

**OFFICE OF ADMINISTRATIVE LAW JUDGES**

**WASHINGTON, D.C. 20424-0001**

U.S. DEPARTMENT OF VETERANS AFFAIRS MEDICAL CENTER,  
DANVILLE, ILLINOIS

Respondent

and  
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1963

Case No. CH-CA-40344

Charging Party

Thornton E. Cherry, Esq. and

Jerry Willison

For the Respondent

Susanne S. Matlin, Esq.

For the General Counsel

Before: SALVATORE J. ARRIGO

Administrative Law Judge

**DECISION**

**Statement of the Case**

This case arose under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the U.S. Code, 5 U.S.C. section 7101, et seq. (herein the Statute).

Upon an unfair labor practice charge having been filed by the captioned Charging Party, herein sometimes AFGE, against the captioned Respondent, the General Counsel of the Federal Labor Relations Authority, herein the Authority, by the Regional Director for the Chicago Region, issued a Complaint and Notice of Hearing alleging Respondent violated section 7116(a)(1) and (8) of the Statute by refusing to comply with the provisions of a final and binding arbitration award. The Complaint and Notice of Hearing was served on various representatives of Respondent and Respondent, by Jerry Willison, Respondent's Acting Medical Center Director, filed an Agency Response to Complaint and Notice of Hearing. In the Response Respondent admitted the factual allegations of the Complaint and offered an "explanation" of its position.

Subsequently, counsel for the General Counsel filed a Motion for Summary Judgment and supporting documents with the Regional Director for the Chicago Regional Office and on August 18, 1994 the matter was transferred to the Office of Administrative Law Judges for ruling pursuant to section 2423.22(b) of the Authority's Rules and Regulations. By Order of Chief Administrative Law Judge John H. Fenton dated August 23, 1994, the parties were notified that any additional pleadings or briefs in this case must be filed by September 7, 1994, and thereafter the record would be closed. Counsel for the General Counsel filed a brief in support of the Motion for Summary Judgment and counsel for Respondent filed an Agency Response to the Motion for Summary Judgment.

Based upon my review and evaluation of the record before me I make the following:

#### Findings of Fact

1. AFGE is the exclusive collective bargaining agent of Respondent's employees at the Veterans Administration Medical Center (VAMC), Danville, Illinois.
2. On March 27, 1992, AFGE filed a grievance under the parties' negotiated grievance procedure concerning Respondent's implementation of a smoke-free environment policy at VAMC Danville.
3. Respondent and AFGE were not able to resolve the grievance described above and the parties selected arbitrator Anne L. Draznin to decide the grievance.
4. On May 21, 1993, Arbitrator Draznin issued an opinion and award in FMCS 92-17184 on the grievance described above. In her award, Arbitrator Draznin, inter alia, determined that Respondent had failed to provide adequate and accessible outdoor smoking shelters when it implemented its smoke-free policy at VAMC Danville and essentially ordered Respondent to reopen the indoor designated smoking areas in Buildings 19, 26, 64, 69, 72, 104, and 125 at VAMC Danville until the required alterations to the outside shelters were completed.
5. Respondent filed exceptions to Arbitrator Draznin's May 21, 1993 award with the Authority pursuant to 5 U.S.C. § 7122(a).
6. On December 8, 1993, the Authority in 48 FLRA No. 116 denied Respondent's exceptions to Arbitrator Draznin's May 21, 1993 award.
7. Since May 8, 1993, Respondent has failed to reopen the indoor smoking areas in Buildings 19, 26, 64, 69, 72, 104, and 125 at VAMC Danville pending completion of the required alterations to the outside smoking shelters.
8. On February 24, 1994, AFGE filed a timely unfair labor practice charge in this matter alleging Respondent violated the Statute by failing to comply with the final and binding arbitration award of Arbitrator Anne L. Draznin dated May 21, 1993.

