

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

U.S. DEPARTMENT OF VETERANS AFFAIRS VETERANS AFFAIRS MEDICAL CENTER CONSOLIDATED MAIL OUTPATIENT PHARMACY DALLAS, TEXAS  Respondent  and  AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 2437, AFL-CIO  Charging Party	Case No. DA-CA-02-0605

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/her 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. §§ 2423.40-41, 2429.12, 2429.21-2429.22, 2429.24-2429.25, and 2429.27.

Any such exceptions must be filed on or before **OCTOBER 15, 2002**, and addressed to:

Office of Case Control  
Federal Labor Relations Authority  
607 14th Street, N.W., Suite 415  
Washington, D.C. 20424

PAUL B. LANG  
Administrative Law Judge

Dated: September 13, 2002  
Washington, DC

UNITED STATES OF AMERICA  
**FEDERAL LABOR RELATIONS AUTHORITY**

Office of Administrative Law Judges  
WASHINGTON, D.C. 20424-0001

MEMORANDUM

DATE: September 13, 2002

TO: The Federal Labor Relations Authority

FROM: PAUL B. LANG  
Administrative Law Judge

SUBJECT: U.S. DEPARTMENT OF VETERANS AFFAIRS  
VETERANS AFFAIRS MEDICAL CENTER  
CONSOLIDATED MAIL OUTPATIENT PHARMACY  
DALLAS, TEXAS

Respondent

and  
CA-02-0605

Case No. DA-

AMERICAN FEDERATION OF GOVERNMENT  
EMPLOYEES, LOCAL 2437, AFL-CIO

Charging Party

Pursuant to section 2423.27(c) of the Rules and Regulations 5 C.F.R. § 2423.27(c), 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 Motions for Summary Judgment and other supporting documents filed by the parties.

Enclosures

**FEDERAL LABOR RELATIONS AUTHORITY**  
Office of Administrative Law Judges                      OALJ 02-59  
WASHINGTON, D.C.

U.S. DEPARTMENT OF VETERANS AFFAIRS VETERANS AFFAIRS MEDICAL CENTER CONSOLIDATED MAIL OUTPATIENT PHARMACY DALLAS, TEXAS <p style="text-align:right">Respondent</p> and  AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 2437, AFL-CIO <p style="text-align:right">Charging Party</p>	Case No. DA-CA-02-0605

Lynne McNerney, Representative  
For the Respondent

Nora E. Hinojosa, Esquire  
For the General Counsel

Before:     PAUL B. LANG  
              Administrative Law Judge

**DECISION ON MOTION FOR SUMMARY JUDGMENT**

On July 31, 2002, pursuant to 5 C.F.R. § 2423.20(a)<sup>1</sup>, the Regional Director of the Dallas Region issued and served a Complaint and Notice of Hearing on the Office of Administrative Law Judges. The Regional Director simultaneously served a copy of the Complaint and Notice of Hearing on the U.S. Department of Veterans Affairs, Veterans Affairs Medical Center, Consolidated Mail Outpatient Pharmacy, Dallas, Texas (the Respondent). The pleading included notice to the Respondent that its Answer to the Complaint had to be filed no later than August 26, 2002, and further stated that, absent a showing of good cause to the contrary, a failure to file an answer or to respond to any allegation in the Complaint would be deemed an admission.

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<sup>1</sup>

The Rules and Regulations of the Authority are set forth in 5 C.F.R. § 2411.1, *et seq.*

On September 5, 2002, pursuant to §2423.27 of the Authority's Rules and Regulations, the General Counsel filed a Motion for Summary Judgment on the grounds that the Respondent had failed to answer the Complaint. On September 12, 2002 (the date by which it was required to respond to the motion), the Respondent filed by facsimile copy, in letter form a "Response to Complaint and Notice of Hearing." The Response did not address each of the allegations of the Complaint as required by §2423.20(b) of the Rules and Regulations, but it did set forth the Respondent's position on the underlying issues. However, the Respondent neither denied nor attempted to justify its late response to the Complaint, nor did it show cause why the Motion for Summary Judgment should not be granted.

### **Discussion and Analysis**

The Authority has stated clearly that parties appearing before it are charged with knowledge of all pertinent statutory and regulatory filing requirements. *U.S. Environmental Protection Agency, Environmental Research Laboratory, Narragansett, Rhode Island*, 49 FLRA 33, 37 (1994). §2423.20(b) of the Rules and Regulations provides that the Respondent shall file and serve its answer to the complaint within 20 days of the date of service of the complaint, but, in any event, prior to the start of the hearing.<sup>2</sup> §2423.27(b) of the Rules and Regulations requires responses to motions for summary judgment to be filed within 5 days after the date of service of the motion.

Even if the Respondent's letter of September 12, 2002, is considered to be a timely response to the Motion for Summary Judgment as well as a significantly untimely answer to the Complaint, the Respondent has not explained why its answer was late, nor has it stated good cause why the motion should not be granted. Therefore, in view of the Respondent's untimely answer and in accordance with §2423.20(b) of the Rules and Regulations, the Respondent is deemed to have admitted the allegations of the Complaint.

