

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY

Office of Administrative Law Judges
WASHINGTON, D.C. 20424-0001

MEMORANDUM

DATE: December 31, 2002

TO: The Federal Labor Relations Authority

FROM: WILLIAM B. DEVANEY
Administrative Law Judge

SUBJECT: NATIONAL FEDERATION OF FEDERAL
EMPLOYEES, LOCAL 2010, AFL-CIO

Respondent

and

Case No. SF-CO-02-0581

DEPARTMENT OF AGRICULTURE
U.S. FOREST SERVICE
ROGUE RIVER NATIONAL FOREST
MEDFORD, OREGON

Charging Party

Pursuant to section 2423.27(c) of the 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 are the Motions 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

NATIONAL FEDERATION OF FEDERAL EMPLOYEES, LOCAL 2010, AFL-CIO Respondent	
and DEPARTMENT OF AGRICULTURE U.S. FOREST SERVICE ROGUE RIVER NATIONAL FOREST MEDFORD, OREGON Charging Party	Case No. SF-CO-02-0581

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 **FEBRUARY 3, 2003**, and addressed to:

Federal Labor Relations Authority
Office of Case Control
607 14th Street, NW, 4th Floor
Washington, DC 20424-0001

WILLIAM B. DEVANEY
Administrative Law Judge

Dated: December 31, 2002
Washington, DC

FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C.

NATIONAL FEDERATION OF FEDERAL EMPLOYEES, LOCAL 2010, AFL-CIO Respondent	
and DEPARTMENT OF AGRICULTURE U.S. FOREST SERVICE ROGUE RIVER NATIONAL FOREST MEDFORD, OREGON Charging Party	Case No. SF-CO-02-0581

Vanessa Lim, Esquire
For the General Counsel

Kim Rasmussen
For the Charging Party

Cheryl A. Westfall
For the Respondent

Before: WILLIAM B. DEVANEY
Administrative Law Judge

**DECISION GRANTING GENERAL COUNSEL'S
MOTION FOR SUMMARY JUDGMENT**

Statement of the Case

This proceeding, under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the United States Code, 5 U.S.C. § 7101, et seq. 1, was initiated by a charge filed on May 24, 2002 (Exhibit 1 to General Counsel's Motion for Summary Judgment) (hereinafter,

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For convenience of reference, sections of the Statute hereinafter are, also, referred to without inclusion of the initial, "71" of the statutory reference, i.e., Section 7116 (b) (5) will be referred to, simply, as, "\$ 16(b) (5)".

Exhibits to the Motion will be referred to as, "Exh." followed by the Exhibit Number). An Amended charge was filed on August 20, 2002 (Exh. 2). The Answer was required to be mailed and postmarked by September 24, 2002, but Respondent did not file an Answer. The Hearing was set for October 30, 2002, at a place to be determined, in Medford, Oregon (Exh. 3).

This case involves the repudiation by the Union of an oral agreement entered into by the National Federation of Federal Employees, Local 2010, AFL-CIO, and the Department of Agriculture, U.S. Forest Service, Rogue River National Forest, Medford, Oregon, in violation of §§16(b)(5) and (1) of the Statute.

On October 10, 2002, General Counsel filed her Motion for Summary Judgment, received on October 11, 2002, and on October 15, 2002, an Order was entered denying General Counsel's Motion To Postpone Hearing, but Pre-Hearing Disclosure was indefinitely postponed. Respondent failed to respond to General Counsel's Motion For Summary Judgment and on October 28, 2002, an Order was entered canceling the hearing, set for October 30, 2002, and notifying the parties that this case will be decided on the basis of General Counsel's Motion for Summary Judgment.

FACTS

Based on the Complaint, Respondent's failure to answer the Complaint and testimony provided by Robert Blakey the following facts are not in dispute:

1. The National Federation of Federal Employees, AFL-CIO (NFFE), is a labor organization under 5 U.S.C. §3(a)(4) and is the exclusive representative of a nationwide unit of employees appropriate for collective bargaining at the Department of Agriculture, U.S. Forest Service. (Exh. 3, ¶ 2).

2. Respondent is an agent of NFFE for the purpose of representing employees at the Charging Party, which is within the unit described in paragraph 1. (Exh. 3, ¶ 3).

3. The charge and amended charge in this case were filed by the Charging Party with the San Francisco Regional Director on May 24, 2002, and August 20, 2002, respectively, and copies of the charge and amended charge were served on the Respondent. (Exh. 3, ¶ 4, 5, 6).

4. During the time period covered by the Complaint, the persons listed below occupied the positions opposite their names and were acting on Respondent's behalf. (Exh. 3, ¶ 7, 8):

Cheryl Westfall	President of Respondent
Elaine Vercruysse	Chief Steward of Respondent

5. On March 7, 2002, representatives of Respondent and the Activity met in order for the Activity to share information related to the projected budget and management's plans for downsizing. Present at the meeting were Union President Cheryl Westfall, Union Chief Steward Elaine Vercruysse, and several representatives of the Activity, including Personnel Officer Bob Blakey and Acting Forest Supervisor Thomas K. Reilly. (Exh. 4, Affidavit of Blakey, p. 1).