9. On March 18, 1994, AFGE filed an amended unfair labor practice charge.

10. On May 4, 1994, the Regional Director for the Chicago Region of the Federal Labor Relations Authority issued a Complaint and Notice of Hearing in this matter alleging Respondent violated section 7116(a)(1) and (8) of the Statute by failing to comply with the May 21, 1993 arbitration award that became final and binding on December 8, 1993 after Authority review in Case No. 48 FLRA No. 116.

11. On May 17, 1994, Respondent filed a Response to the Complaint in this matter (above).

### Discussion Conclusions

Respondent proceeded to arbitration of a grievance and it received an award of the Arbitrator which it considered to be adverse. Exceptions to the award were filed by Respondent to the Authority and were denied. The gravamen of the Complaint is that Respondent failed to comply with the Arbitrator's award by reopening the indoor smoking areas pending completion of the outside smoking areas. Respondent does not deny this allegation but avers in its Response that it has installed a substantial number of substitute outside smoking areas and therefore contends the matter at issue herein is moot. Respondent also raises matters which were previously raised and rejected by the Arbitrator and the Authority. I reject Respondent's defenses raised in its Agency Response and concluded that at all times relevant Respondent has failed to comply with the award.<sup>(1)</sup> Failure to fully comply with an arbitration award after it is affirmed on appeal to the Authority fails to comply with the provisions of section 7122(b) of the Statute in violation of 7116(a)(1) and (8) of the Statute. United States Army Adjutant General Publications Center, St. Louis, Missouri, 22 FLRA 200 (1986), cited with approval in Department of Health and Human Services, Social Security Administration v. FLRA, 976 F.2d 1409 (D.C. Cir. 1992) at 1413.

Accordingly, I conclude that upon the record before me Respondent's failure to fully comply with Arbitrator Draznin's award dated May 21, 1993 violated section 7116(a)(1) and (8) of the Statute and I grant counsel for the General Counsel's Motion for Summary Judgment. Therefore, I recommend the Authority issue the following:

### ORDER

Pursuant to section 2423.29 of the Federal Labor Relations Authority's Rules and Regulations and section 7118 of the Statute, it is hereby ordered that U.S. Department of Veterans Affairs Medical Center, Danville, Illinois shall:

1. Cease and desist from:

(a) Failing or refusing to comply with provisions of section 7122(b) of the Statute by failing and refusing to implement Arbitrator Anna L. Draznin's May 21, 1993 award.

(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.

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

(a) Comply fully with the May 21, 1993 award of Arbitrator Anne L. Draznin.

(b) Post at its facilities where bargaining unit employees represented by the American Federation of Government Employees, Local 1963, 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 of the Department of Veterans Affairs Medical Center, Danville, Illinois 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 insure that such Notices are not altered, defaced, or covered by any other material.

(c) Pursuant to section 2423.30 of the Authority's Rules and Regulations, notify the Regional Director of the Chicago Region, 55 West Monroe, Suite 1150, Chicago, IL 60603-9729, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

Issued, Washington, DC, September 26, 1994

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SALVATORE J. ARRIGO

Administrative Law Judge

**NOTICE TO ALL EMPLOYEES**

**AS ORDERED BY THE FEDERAL LABOR RELATIONS AUTHORITY**

**AND TO EFFECTUATE THE POLICIES OF THE**

**FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS STATUTE**

**WE HEREBY NOTIFY OUR EMPLOYEES THAT:**

WE WILL NOT fail or refuse to comply with the provisions of section 7122(b) of the Federal Labor-Management Relations Statute by failing or refusing to fully implement Arbitrator Anne L. Draznin's May 21, 1993 award.

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 comply fully with the May 21, 1993 award of Arbitrator Anne L. Draznin.

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(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 of the Federal Labor Relations Authority, Chicago Region, 55 West Monroe, Suite 1150, Chicago, IL 60603-9729, and whose telephone number is: (312) 353-6306.

1. With regard to Respondent's argument that due to partial compliance with the award, the issue is moot, see U.S. Department of the Air Force Headquarters, Air Force Logistics Command, Wright Patterson Air Force Base, Ohio, 36 FLRA 524, 534-535 (1990).