

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

MEMORANDUM

DATE: June 19, 2003

TO: The Federal Labor Relations Authority

FROM: WILLIAM B. DEVANEY
Administrative Law Judge

SUBJECT: DEPARTMENT OF VETERANS AFFAIRS
W.G. (BILL) HEFNER VA
MEDICAL CENTER
SALISBURY, NORTH CAROLINA

Respondent

and

Case No. WA-CA-02-0751

AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES
LOCAL 1738, AFL-CIO

Charging Party

Pursuant to section 2423.27(c) of the Final 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 is a Motion for Summary Judgment and other supporting documents filed by the parties.

Enclosures

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

DEPARTMENT OF VETERANS AFFAIRS W.G. (BILL) HEFNER VA MEDICAL CENTER SALISBURY, NORTH CAROLINA Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES LOCAL 1738, AFL-CIO Charging Party	Case No. WA-CA-02-0751

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 **JULY 21, 2003**, and addressed to:

Office of Case Control
Federal Labor Relations Authority
1400 K Street, NW, Suite 201
Washington, DC 20424-0001

WILLIAM B. DEVANEY
Administrative Law Judge

Dated: June 19, 2003
Washington, DC

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

DEPARTMENT OF VETERANS AFFAIRS W.G. (BILL) HEFNER VA MEDICAL CENTER SALISBURY, NORTH CAROLINA <p style="text-align: center;">Respondent</p>	
<p style="text-align: center;">and</p> AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES LOCAL 1738, AFL-CIO <p style="text-align: center;">Charging Party</p>	<p style="text-align: center;">Case No. WA-CA-02-0751</p>

Greg Weddle, Esq.
 For the General Counsel

Before: WILLIAM B. DEVANEY
 Administrative Law Judge

DECISION ON MOTION FOR SUMMARY JUDGMENT

Statement of the Case

The charge in this case was filed with the Washington Regional Director on August 9, 2002; however, the Complaint and Notice of Hearing was issued by the Chicago Region on April 16, 2003. The Complaint stated in relevant part that an Answer must be received by the Office of Administrative Law Judges, and a copy served on the Chicago Regional Office and on the Charging Party, not later than May 12, 2003. No Answer was filed and on May 27, 2003, General Counsel filed and served all parties by facsimile a Motion For Summary Judgment. No response was filed by Respondent and, on June 9, 2003, an Order was issued and served on all parties by facsimile cancelling the Hearing, set for July 2, 2003, in Charlotte, North Carolina; cancelled the pre-hearing conference, set for June 25, 2003; and ordering that the case be indefinitely postponed and decided on General Counsel's Motion For Summary Judgment.

Findings

The allegations of the Complaint, to which no Answer was filed, are admitted. Department of Veterans Affairs Medical Center, Asheville, North Carolina, 51 FLRA 1572, 1594 (1996) (VA Asheville) and the facts alleged are adopted as admitted.

1. The American Federation of Government Employees, AFL-CIO (AFGE) is the exclusive representative of an appropriate unit of employees of the Department of Veterans Affairs (VA).

2. The American Federation of Government Employees, Local 1738 (hereinafter, "Union") is an agent of AFGE for the purpose of representing bargaining unit employees of the Respondent W.G. (Bill) Hefner VA Medical Center (hereinafter, "Respondent").

3. On, or about, May 19, 2002, Respondent communicated directly with bargaining unit employees and polled the employees concerning their views on a proposed change in their work schedule.

4. By communicating directly with and polling bargaining unit employees, Respondent by-passed the Union and dealt directly with bargaining unit employees concerning their conditions of employment in violation of §§ 7116(a)(1) and (5) of the Statute.

Conclusions

Because there are no disputed factual or legal issues, Respondent has admitted that it by-passed the Union by communicating directly with, and polling, bargaining unit employees and dealing directly with bargaining unit employees, whereby it violated §§ 7116(a)(1) and (5) of the Statute. It is recommended that the Authority adopt the following:

ORDER

Pursuant to section 2423.41(c) of the Authority's Rules and Regulations, 5 C.F.R. § 2423.41(c), and § 18 of the Statute, 5 U.S.C. § 7118, it is hereby Ordered that the Department of Veterans Affairs, W.G. (Bill) Hefner VA Medical Center, Salisbury, North Carolina, shall:

1. Cease and desist from:

(a) By-passing the Union and communicating directly with, and polling, bargaining unit employees, and dealing directly with bargaining unit employees, concerning their conditions of employment.

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

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

(a) Post at its Salisbury, North Carolina, Medical Center copies of the attached Notice on forms to be furnished by the Federal Labor Relations Authority. Upon receipt of such forms, the forms shall be signed by the Medical 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.

(b) Pursuant to section 2423.41(e) of the Authority's Rules and Regulations, 5 C.F.R 2423.41(e), notify the Regional Director, Chicago Region, Federal Labor Relations Authority, 55 West Monroe, Suite 1150, Chicago, Illinois 60603-0729, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply.

Issued, Washington, DC, June 19, 2003

WILLIAM B. DEVANEY
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, W.G. (Bill) Hefner VA Medical Center, Salisbury, North Carolina, 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 by-pass the American Federation of Government Employees, Local 1738, AFL-CIO (hereinafter, "Union") by communicating directly with bargaining unit employees concerning their conditions of employment.

WE WILL NOT by-pass the Union by directly polling bargaining unit employees concerning their conditions of employment.

WE WILL NOT by-pass the Union by directly dealing with bargaining unit employees concerning their conditions of employment.

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.

CENTER

DIRECTOR
W.G. (Bill) HEFNER VA MEDICAL
SALISBURY, NORTH CAROLINA

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 provisions, they may communicate directly with the Regional Director, Chicago Regional Office, Federal Labor Relations Authority, whose address is: 55 West Monroe, Suite 1150, Chicago, Illinois 60603-0729, and whose phone number is: 312-353-6303.

CERTIFICATE OF SERVICE

I hereby certify that copies of this **DECISION**, issued by WILLIAM B. DEVANEY, Administrative Law Judge, in Case No.

WA-CA-02-0751, were sent to the following parties:

CERTIFIED MAIL AND RETURN RECEIPT

CERTIFIED NOS:

Greg A. Weddle

7000 1670 0000 1175

2096

Counsel for the General Counsel
Federal Labor Relations Authority
55 West Monroe, Suite 1150
Chicago, IL 60603-0729

John Berry

7000 1670 0000 1175

2102

Staff Attorney
VA Office of Regional Counsel
Hiram H. Ward Federal Building
251 North Main Street
Winston-Salem, NC 27155

J. Cox, Sr.

7000 1670 0000 1175

2119

President
AFGE, Local 1738
1601 Brenner Avenue
Salisbury, NC 28144

Dated: June 19, 2003
Washington, DC