

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

DEPARTMENT OF VETERANS AFFAIRS VETERANS AFFAIRS MEDICAL CENTER NEW ORLEANS, LOUISIANA Respondent and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 3553 Charging Party	Case No. DA-CA-00313

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, 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 **JANUARY 2, 2001**, and addressed to:

Federal Labor Relations Authority
Office of Case Control
607 14th Street, NW, 4th Floor
Washington, DC 20424

ELI NASH, JR.
Administrative Law Judge

Dated: November 30, 2000
Washington, DC

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

MEMORANDUM

DATE: November 30, 2000

TO: The Federal Labor Relations Authority

FROM: ELI NASH, JR.
Administrative Law Judge

SUBJECT: DEPARTMENT OF VETERANS AFFAIRS
VETERANS AFFAIRS MEDICAL CENTER
NEW ORLEANS, LOUISIANA

Respondent

and

Case No. DA-CA-00313

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
LOCAL 3553

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, 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

FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges OALJ 01-09
WASHINGTON, D.C.

DEPARTMENT OF VETERANS AFFAIRS VETERANS AFFAIRS MEDICAL CENTER NEW ORLEANS, LOUISIANA	Case No. DA-CA-00313
Respondent	
and	
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 3553	
Charging Party	

Susanne S. Matlin, Esquire
For the General Counsel

Before: Eli Nash, Jr.
 Administrative Law Judge

DECISION ON MOTION FOR SUMMARY JUDGMENT

On September 1, 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 reassigning bargaining unit employee Lionel Washington from his position as a Pharmacy Assistant to a Consult/Coordinator without providing the American Federation of Government Employees, Local 3553 (the Union), with notice and an opportunity to negotiate over the reassignment, as requested. A hearing was scheduled for January 8, 2001.

The Complaint specifically advised the Respondent that an answer must be filed "no later than September 26, 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 September 8, 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 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 November 6, 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).

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 reassigned Lionel Washington without providing the Union with notice and an opportunity to negotiate over the impact and implementation of the reassignment. 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 reassignment of Lionel Washington 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:

1. Cease and desist from:

(a) Reassigning bargaining unit employees without providing the American Federation of Government Employees, Local 3553, the exclusive representative of bargaining unit employees, with notice and an opportunity to negotiate over reassignments, 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.

2. 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 American Federation of Government Employees, Local 3553, over the reassignment of Lionel Washington, 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 American Federation of Government Employees, Local 3553 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, November 30, 2000.

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 reassign bargaining unit employees without providing the American Federation of Government Employees, Local 3553, the exclusive representative of bargaining unit employees, with notice and an opportunity to negotiate over reassignments, 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 American Federation of Government Employees, Local 3553, an opportunity to negotiate over the reassignment of Lionel Washington 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.

CERTIFICATE OF SERVICE

I hereby certify that copies of this **DECISION** issued by ELI NASH, JR., Administrative Law Judge, in Case No. DA-CA-00313, were sent to the following parties:

CERTIFIED MAIL & RETURN RECEIPT

CERTIFIED NOS:

Susanne Matlin, Esquire
Federal Labor Relations Authority
55 W. Monroe Street, Suite 1150
Chicago, IL 60603

P168-060-259

Carolyn Grey
VAMC, Human Resources
1601 Perdido Street
New Orleans, LA 70112

P168-060-260

Mark Gatlin, Vice President
AFGE, Local 3553
1604 Perdido Street
New Orleans, LA 70112

P168-060-262

REGULAR MAIL:

Conchetta Buttone, President
NFFE, Local 1904
c/o VAMC
1601 Perdido Street
New Orleans, LA 70112

President
AFGE, AFL-CIO
80 "F" Street, NW.
Washington, DC 20001

CATHERINE L. TURNER, LEGAL TECHNICIAN

DATED: NOVEMBER 30, 2000
WASHINGTON, DC