### **Findings and Conclusions**

1. The U.S. Department of Veterans Affairs (DVA), Veterans Affairs Medical Center, Consolidated Mail Outpatient

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The Regional Director apparently allowed the Respondent an additional three week days past the 20 day period, which expired on Wednesday, August 21, 2002, because the Complaint and Notice of Hearing had been mailed. Since August 24 fell on a Saturday, the Respondent's answer was due on Monday, August 26, 2002.

Pharmacy, Dallas, Texas (Respondent), is an agency under 5 U.S.C. §7103(a) (3).

2. The American Federation of Government Employees, AFL-CIO (AFGE), is a labor organization under 5 U.S.C. §7103(a) (4) and is the exclusive representative of a unit of employees appropriate for collective bargaining at the DVA.
3. The American Federation of Government Employees, Local 2437 (AFGE Local 2437 or Charging Party), is an agent of AFGE for the purpose of representing employees at Respondent within the unit described in paragraph 3.
4. The charge in Case No. DA-CA-02-0605 was filed by AFGE, Local 2128 with the Dallas Regional Director on May 30, 2002.
5. A copy of the charge described in paragraph 5 was served on the Respondent.
6. During the time period covered by this complaint, the person listed below occupied the positions opposite his name:  

Jay Cooper Director
7. During the time period covered by this complaint, the person named in paragraph 7 was a supervisor and/or management official under 5 U.S.C. §§ 7103(a) (10) and (11) at the Respondent.
8. During the time period covered by this complaint, the person named in paragraph 7 was acting on behalf of the Respondent.
9. AFGE and the DVA are parties to a collective bargaining agreement covering employees in the bargaining unit described in paragraph 3.
10. On or about February 20, 2002, the Respondent, through Cooper, refused to participate in the selection of arbitrators for a grievance which had been filed by AFGE Local 2437 on November 5, 2001 and elevated to arbitration on December 26, 2001.

In view of the foregoing findings and conclusions, the General Counsel's Motion for Summary Judgment is hereby, Granted.

I further find that, by its refusal to cooperate in the selection of arbitrators for a grievance which was filed by the American Federation of Government Employees, Local 2437, AFL-CIO, the Respondent has failed to comply with §7121 of the Federal Service Labor-Management Relations Statute and has committed an unfair labor practice in violation of §7116 (a) (1) and (8) of the Statute.

Accordingly, I recommend that the Authority adopt the following Order:

**ORDER**

Pursuant to §2423.41(c) of the Authority's Rules and Regulations and §7118 of the Federal Service Labor-Management Relations Statute, it is hereby ordered that the U.S. Department of Veterans Affairs, Veterans Affairs Medical Center, Consolidated Mail Outpatient Pharmacy, Dallas, Texas:

1. Cease and desist from:

(a) Refusing to participate in the selection of arbitrators for the grievance which was filed by the American Federation of Government Employees, Local 2437, AFL-CIO on November 5, 2001, and elevated to arbitration on December 26, 2001.

(b) 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.

10.2 Take the following affirmative action in order to effectuate the purposes and policies of the Statute:

(a) Post at its Dallas, Texas, facilities where bargaining unit employees represented by the American Federation of Government Employees, Local 2437, AFL-CIO 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, 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 §2423.41(e) of the Rules and Regulations of the Authority, notify the Regional Director, Dallas Region, of the Federal Labor Relations Authority in writing within 30 days of the date of this Order as to what steps have been taken to comply.

Issued, Washington, DC, September 13, 2002.

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PAUL B. LANG  
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 U.S. Department of Veterans Affairs, Veterans Affairs Medical Center Consolidated Outpatient Pharmacy, Dallas, Texas, 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 refuse to participate in the selection of arbitrators for the grievance which was filed by the American Federation of Government Employees, Local 2437, AFL-CIO, on November 5, 2001, and elevated to arbitration on December 26, 2001.

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, upon request of the American Federation of Government Employees, Local 2437, AFL-CIO, proceed to arbitration concerning the grievance filed on November 5, 2001, and elevated to arbitration on December 26, 2001.

\_\_\_\_\_  
(Respondent/Activity)

Date: \_\_\_\_\_ 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, Dallas Regional Office, Federal Labor Relations Authority, whose address is: 525 Griffin Street, Suite 926, Dallas, TX 75202 and whose telephone number is: (214)767-4996.

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the **DECISION** issued by PAUL B. LANG, Administrative Law Judge, in Case No. DA-CA-02-0605, were sent to the following parties:

**CERTIFIED MAIL & RETURN RECEIPT**

**CERTIFIED NOS:**

Nora E. Hinojosa, Esquire  
7000-1670-0000-1175-6537  
Federal Labor Relations Authority  
525 Griffin Street, Suite 926  
Dallas, TX 75202

Lynne McNerney 7000-1670-0000-1175-6544  
Employee Relations Specialist  
Department of Veterans Affairs  
VAMC, North Texas Health Care System  
4500 South Lancaster Road  
Dallas, TX 75216

Donald Burrell, President  
7000-1670-0000-1175-6551  
AFGE Local 2437  
P.O. Box 397690  
Dallas, TX 75339

**REGULAR MAIL:**

Bobby Harnage, National President  
AFGE, AFL-CIO  
80 "F" Street, N.W.  
Washington, D.C. 20001

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CATHERINE L. TURNER, LEGAL TECHNICIAN

DATED: SEPTEMBER 13, 2002  
WASHINGTON, DC