6. During the meeting, Westfall and Vercruysse asked the Activity for a list of the specific positions it intended to abolish. Blakey explained to them that the Activity was at a pre-decisional stage and that it had come up with a very tentative list of positions it could not fund with the current budget. Blakey specifically told them the Activity did not want the information released to employees and he gave them the example of how the release of pre-decisional information to Siskiyou employees had been really damaging. Westfall acknowledged she understood the need to keep the information confidential. Based on that acknowledgment, Blakey provided a copy of the list to Westfall and Vercruysse. (Exh. 4, p.1).

7. After some additional discussion about the list, Blakey ended the meeting by reiterating to the whole group that the list was confidential. Blakey would not have released the list to the Union had he believed they would not honor the agreement to keep the list confidential. (Exh. 4, p. 1-2).

8. On March 13, 2002, Acting Forest Supervisor Thomas Reilly learned that Westfall had shared the list with bargaining unit employees during a meeting held earlier that day. Reilly immediately sent Westfall a Pre-Notification of Unfair Labor Practice. (Exh. 4, p. 2).

9. On March 15, 2002, Westfall responded to the Pre-Notification. In her response, Westfall admitted that she shared the list with bargaining unit employees and therefore violated the verbal agreement made on March 7, 2002. (Exh. 4, p. 2; Exhibit 4(a)).

CONCLUSIONS

Section 2423.27 of the Authority's Regulations codifies the summary judgment procedures adopted by the Authority in earlier cases, in which the Authority adopted the requirements of Rule 56 of the Federal Rules of Civil Procedure. *E.g. Dept. of the Navy, U.S. Naval Ordinance Station, Louisville, Kentucky*, 33 FLRA 3, 4-6 (1988). Thus, under §2423.27(a), moving party's motion "shall be supported by documents, affidavits, applicable precedent, or other appropriate materials" and, consistent with Rule 56 (c), the motion is to be granted if the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c).

Section 2423.20(b) of the Authority's Rules and Regulations provides in part that, "Absent a showing of good cause to the contrary, failure to file an answer or respond to any allegation shall constitute an admission." Respondent has failed to answer the allegations in the Complaint or respond to the allegations of the Complaint and has failed to respond to General Counsel's Motion for Summary Judgment. Accordingly, the factual allegations in the Complaint and in the Motion for Summary Judgment must be deemed admitted in their entirety. The only issue for determination, therefore, is the legal issue as to whether Respondent repudiated an agreement with the Charging Party and therefore violated sections 16(b)(1) and (5) of the Statute.

RESPONDENT'S RELEASE OF THE POSITION LIST TO EMPLOYEES VIOLATED §§ 16(b)(1) and (5) OF THE STATUTE.

In this case, there is no dispute that the parties orally agreed the subject list was confidential and would not be released to employees. Thus, the only issue in this case is whether Respondent's release of the position list to employees was a violation of §§16(b)(1) and (5) of the Statute because it constituted a repudiation of the agreement. The Authority has held that repudiation of an agreement can constitute a failure to negotiate in good faith in violation of §§16(a)(1) and (5) of the Statute. *Department of the Air Force, 375th Mission Support Squadron, Scott Air Force Base, Illinois*, 51 FLRA 858 (1996) (*Scott Air Force Base*). Similarly, the Authority has found that a failure on the part of an exclusive representative to negotiate in good faith constitutes a violation of §§16(b)

(1) and (5) of the Statute. *Sport Air Traffic Controllers Organization*, 52 FLRA 339 (1996) (SATCO). In determining if a repudiation of an agreement has occurred, the Authority examines two factors: 1) the nature and scope of the alleged breach of the agreement (whether the breach was clear and patent); and 2) the nature of the agreement provision allegedly breached (did the provision go to the heart of the agreement). *Scott Air Force Base*; see also *American Federation of Government Employees, Local 3137*, 56 FLRA 1021 (2000) (Authority applied the same factors to a repudiation charge against an exclusive representative).

As to the first factor, the issue in this case is whether Westfall's release of the list to employees constituted a clear and patent breach of the agreement. The meaning of the agreement was simple, clear and not subject to varying interpretations. The Activity agreed to provide the pre-decisional list to Westfall and Vercruysse as long as they agreed not to release the list to employees. Westfall's release of the list to employees was clearly a breach of that agreement. Further, the entire purpose of the agreement was to keep the list out of the hands of the employees so as not to alarm them during the pre-decisional process. Consequently, the scope of the breach was sufficient to render the agreement meaningless. Thus, the release of the list to the employees constituted a clear and patent violation. *E.g. Department of Transportation, Federal Aviation Administration, Fort Worth, Texas*, 55 FLRA 951, 952 (1999) (DOT) (Authority adopted an ALJ decision finding that an agency repudiated an MOU by failing to comply with the clear language of an MOU regarding union representation on interview panels).

