UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
OFFICE OF ADMINISTRATIVE LAW JUDGES
WASHINGTON, D.C. 20424

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1457, AFL-CIO Respondent	
and	Case No. 9-CO-90016
LETTERMAN ARMY MEDICAL CENTER Charging Party	

Yolanda Shepherd, Esquire
Susan E. Jelen, Esquire
For the General Counsel

Mr. Allen L. Perdue
For the Respondent

Before: BURTON S. STERNBURG
Administrative Law Judge

DECISION

Statement of the Case

This is a proceeding 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., and the Rules and Regulations issued thereunder.

Pursuant to amended charges first filed on May 16, 1989, by Letterman Army Medical Center, (hereinafter called the Charging Party or LAMC), a Complaint and Notice of Hearing was issued on September 26, 1989, by the Regional Director for Region IX, Federal Labor Relations Authority, San Francisco, California. The Complaint alleges that Local 1457, American Federation of Government Employees, AFL-CIO, (hereinafter called the Union or Respondent), violated sections 7116(b)(1) and (8) of the Federal Service Labor-Management Relations Statute, (hereinafter called the Statute), by virtue of its action in refusing to participate

in the selection of an arbitrator to decide a pending grievance filed by LAMC.

A hearing was held in the captioned matter on November 7, 1989, in San Francisco, California. All parties were afforded the full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues involved herein. The General Counsel and the Respondent submitted post hearing briefs on December 7 and 5, 1989, respectively, which have been duly considered.1/

Upon the basis of the entire record, including my observation of the witnesses and their demeanor, I make the following findings of fact, conclusions and recommendations.

Findings of Fact 2/

At all time material herein the Union has been the certified exclusive representative, with certain named exclusions, of all wage and general schedule employees working in the Department of Nursing at the Letterman Army Medical Center (LAMC).

The Union and the LAMC are parties to a collective bargaining agreement which contains a grievance and arbitration procedure. Article XXIV, Section 1(C) provides

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1/ On February 1, 1990, the General Counsel filed a motion to strike portions of the Respondent's post hearing brief on the ground that documents not accepted into evidence were appended thereto and that certain arguments made by Respondent were based on alleged facts not in evidence. To the extent that Respondent has appended certain documents not in evidence to its post hearing brief and/or relied upon such documents and other facts not in evidence in support of various arguments, such portions of Respondent's brief are hereby deemed stricken from the record and will not be considered by the undersigned in deciding the merits of the case.

2/ The pertinent facts are not in dispute. The only dispute appears to center around the merits and timeliness of the unresolved grievance which was the basis for LAMC's request for the selection of an arbitrator. Respondent was denied the opportunity at the hearing to submit evidence on such subjects. As noted in footnote 1, Respondent has again attempted in his post-hearing brief to litigate the merits of the grievance and support its position thereon.

that Employer grievances shall be submitted by the Civilian Personnel Officer, or his designee, to the Union President within fifteen work days of the date he could have reasonably become aware of the incident or decision giving rise to the grievance. In the event that "satisfactory resolution of the grievance is not achieved . . ., the Union or the employer may, within ten work days of the final decision elect to have the grievance settled by arbitration. . . ."

On or about April 17, 1989, LAMC filed a grievance under the provisions of the parties' collective bargaining agreement. The grievance alleged that Mr. Allen Perdue, President of the Union, had entered a worksite at LAMC in violation of the terms and provisions of the collective bargaining agreement.

On or about April 29, 1989, the Union's Executive Vice President, Mr. Greg Hudson, denied the grievance on the ground that it was untimely.

By letter dated May 8, 1989, Mr. Jerry Stewart, who was the Chief of Management Employee Relations at LAMC, invoked arbitration on the grievance and requested Mr. Perdue to meet with him in accordance with Article 25, Section 2 of the collective bargaining agreement for purposes of stipulating the issues and signing a request for a list of arbitrators.

