

Office of Administrative Law Judges

WASHINGTON, D.C.

DEPARTMENT OF VETERANS AFFAIRS
VETERANS AFFAIRS MEDICAL CENTER
NEW ORLEANS, LOUISIANA Respondent
and NATIONAL FEDERATION OF FEDERAL EMPLOYEES,
LOCAL 1904 Charging Party

Case No. DA-CA-00610

John F. Gallagher, Esquire For the General Counsel Before: Eli Nash, Jr. Administrative Law Judge

DECISION ON MOTION FOR SUMMARY JUDGMENT

On September 26, 2000 the Regional Director for the Dallas Region of the Federal Labor Relations Authority (FLRA), issued a Complaint and Notice of Hearing which was duly served by certified mail upon the named Respondent. The Complaint alleged that Respondent violated section 7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute (the Statute), 5 U.S.C. § 7116(a)(1) and (5), by changing the position of bargaining unit employee Ernest Lynch from a Title 38 Clinical Application Coordinator/Program Analyst to a General Schedule (GS), Computer Specialist in December 1999 without providing the National Federation of Federal Employees, Local 1904 (the Union), with notice and an opportunity to negotiate over the change to the extent required by the Statute. A hearing was scheduled for February 2, 2001.

The Complaint specifically advised the Respondent that an answer must be filed "no later than October 23, 2000" and that a failure to file an answer or respond to any allegation of this complaint will constitute an admission. See 5 C.F.R. § 2423.20(b). Respondent did not file an answer, either in person or by mail, within the required period or at any time thereafter.

An Order Transferring the Case dated October 17, 2000, was served by regular mail on Respondent, indicating that the case had been transferred to the Chicago Regional Office of the FLRA.

No answer was received from the Respondent nor has Respondent acknowledged receipt of any of the above-mentioned documents. Accordingly, Respondent has admitted all of the allegations of the Complaint. *Department of Veterans Affairs Medical Center, Asheville, North Carolina*, 51 FLRA 1572, 1594 (1996).

Since Respondent failed to answer the instant Complaint, Counsel for the General Counsel filed a Motion for Summary Judgment on December 18, 2000. Respondent also failed to file any response to the General Counsel's Motion for Summary Judgment within the 5 day time period provided for in the Regulations. See 5 C.F.R. § 2423.27(b).

Findings of Fact

The undisputed facts in this case are as follows:

1. The Department of Veterans Affairs, Veterans Affairs Medical Center, New Orleans, Louisiana, is an agency within the meaning of 5 U.S.C. § 7103(a)(3) of the Statute. Fernando Rivera is Respondent's Chief of Computer Information Management.
2. The National Federation of Federal Employees (NFFE) is the exclusive representative of a nationwide consolidated unit of employees appropriate for collective bargaining at the Respondent. The National Federation of Federal Employees, Local 1904, is an agent of NFFE for the purpose of representing bargaining unit employees at Respondent's New Orleans, Louisiana, facility.
3. At all times material herein, Ernest Lynch was an employee in the bargaining unit at Respondent's New Orleans facility.
4. Sometime in December 1999 the Respondent, by Rivera, changed the position of Ernest Lynch from a Title 38 Clinical Application Coordinator/Program Analyst to a GS Computer Specialist.
5. Respondent implemented the above change without providing NFFE, Local 1904, with notice and an opportunity to negotiate over the change to the extent required by the Statute.

Conclusions

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 Absent a showing of good cause to the contrary, failure to file an answer or respond to any allegation shall constitute an admission.

In this case, Respondent has not filed an answer as required by the Regulations. Furthermore, Respondent filed no response to the Motion for Summary Judgment. Accordingly, there are no disputed factual or legal issues in this case.

Consequently, it can only be found that Respondent has admitted that it changed the position of Ernest Lynch from a Title 38 Clinical Application Coordinator/Program Analyst to a GS Computer Specialist without providing the Union with notice and an opportunity to negotiate over the impact and implementation of the change. Thus, Respondent violated section 7116(a)(1) and (5) of the Statute, as alleged.

Additionally, Counsel for the General Counsel proposed a recommended remedy requiring Respondent to

negotiate over the change in the position of Ernest Lynch to the extent required by the Statute and the posting of an appropriate Notice to All Employees signed by the Medical Center Director, Department of Veterans Affairs, Veterans Affairs Medical Center, New Orleans, Louisiana. In the circumstances of this case, it is found that the proposed remedy does effectuate the purposes and policies of the Statute.

Accordingly, it is recommended 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, it is hereby ordered that the Department of Veterans Affairs, Veterans Affairs Medical Center, New Orleans, Louisiana, shall:

- Cease and desist from:

(a) Changing the position of bargaining unit employees without providing the National Federation of Federal Employees, Local 1904, the exclusive representative of bargaining unit employees, with notice and an opportunity to negotiate over the change, to the extent required by the Federal Service Labor-Management Relations Statute.

(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.

- Take the following affirmative action in order to

effectuate the purposes and policies of the Federal Service Labor-Management Relations Statute:

(a) Upon request, negotiate with the National Federation of Federal Employees, Local 1904, over the change in the position of Ernest Lynch from a Title 38 Clinical Application Coordinator/Program Analyst to a General Schedule Computer Specialist, to the extent required by the Federal Service Labor-Management Relations Statute.

(b) Post at the Department of Veterans Affairs, Veterans Affairs Medical Center, New Orleans, Louisiana, where bargaining unit employees represented by the National Federation of Federal Employees, Local 1904, 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, Department of Veterans Affairs, Veterans Affairs Medical Center, New Orleans, Louisiana, 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, Chicago 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, January 18, 2001.

ELI NASH, JR.

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, Veterans Affairs Medical Center, New Orleans, Louisiana, 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 change the positions of bargaining unit employees without providing the National Federation of Federal Employees, Local 1904, the exclusive representative of bargaining unit employees, with notice and an opportunity to negotiate over the change, to the extent required by the Federal Service Labor-Management Relations Statute.

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, provide the National Federation of Federal Employees, Local 1904, an opportunity to negotiate over the change in the position of Ernest Lynch a Title 38 Clinical Application Coordinator/Program Analyst to a General Schedule Computer Specialist, to the extent required by the Federal Service Labor-Management Relations Statute.

(Respondent/Activity)

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, Chicago Regional Office, Federal Labor Relations Authority,
whose address is: 55 West Monroe Street, Suite 1150, Chicago, Illinois
60603, and whose telephone number is: (312)353-6306.