

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY

Office of Administrative Law Judges

WASHINGTON, D.C. 20424-0001

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO, LOCAL 3137 Respondent	
and DEPARTMENT OF AGRICULTURE U.S. FOREST SERVICE ALBUQUERQUE, NEW MEXICO Charging Party	Case No. DA-CO-90649

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, issued pursuant to 5 C.F.R. § 2423.31(d), 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 22, 2000**, and addressed to:

Office of Case Control
Federal Labor Relations Authority
607 14th Street, NW, Suite 415
Washington, DC 20424

GARVIN LEE OLIVER
Administrative Law Judge

Dated: April 19, 2000
Washington, DC

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY

Office of Administrative Law Judges

WASHINGTON, D.C. 20424-0001

MEMORANDUM
2000

DATE: April 19,

TO: The Federal Labor Relations Authority

FROM: GARVIN LEE OLIVER
Administrative Law Judge

SUBJECT: AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
AFL-CIO, LOCAL 3137

Respondent

and

Case No. DA-

CO-90649

DEPARTMENT OF AGRICULTURE
U.S. FOREST SERVICE
ALBUQUERQUE, NEW MEXICO

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, issued pursuant to section 2423.31 (d), the service sheet, and the transmittal form sent to the parties. Also enclosed in the record are the transcript, exhibits, filings or submissions made by the parties.

Enclosures

10 Pinon Road
Edgewood, NM 87015-9001

On behalf of the Charging Party:

CHARLES M. De CHATEAUVIEUX, Esq.
Federal Labor Relations Authority
525 S. Griffin Street, Suite 926
Dallas, TX 75202-5093

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42 15-minute recess.

(Off the record.)

(On the record.)

JUDGE OLIVER: Back on the record. This is a bench decision rendered at the close of the hearing pursuant to Section 2423.39 before the Authority's Regulations.

The Unfair Labor Practice complaint alleges that the respondent committed an Unfair Labor Practice in violation of 7116(b) (5) of the Federal Service Labor Management Relations Statute by failing to comply with Article 13, Section E of the parties' collective bargaining agreement by refusing to pay its share of the arbitration expenses of bargaining unit employee Aileen Garcia.

The Respondent's answer denied any violation of the Statute and asserted that all parties, including the Arbitrator, had agreed that the Union's share of the Arbitrator's fees would be paid by the Grievant, Aileen Garcia.

All parties were represented during the course of the hearing for full opportunity to be heard, adduce relevant evidence, and examine and cross-examine witnesses.

Based on the entire record, including my observation of the witnesses and their demeanor, I make the following finding of facts and conclusions of law and recommendations.

Findings of facts. The American Federation of Government Employees, AFL-CIO, Local 3137, is the exclusive

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representative of the unit of employees appropriate for collective bargaining at Respondent, Cibola National Forest, Albuquerque, New Mexico facility. AFGE Local 3137 and the Charging Party are parties to a collective bargaining agreement covering employees in the bargaining unit.

Article 13, Section E of the parties' collective bargaining agreement provides that the Arbitrator's fee and the expenses of arbitration, if any, shall be borne equally by the management and the Union.

On May 27, 1998, an arbitration hearing was held concerning the arbitration of the matters concerning the bargaining unit employee Aileen Garcia.

On February 6, 1999, the Arbitrator rendered his opinion and award concerning the arbitration, and the Arbitrator submitted his invoice for the arbitration expenses.

Since February 6, 1999, the Respondent Local 3137 has refused to pay the outstanding balance of the Garcia arbitration expenses.

It appears from an exhibit to the Respondent's answer that an earlier arbitration hearing was held in this matter involving the parties, and that the Arbitrator agreed on June 3, 1997, that the Union's half of the second arbitration would be paid by the Grievant and that Local 3137 would not be responsible for any fees except for the arbitration case on the threshold issues.

Respondent's Exhibit 1, a letter by Arbitrator dated June 14, 1997, reflects that, "in accordance with the Agreement of Parties," the Union should send its check for one-half of the first hearing and that the \$800 paid by the Grievant "will be credited to her bill for the second hearing charges."

The General Counsel's Exhibit 3 reflects that the Arbitrator is continuing to credit \$800 towards the second hearing but is now insisting that the Union pay the balance.

Conclusions of law. The General Counsel alleges that by its failure to pay its share of the Garcia arbitration expenses, the Respondent has committed an Unfair Labor Practice in violation of 5 U.S.C. 7116(b) (5), constituting a repudiation of Article 13, Section E of the parties' collective bargaining agreement.

In Department of the Air Force, 375th Mission Support Squadron, Scott Air Force Base, Illinois, 51 FLRA 858 (1996), the Authority clarified its analytical framework for determining whether a party's failure or refusal to honor an agreement constitutes a repudiation.

Consistent with the framework that was set forth in Department of Defense, Warner Robins Air Logistics Center, Robins Air Force Base, Georgia, 40 FLRA 1211 (1991), the Authority held that it will examine two elements of analyzing an allegation of repudiation.

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One, the nature and scope of the alleged breach of an agreement; that is, whether the agreement was clear and patent and the nature of the agreement provision allegedly

breached. Did the provision go to the heart of the parties' agreement? The examination of either element may require an inquiry into the meaning of the agreement provision allegedly breached.

With regard to first element, the Authority states that it is necessary to show that the respondent's action constituted a clear and patent breach of the terms of agreement. If the meaning of a particular agreement term is unclear and the parties act in accordance with a reasonable interpretation of that term, that action will not constitute a clear and patent breach of the terms of the agreement. In such a case, it is not necessary to examine the second element according to the Authority.

I conclude that the Union's failure to pay the remaining balance, that the Arbitrator has insisted be paid, and to insist that the Arbitrator look solely to the Grievant for payment is not a clear and patent breach of the collective bargaining agreement, but rather is a reasonable interpretation of the side agreement between the Arbitrator and the Union and the Grievant. This is to the first and only arbitration involving this Local, and it appears in other respects, the existing practice is that the parties adhere to the collective bargaining agreement.

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I conclude that the facts in this case do not demonstrate that the Respondent has disowned, rejected, or refused to recognize the agreement, but it is merely insisting on enforcement by the Arbitrator of his own agreement that his fee would be paid by the Grievant. See *AFGE, Local 1909*, 41 FLRA 18 (1991).

The Charging Party in this case has indicated that the Arbitrator is trying to look to it for payment of the remaining amount under the legal principle of Joint and Several Liability.

It's not my function to address that, but it seems like the Charging Party could simply refer to the signed agreement that the Arbitrator himself has recognized in his correspondence. Therefore, I recommend that the complaint be dismissed.

(The hearing concluded at 10:30 a.m.)

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CERTIFICATE OF SERVICE

I hereby certify that copies of this **DECISION** issued by GARVIN LEE OLIVER, Administrative Law Judge, in Case No. DA-CO-90649, were sent to the following parties:

CERTIFIED MAIL & RETURN RECEIPT

CERTIFIED NOS:

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CATHERINE L. TURNER, LEGAL TECHNICIAN

DATED: APRIL 19, 2000
WASHINGTON, DC