

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  NATIONAL FEDERATION OF FEDERAL EMPLOYEES, LOCAL 1904  Charging Party	Case No. DA-CA-01-0581

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 **OCTOBER 22, 2001**, and addressed to:

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

ELI NASH, Chief  
Administrative Law Judge

Dated: September 18, 2001  
Washington, DC

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

MEMORANDUM

DATE: September 18, 2001

TO: The Federal Labor Relations Authority

FROM: ELI NASH, Chief  
Administrative Law Judge

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

Respondent

and  
CA-01-0581

Case No. DA-

NATIONAL FEDERATION OF FEDERAL EMPLOYEES  
LOCAL 1904

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 01-60  
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-01-0581

Sharon Wilson Rivers, Esquire  
For the General Counsel

Before: Eli Nash, Chief  
Administrative Law Judge

**DECISION ON MOTION FOR SUMMARY JUDGMENT**

On July 31, 2001 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 the Department of Veterans Affairs, Veterans Affairs Medical Center, New Orleans, Louisiana (herein called 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 unilaterally implementing 12 hour shifts on Ward 4C at Respondent's New Orleans facility without providing the National Federation of Federal Employees, Local 1904 (herein called Union), with notice and an opportunity to negotiate over the change to the extent required by the Statute. A hearing was scheduled for November 28, 2001.

The Complaint specifically advised the Respondent that an answer must be filed "no later than August 27, 2001" and that 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.

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 September 6, 2001. 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 unilaterally implemented 12 hour shifts on Ward 4C without providing the Union with notice and an opportunity to bargain over the shift change. Thus, Respondent violated section 7116(a)(1) and (5) of the Statute as alleged.

Secondly, Counsel for the General Counsel proposed a recommended remedy requiring Respondent to negotiate over the impact and implementation of the change as 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) Unilaterally implementing 12 hour shifts on Ward 4C without providing the National Federation of Federal Employees, Local 1904, 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.

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 National Federation of Federal Employees, Local 1904, over changing 12 hour shifts on Ward 4C 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, September 18, 2001.

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ELI NASH, Chief  
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 unilaterally implement 12 hour shifts on Ward 4C 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 implementation of 12 hour shifts on Ward 4C 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, IL 60603, and  
whose telephone number is: (312)353-6306.

**CERTIFICATE OF SERVICE**

I hereby certify that copies of this **DECISION** issued by ELI NASH, Chief Administrative Law Judge, in Case No. DA-CA-01-0581, were sent to the following parties:

**CERTIFIED MAIL:**

**CERTIFIED NUMBERS:**

Shannon Wilson Rivers, Esquire  
Federal Labor Relations Authority  
525 Griffin Street, Suite 926  
Dallas, TX 75202

7000-1670-0000-1176-3481

John Church, Jr.  
Director, VAMC  
1601 Perdido Street  
New Orleans, LA 70112

7000-1670-0000-1176-3474

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

7000-1670-0000-1176-3498

**REGULAR MAIL:**

President  
NFFE, AFL-CIO  
1016 16<sup>th</sup> Street, NW.  
Washington, DC 20036

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CATHERINE L. TURNER, LEGAL TECHNICIAN

DATED: SEPTEMBER 18, 2001  
WASHINGTON, DC