The second factor to consider is the nature of the provision allegedly breached, i.e. whether the provision went to the heart of the parties' agreement. *Scott Air Force Base*. In the instant case, the agreement consisted of only one term and was not part of a larger agreement between the parties. As noted above, the Activity agreed to provide the pre-decisional list to Westfall and Vercruysse as long as they agreed not to release the list to employees. Thus, the confidentiality of the list was the sole purpose of the parties' agreement and clearly went to heart of the agreement. *E.g. DOT*, 55 FLRA at 952 (Authority adopted ALJ decision finding that the Agency's failure to allow union representatives to sit on interview panels went to the heart of the MOU where the MOU existed simply to allow representatives to sit on the interview panels).

Accordingly, the two factors necessary to find that Respondent repudiated the agreement have been met in this

case. Therefore, Respondent's release of the list to employees constituted a violation of §16(b)(1) and (5) of the Statute. *Scott Air Force Base; SATCO.*

General Counsel's Motion for Summary Judgment is granted and 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 section 18 of the Statute, 5 U.S.C. § 7118, the National Federation of Federal Employees, Local 2010, AFL-CIO shall:

1. Cease and desist from:

(a) Failing or refusing to honor agreements made with the Department of Agriculture, U.S. Forest Service, Rogue River National Forest, Medford, Oregon.

(b) In any like manner, failing or refusing to comply with its obligations under 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) Post at its business offices and its normal meeting places, including all places where notices to members and employees of Department of Agriculture, U.S. Forest Service, Rogue River National Forest, Medford, Oregon, are customarily posted, copies of the attached Notice To All Members and Employees on forms to be furnished by the Federal Labor Relations Authority. Upon receipt of such forms, they shall be signed by the President of National Federation of Federal Employees, Local 2010, AFL-CIO, 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 and members are customarily posted. Reasonable steps shall be taken to ensure that such Notices are not altered, defaced, or covered by any other material.

(b) Submit signed copies of the Notice to the San Francisco Regional Director who will forward them to the Agency whose employees are involved herein, for posting in conspicuous places in and about the Agency's premises where they shall be maintained for a period of at least (60) days from the date of posting.

(c) Pursuant to section 2423.41(e) of the Authority's Rules and Regulations, notify the San Francisco Regional Director of the Federal Labor Relations Authority, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply.

DEVANEY
Judge

WILLIAM B.
Administrative Law

Dated: December 31, 2002
Washington, D.C.

**NOTICE TO ALL MEMBERS AND EMPLOYEES
POSTED BY ORDER OF THE
FEDERAL LABOR RELATIONS AUTHORITY**

The Federal Labor Relations Authority has found that the National Federation of Federal Employees, Local 2010, AFL-CIO, violated the Federal Service Labor-Management Relations Statute, and has ordered us to post and to abide by this Notice.

On March 7, 2002, the National Federation of Federal Employees, Local 2010, AFL-CIO (NFFE) and Department of Agriculture, U.S. Forest Service, Rogue River National Forest, Medford, Oregon, agreed that a particular list would be kept confidential and not released to employees. On March 13, 2002, NFFE released the list to certain employees.

WE HEREBY NOTIFY EMPLOYEES THAT:

WE WILL NOT fail or refuse to honor agreements made with the Department of Agriculture, U.S. Forest Service, Rogue River National Forest, Medford, Oregon .

WE WILL NOT fail or refuse to comply with our obligations under the Federal Service Labor-Management Relations Statute.

NATIONAL FEDERATION OF FEDERAL EMPLOYEES, LOCAL
2010, AFL-CIO
(Labor Organization)

Dated: _____ By: _____
President (Signature)

This Notice must remain posted for 60 consecutive days from the date of the 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, San Francisco Region, Federal Labor Relations Authority, whose address is: 901 Market Street, Suite 220, San Francisco, California 94103, and whose telephone is: (415) 356-5000.

CERTIFICATE OF SERVICE

I hereby certify that copies of this DECISION issued by WILLIAM B. DEVANEY, Administrative Law Judge, in Case No. SF-CO-02-0581, were sent to the following parties in the manner indicated:

CERTIFIED MAIL AND RETURN RECEIPT

CERTIFIED NOS:

Vanessa Lim 1501 Counsel for the General Counsel Federal Labor Relations Authority 901 Market Street, Suite 220 San Francisco, CA 94103-1791	7000 1670 0000 1175
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Cheryl Westfall, President 1518 National Federation of Federal Employees, Local 2010 47201 Highway 62 Prospect, OR 97536	7000 1670 0000 1175
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Kim Rasmussen 1525 L/R Specialist USDA Forest Service Region 6 Rogue River National Forest P.O. Box 3623 Portland, OR 97028-3623	7000 1670 0000 1175
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REGULAR MAIL:

National President
National Federation of Federal Employees
1016 16th St., NW
Washington, DC 20036

Dated: December 31, 2002

Washington