

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

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| DEPARTMENT OF VETERANS AFFAIRS GULF COAST VETERANS AFFAIRS HEALTH CARE SYSTEM BILOXI, MISSISSIPPI Respondent and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1045, AFL-CIO Charging Party | Case No. AT-CA-04-0523 |
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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 **MAY 2, 2005**, 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: March 30, 2005
Washington, DC

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

MEMORANDUM

DATE: March 30, 2005

TO: The Federal Labor Relations Authority

FROM: RICHARD A. PEARSON
Administrative Law Judge

SUBJECT: DEPARTMENT OF VETERANS AFFAIRS
GULF COAST VETERANS AFFAIRS
HEALTH CARE SYSTEM
BILOXI, MISSISSIPPI

Respondent

and

Case No. AT-CA-04-0523

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 1045, 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

05-26

FEDERAL LABOR RELATIONS AUTHORITYOffice of Administrative Law Judges
WASHINGTON, D.C.

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| DEPARTMENT OF VETERANS AFFAIRS GULF COAST VETERANS AFFAIRS HEALTH CARE SYSTEM BILOXI, MISSISSIPPI Respondent and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1045, AFL-CIO Charging Party | Case No. AT-CA-04-0523 |
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Ruth Pippin Dow
For the General Counsel

Before: RICHARD A. PEARSON
Administrative Law Judge

DECISION ON MOTION FOR SUMMARY JUDGMENT

On November 9, 2004, the Regional Director of the Atlanta Region of the Federal Labor Relations Authority (the Authority), issued a Complaint and Notice of Hearing alleging that the Department of Veterans Affairs, Gulf Coast Veterans Affairs Health Care System, Biloxi, Mississippi (the Respondent), violated section 7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute (the Statute). The complaint alleged that the Respondent failed to respond to a request by the American Federation of Government Employees, Local 1045 (the Charging Party or Union) to bargain over revised bylaws that were circulated to the medical staff and failed to advise the Union what changes were being made in the bylaws.

The complaint, which was served on the Respondent by certified mail, specified that Respondent's answer was to be filed by December 6, 2004, and that a failure to file an

answer would constitute an admission of the allegations of the complaint. A hearing was scheduled for March 3, 2005.

The Respondent did not submit anything in response to the complaint.

On February 4, 2005, Counsel for the General Counsel filed a Motion for Summary Judgment, asserting that by its failure to answer the complaint, the Respondent had admitted all of the allegations therein. Since no facts are in dispute, the General Counsel submits that the record demonstrates that the Respondent violated the Statute as alleged.

The Respondent filed no response to the 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. . . .

Not only did the Respondent fail to answer the allegations of the complaint in any manner, but it neither made any showing of good cause nor responded to the Motion for Summary Judgment. By its inaction, Respondent admitted the allegations of the complaint. Accordingly, there are no factual issues in dispute, 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

The Respondent is an agency as defined by 5 U.S.C. § 7103(a)(3). The American Federation of Government Employees (AFGE) is the exclusive representative of a bargaining unit that includes employees of the Respondent, and the Union is an agent of AFGE for purposes of representing employees of the Respondent.

On or about July 15, 2004, a representative of the Respondent sent an e-mail to all medical staff attaching a copy of "revised bylaws" for them to review and vote on. On or about July 21, 2004, a representative of the Union requested to bargain over the revised bylaws and that the Respondent identify the changes being made in the bylaws. Since on or about July 31, 2004, Respondent has failed to reply to the Union's request.

