

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

DEPARTMENT OF HEALTH AND HUMAN SERVICES CENTERS FOR DISEASE CONTROL AND PREVENTION ATLANTA, GEORGIA Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 2883, AFL-CIO Charging Party	Case No. AT-CA-01-0576

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 July 6, 2004, and addressed to:

Federal Labor Relations Authority
Office of Case Control
1400 K Street, NW, 2nd Floor
Washington, DC 20424-0001

RICHARD A. PEARSON
Administrative Law Judge

Dated: June 3, 2004
Washington, DC

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

MEMORANDUM

DATE: June 3, 2004

TO: The Federal Labor Relations Authority

FROM: RICHARD A. PEARSON
Administrative Law Judge

SUBJECT: DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR DISEASE CONTROL
AND PREVENTION
ATLANTA, GEORGIA

Respondent

and

Case No. AT-CA-01-0576

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 2883, 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 are the transcripts, exhibits and any briefs filed by the parties.

Enclosures

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

DEPARTMENT OF HEALTH AND HUMAN SERVICES CENTERS FOR DISEASE CONTROL AND PREVENTION ATLANTA, GEORGIA, Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 2883, AFL-CIO Charging Party	Case No. AT-CA-01-0576

Brent Hudspeth, Esquire
For the General Counsel

Murray Kampf, Esquire
For the Respondent

Sheila M. Rawls, President
For the Charging Party

Before: RICHARD A. PEARSON
Administrative Law Judge

DECISION AND ORDER REMANDING CASE

On September 28, 2001, the Regional Director of the Atlanta Regional Office of the Federal Labor Relations Authority issued a Complaint and Notice of Hearing alleging that the Respondent violated section 7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute (the Statute) by refusing to bargain with the Charging Party before converting 21 general use parking spaces to reserved parking. The Respondent subsequently filed an answer denying the allegations of the complaint.

A hearing in this case was held on January 8, 2002, in Atlanta, Georgia, at which all parties had the opportunity to call and examine witnesses. Among the defenses raised by the Respondent for its conduct was its assertion that the change in parking arrangements had only a *de minimis* impact on bargaining unit employees' working conditions. The General

Counsel argued in response that because parking arrangements are a substantively negotiable subject of bargaining, the Respondent was obligated to bargain regardless of its impact on employees. The parties subsequently filed post-hearing briefs and the record was closed.

Recently, the Authority issued a decision in *Social Security Administration, Office of Hearings and Appeals, Charleston, South Carolina*, 59 FLRA 646 (2004) (SSA). While the Authority prior to SSA had held that the *de minimis* rule applied only to changes arising out of an agency's exercise of management rights, it has now extended the *de minimis* test to substantively negotiable changes as well.

In response to the SSA decision, the General Counsel filed a motion on April 12, 2004, to remand the instant case to the Atlanta Regional Director "for reconsideration and action consistent with the [SSA] decision." I denied that motion, because I did not believe it was in the interest of justice for the case to be remanded on such ambiguous grounds, or for the Regional Director to have broad discretion and control over the ultimate handling of the case. Instead, I asked for the parties to submit position statements as to the appropriate disposition of the case, in light of SSA. The parties have submitted position statements, and resolution of the case is now appropriate.

The General Counsel, which issued the Complaint alleging that the Respondent violated the Statute, has now concluded that the reasonably foreseeable impact of the change was *de minimis*; therefore, in light of the SSA decision, the Respondent was not obligated to bargain over the change. The General Counsel, joined by the Charging Party, asks that the case be remanded to the Regional Director to enable the Charging Party to withdraw its unfair labor practice charge. The General Counsel's position statement indicates that the Respondent joins in this motion, but the Respondent also submitted its own position statement, in which it requested that I rule on the underlying unfair labor practice allegations and dismiss the Complaint.

Because the Charging Party has expressed its intention to withdraw its charge, and the General Counsel has stated its intent to approve the withdrawal, I find that the purposes and policies of the Statute are best served by allowing the charge to be withdrawn. I will therefore remand the case to the Regional Director for the purpose of effecting the withdrawal of the charge.

ORDER

Pursuant to sections 2423.31 and 2423.34 of the Authority's Rules and Regulations, permission to withdraw the Complaint is granted. The case is hereby remanded to the Regional Director for the purpose of approving the withdrawal of the charge.

Issued, Washington, DC, June 3, 2004.

RICHARD A. PEARSON
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of this DECISION, issued by RICHARD A. PEARSON, Administrative Law Judge, in Case No. AT-CA-01-0576, were sent to the following parties:

CERTIFIED MAIL AND RETURN RECEIPT

CERTIFIED NOS:

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Dated: June 3, 2004
Washington, DC