that he would bring her the form that would release her from the Union. He never contacted her again. She called him on a number of occasions but was never able to reach him. Again, I credit Saria's undenied testimony as to this conversation, noting that Haynes was not called as a witness by the Union.

Union Steward Jose Ortega called Saria about 4 days after her conversation with Haynes. She did not receive the call, but a co-worker, who had received it, told Saria that Ortega had called. The next night Saria saw Ortega, who told her that Barkley had decided that Saria's anniversary date for getting out of the Union had been changed and that Barkley would write Saria a letter. Ortega said something about a month period. Saria did not understand what Ortega meant but she understood that the letter would explain it. She thought Ortega's statement meant that her anniversary date had passed and that she was no longer eligible to get out of the Union.

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In this regard I note that the General Counsel of the FLRA called none of the other telephone operators who were at this meeting as witnesses.

Saria never got an SF 1188 from the Union, nor did she get a letter from the Union explaining the procedure for withdrawal. Throughout this entire period Saria did not know what an SF 1188 was. She was not told, nor was she aware, that a release form was available from any office other than from the Union.

When employees join the Union, standard procedure is to advise the new member that the anniversary date is the next date the employee could get out. The record does not establish that Saria was so advised by Galvan, who signed her up in March 1994. Saria was not advised of her anniversary date in early 1996.

At VA Loma Linda new employees are given a copy of the MA when they are employed, but the record does not establish this was the case 14 years ago when Saria was employed by VA Loma Linda or that she received a copy of the MA. The Union did not publish or post instructions concerning the procedures for revoking dues check-off.

It was common knowledge, in accordance with the MA, that dues revocation was to be accomplished by submitting the dues revocation form to the Union between the employee's anniversary date and 30 calendar days prior to that date. The record does not establish that Saria knew of this requirement. It was the Union's practice not to provide an employee with the SF 1188 more than 30 days before the employee's anniversary date.

Discussion and Conclusions of Law

A. Statutory Provisions

Section 7102 of the Statute, entitled "Employees' rights," provides, in part:

Each employee shall have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right.

Section 7115 of the Statute, entitled "Allotments to representatives," provides, in part:

(a) If an agency has received from an employee in an appropriate unit a written assignment which authorizes the agency to deduct from the pay of the employee amounts

for the payment of regular and periodic dues of the exclusive representative of the unit, the agency shall honor the assignment and make an appropriate allotment pursuant to the assignment. . . . Except as provided under subsection (b) of this section, any such assignment may not be revoked for a period of 1 year.

Section 7116(b) (1) and (8) of the Statute provides:

(b) For the purpose of this chapter, it shall be an unfair labor practice for a labor organization--

(1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;

. . . .

(8) to otherwise fail or refuse to comply with any provision of this chapter.

B. AFGE Local 1061 failed to provide SF 1188 or to respond to Saria's request

Section 7115 of the Statute, although it authorizes employees to initiate and to revoke dues withholding allotments from their pay, prescribes no particular means for initiating or revoking dues withholding. The Authority recognized that a labor organization and an agency may define through negotiations the procedures for implementing § 7115 of the Statute. *Federal Employees Metal Trades Council, AFL-CIO, Mare Island Naval Shipyard*, 47 FLRA 1289, 1294 (1993) (*Mare Island*). While concluding that the Statute allows reasonable procedures be imposed upon dues revocation, the Authority does not allow revocation procedures which are inherently coercive. *American Federation of Government Employees, AFL-CIO*, 51 FLRA 1427, 1433-34 (1996) (*AFGE-VA*); *Department of the Navy, Portsmouth Naval Shipyard, Portsmouth, New Hampshire*, 19 FLRA 586 (1983).

The GC of the FLRA does not allege that the MA provision, Article 31 Section 6, which sets forth the procedure for revoking dues withholding is inherently coercive of the employees' right to revoke dues checkoff or

that the MA provision interfered with, restrained or coerced employees in their exercise of rights under either § 7115 or § 7102 of the Statute. See *AFGE-VA*, at 1437; *American Federation of Government Employees, AFL-CIO*, 52 FLRA 52, 56-57 (1996).

The GC of the FLRA does allege that AFGE Local 1061 interfered with, restrained and coerced Saria in the exercise of her rights under § 7115 and § 7102 of the Statute by the Union's conduct, or rather by its inaction.

I have found that Saria did not, in the incidents alleged by the GC of the FLRA, communicate with Galvan or Barkley concerning her desire to withdraw from the Union, nor did she request of them an SF 1188. However, the record does establish that, in January 1996, Saria did communicate with Grenier, the Union Vice-President for VA Loma Linda, and expressed her desire to revoke her dues, and Grenier said he would get in touch with her. He never did.

Similarly, during January 1996, she communicated her desire to Union Chief Steward Haynes, who, after inquiring into her anniversary date, which she did not know, said he would bring her a release form in a few days. He never contacted her again. Saria attempted to communicate again with Haynes a number of times, but was unsuccessful.