Discussion and Conclusions

The record before me establishes that the Respondent failed to respond to the Union's bargaining request. Under established precedent, such failure constitutes a violation of the Statute. In this regard, section 7114 of the Statute provides that a labor organization that is the exclusive representative of employees in a bargaining unit is entitled to act for and negotiate collective bargaining agreements covering employees in the unit. The Authority has held that the statutory obligation to bargain under section 7114 includes, at a minimum, the requirement that a party respond to a bargaining request. See, e.g., *Army and Air Force Exchange Service, McClellan Base Exchange, McClellan Air Force Base, California*, 35 FLRA 764, 769 (1990). A failure to respond in a timely manner to a request to bargain constitutes a violation of section 7116(a)(1) and (5) of the Statute. *Id.* The requirement that an agency respond is not dependent on a determination that the agency ultimately is required to engage in bargaining. See *U.S. Department of Justice, Immigration and Naturalization Service*, 55 FLRA 892, 900-02 (1999) (where a union requests bargaining and the agency does not respond to the request, the agency violates the duty to bargain even where the union did not submit specific proposals or negotiable proposals). Cf. *Department of Health and Human Services, Social Security Administration, New York Region, New York, New York*, 52 FLRA 1133, 1149-50 (1997) (the obligation to respond to a request for data under section 7114(b)(4) applies regardless of whether the information requested meets the criteria for disclosure set forth in that section).

In this case, by failing to respond to the complaint, the Respondent admitted that it failed to respond to the Union's request to bargain about the revised bylaws. By failing to respond to the Union's bargaining request, the Respondent violated section 7116(a)(1) and (5).

It is not clear whether the reference in the complaint to Respondent's claimed failure to identify the changes being made in the bylaws is intended to constitute an

allegation of a separate action and violation. With respect to the Union's request on this particular point, the factual record is extremely sparse and consists only of the bare allegations in the complaint. If the claim is intended to serve as an allegation discrete from the contention that Respondent failed to respond to the Union's request to bargain, I find that the record is insufficient to support finding a separate violation.¹

As a remedy for the Respondent's violations, the General Counsel requests, and I find it is appropriate, that a cease and desist order be issued and that the Respondent post a notice to employees signed by the Center Director throughout its facilities at the Department of Veterans Affairs, Gulf Coast Veterans Affairs Health Care System in Biloxi, Mississippi.

I therefore 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 (the Statute), it is hereby ordered that the Department of Veterans Affairs, Gulf Coast Veterans Affairs Health Care System, Biloxi, Mississippi (the Agency), shall:

1. Cease and desist from:

(a) Failing to respond to requests to bargain by the American Federation of Government Employees, Local 1045 (the Union), including the July 21, 2004, request to bargain about changes in medical staff bylaws.

(b) In any like or related manner, interfering with, restraining, or coercing its employees in the exercise of rights assured them by the Statute.

2. Take the following affirmative action in order to effectuate the purposes and policies of the Federal Service Labor-Management Relations Statute:

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Assuming that my recommended order that requires Respondent to reply to the Union's request for bargaining is adopted, any needs that the Union may continue to have for information regarding what Respondent is doing can be addressed in the context of that reply and any bargaining that develops.

(a) Respond to the July 21, 2004, request by the Union to bargain about changes in medical staff bylaws.

(b) Post at its facilities at the Department of Veterans Affairs, Gulf Coast Veterans Affairs Health Care System in Biloxi, Mississippi, where employees represented by the Union 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 Center Director 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.

(c) 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 30, 2005.

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, Gulf Coast Veterans Affairs Health System, Biloxi, Mississippi (the Agency), violated the Federal Service Labor-Management Relations Statute (the Statute), and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT fail or refuse to respond to requests to bargain by the American Federation of Government Employees, Local 1045 (the Union), including the July 21, 2004, request to bargain about changes in medical staff bylaws.

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 Statute.

WE WILL respond to the July 21, 2004, request by the Union to bargain about changes in the medical staff bylaws.

(Respondent)

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: Suite 701, Marquis Two Tower, 285 Peachtree Center Avenue, Atlanta, GA 30303-1270, and whose telephone number is: 404-331-5300, extension 5024.

CERTIFICATE OF SERVICE

I hereby certify that copies of the **DECISION** issued by RICHARD A. PEARSON, Administrative Law Judge, in Case No. AT-CA-04-0523, were sent to the following parties:

CERTIFIED MAIL & RETURN RECEIPT

CERTIFIED NOS:

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Federal Labor Relations Authority
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John Mechanic
AFGE, Local 1045
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President
AFGE
80 F Street, NW
Washington, DC 20001

Dated: March 30, 2005
Washington, D.C.