Article 24, Section 3 provides that "Disputes as to whether a matter is grievable or arbitrable under the provisions of this agreement, if not resolved by the parties, may be referred to arbitration. . . ."

On May 10, 1989, Mr. Perdue, in his capacity as Union President, advised Mr. Stewart that the Union would not meet with LAMC for purposes of stipulating issues and selecting arbitrators to hear the LAMC grievance.

As of the date of the hearing the matter had not been submitted to arbitration.

Discussion and Conclusions

The General Counsel, relying on the Authority's decisions in Department of Labor, Employment Standards Administration/Wage and Hour Division, Washington, D.C., American Federation of Government Employees, Local 12, AFL-CIO, 10 FLRA 316; American Federation of Government Employees, Local 2782, AFL-CIO, 21 FLRA 339; Department of

the Navy, Portsmouth Naval Shipyard, Portsmouth, New Hampshire, 11 FLRA 456, takes the position that the Union was obligated under both the law and collective bargaining agreement to select an arbitrator for purposes of resolving the outstanding grievance. Having admitted that it refused to participate in the selection of an arbitrator, it is the General Counsel's further position that the Union violated section 7116(b)(1) and (8) of the Statute. Finally, the General Counsel would find the Union's defense predicated upon its opinion that the grievance was untimely to be without merit, since the matter of timeliness is an issue properly before an arbitrator for decision.

The Union appears to take the position that it can unilaterally determine that a grievance was untimely and therefore refuse to submit the grievance to arbitration. Additionally, as noted earlier, the Union in its post-hearing brief again attempts in this proceeding to litigate the merits of the grievance despite being advised by the undersigned that he is without power to make a decision thereon.

In agreement with Counsel for the General Counsel, I find that the above cited cases are dispositive of the instant complaint. Thus, in Department of Labor, Employment Standards Administration/Wage and Hour Division, Washington, D.C. and American Federation of Government Employees, Local 12, AFL-CIO, supra, the Authority held that once arbitration is invoked by one party to a collective bargaining agreement, the other party is obligated to proceed to, and participate in, the arbitration proceedings. It was further held that a failure to so participate, is violative of section 7121 of the Statute and constitutes an unfair labor practice. Finally, the Authority in the aforecited case made it clear that questions concerning grievability and timeliness are threshold questions to be decided by an arbitrator. Similar conclusions were reached by the Authority in American Federation of Government Employees, Local 2782, supra.

Based upon the foregoing analysis of the law, and since it is clear from the record that the Respondent has failed and refused to participate in the arbitration procedures set forth in the collective bargaining agreement, I find that Respondent has failed to comply with section 7121 of the Statute and by such act has violated sections 7116(b)(1) and (8) of the Statute.

Accordingly, it is hereby recommended that the Federal Labor Relations Authority issue the following Order designed to effectuate the purposes and policies of the Statute.

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 American Federation of Government Employees, Local 1457, AFL-CIO, shall:

1. Cease and desist from:

(a) Refusing or failing to proceed to arbitration on a grievance filed by the Letterman Army Medical Center on April 17, 1989, contrary to the requirement of section 7121 of the Federal Service Labor-Management Relations Statute, after receiving timely notice of the Letterman Army Medical Center's desire to invoke arbitration.

(b) In any like or related manner interfering with, restraining or coercing unit 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, proceed to arbitration regarding the grievance filed by the Letterman Army Medical Center, on April 17, 1989.

(b) Post at its business offices and its normal meeting places, including all places where notices to members and employees of the Letterman Army Medical Center, are customarily posted, 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 President of the American Federation of Government Employees, Local 1457, 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 members and other 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) Submit appropriate signed copies of such Notices to the Letterman Army Medical Center, for posting in conspicuous places where the unit employees are located, where they shall be maintained for a period of 60 consecutive days from the date of posting.

(d) Pursuant to section 2423.30 of the Authority's Rules and Regulations, notify the Regional Director, Region IX, 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, D.C., May 3, 1990.

BURTON S. STERNBURG
Administrative Law Judge