Five days after her conversation with Haynes, in early February 1996, spoke to Union Steward Ortega, who mentioned something about Saria's anniversary date and that she would get a letter from the Union explaining the situation. Saria never received such a letter.

The record establishes that during January and February, 1996, Saria repeatedly expressed to the Union her desire to revoke her membership and made several unsuccessful requests to the Union for a form to revoke her dues checkoff. The Union's inaction and failure to respond to Saria interfered with, restrained or coerced Saria in the exercise of the right guaranteed by § 7115 of the Statute to revoke her dues withholding authorization after one year. Accordingly I conclude AFGE Local 1061's conduct violated § 7116(b)(1) and (8) of the Statute. *AFGE-VA* at 1438. Further the Union's conduct violated § 7116(b)(1) and (8) of the Statute by interfering with, restraining or coercing Saria in the exercise of her right under § 7102 of the Statute to refrain from joining or assisting a labor organization. *Id.* at 1438.

AFGE Local 1061 argues that all new employees were given copies of the MA when employed and the procedures for withdrawing from the Union are explained, and that Saria's request was untimely. However the record does not establish that Saria was ever given a copy of the MA or that the withdrawal procedures were explained to her. Further, Saria did not even know her anniversary date. The back of her Union membership card merely indicated March, 1995, with no date set forth. None of the foregoing justifies the Union's failure to respond to Saria's request to revoke her dues withholding, or to at least explain to her the appropriate procedure. *Id.* at 1438.

C. Remedy

Having concluded that AFGE Local 1061 violated § 7116 (b) (1) and (8) of the Statute, it is recommended that the Authority issue the following Order:

Order

Pursuant to § 2423.29 of the Authority's Regulations and § 7118 of the Federal Service Labor-Management Relations Statute, American Federation of Government Employees, AFL-CIO, Local 1061, shall:

1. Cease and desist from:

(a) Failing or refusing, by its application of the nationwide collective bargaining agreement between the Department of Veterans Affairs and the American Federation of Government Employees, AFL-CIO or otherwise, to promptly furnish an SF 1188 to Chris M. Saria or to any Local 1061 member who requests one.

(b) Interfering with, restraining or coercing Chris M. Saria, or any other employee, in the exercise of rights to revoke dues withholding authorization at intervals of one year.

(c) 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) Make Chris M. Saria whole for all dues and monies which were withheld from her pay since March 20, 1996, the anniversary date at which time her SF 1188 would have been effective had it been processed in a timely manner.

(b) Post at its business offices, and in all places where notices to bargaining unit employees represented by it are customarily posted, 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 President of AFGE Local 1061, and shall be posted and maintained for 60 consecutive days thereafter. Reasonable steps shall be taken to insure that such notices are not altered, defaced, or covered by any other material.

(c) Submit appropriate signed copies of the Notice to the U.S. Department of Veterans Affairs for posting in conspicuous places where unit employees represented by AFGE Local 1061 are located in VA facilities located at Loma Linda, West Los Angeles, and Long Beach, California. Copies of the Notices should be maintained for a period of 60 consecutive days from the date of posting.

(d) Pursuant to section 2423.30 of the Authority's Rules and Regulations, notify the Regional Director, San Francisco 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, January 16, 1997

—

Judge

SAMUEL A. CHAITOVITZ
Chief Administrative Law

NOTICE TO OUR MEMBERS

POSTED BY ORDER OF THE

FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the American Federation of Government Employees, AFL-CIO, Local 1061 violated the Federal service Labor-Management Relations Statute and has ordered us to post and abide by this notice:

We hereby notify all AFGE Local 1061 members that:

WE WILL NOT fail or refuse, by our application of the nationwide collective bargaining agreement between the Department of Veterans Affairs and the American Federation of Government Employees, AFL-CIO or otherwise, to promptly furnish an SF 1188 to Chris M. Saria or to any Local 1061 member who requests one.

WE WILL NOT interfere with, restrain or coerce Chris M. Saria, or any other employee, in the exercise of rights to revoke dues withholding authorization at intervals of one year.

WE WILL NOT in any like or related manner interfere with, restrain or coerce employees in the exercise of their rights assured by the Federal Service Labor-Management Relations Statute.

WE WILL make Chris M. Saria whole for all dues and monies which were withheld from her pay since March 20, 1996, the anniversary date at which time her SF 1188 would have been effective had it been processed in a timely manner.

—

(AFGE Local 1061)

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 its provision, they may communicate directly with the Regional Director for the Federal Labor Relations Authority, whose address is: 901 Market Street, Suite 220, San Francisco, CA 94103-1791 and whose telephone number is (415) 356-5000.

CERTIFICATE OF SERVICE

I hereby certify that copies of this DECISION issued by SAMUEL A. CHAITOVITZ, Chief Administrative Law Judge, in Case No. SF-CO-60527, were sent to the following parties in the manner indicated:

CERTIFIED MAIL:

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Washington, DC 20001

Dated: January 16, 1997
Washington, DC