

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

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U.S. ARMY AEROMEDICAL CENTER, .  
FORT RUCKER, ALABAMA .

and .

HEADQUARTERS, U.S. ARMY HEALTH .  
SERVICES COMMAND, FORT SAM .  
HOUSTON, TEXAS .

Respondents .

and .

Case No. 4-CA-10778

AMERICAN FEDERATION OF .  
GOVERNMENT EMPLOYEES, .  
LOCAL 1815 .

Charging Party .

.....

Major Milton C. Spaulding  
For the Respondent

Godfrey E. Goff, Jr., Esq.  
For the General Counsel

Before: SALVATORE J. ARRIGO  
Administrative Law Judge

DECISION

Statement of the Case

This case arose under the Federal Service Labor-  
Management Relations Statute, Chapter 71 of Title 5 of the  
U.S. Code, 5 U.S.C. § 7101, et seq. (herein the Statute).

Upon an unfair labor practice charge having been filed by  
the captioned Charging Party (herein the Union) against the  
captioned Respondents, the General Counsel of the Federal  
Labor Relations Authority (herein the Authority), by the  
Regional Director for the Atlanta Regional Office, issued a  
Complaint and Notice of Hearing alleging Respondents violated

section 7116(a)(1), (5) and (6) of the Statute by refusing to adopt and implement a decision of the Federal Service Impasses Panel and by engaging in a course of conduct which constituted bad faith bargaining regarding a negotiation proposal submitted by the Union concerning "on-call" employees. Respondent failed to file an Answer to the Complaint.

Subsequently, counsel for the General Counsel filed a Motion for Summary Judgment and supporting documents with the Regional Director for the Atlanta Regional Office which was transferred to the Office of Administrative Law Judges for ruling pursuant to section 2423.22(b) of the Authority's Rules and Regulations. Thereafter Respondent filed a Response to counsel for the General Counsel's Motion for Summary Judgment, which included an Answer to the Complaint in which the factual allegations of the Complaint were admitted and the legal conclusions denied. Based upon my review and evaluation of the entire record before me, I make the following:

#### Findings of Fact

1. The unfair labor practice Complaint and Notice of Hearing in this matter was issued under 5 U.S.C. §§ 7101-7135 and 5 C.F.R. Chapter XIV.
2. The American Federation of Government Employees, Local 1815 (Union) is a labor organization under 5 U.S.C. § 7103(a)(4).
3. The U.S. Army Aeromedical Center, Fort Rucker, Alabama (Respondent-Fort Rucker), and Headquarters, U.S. Army Health Services Command, Fort Sam Houston, Texas (Respondent-Fort Sam Houston), are agencies under 5 U.S.C. § 7103(a)(3).
4. The original charge was filed by the Union with the Atlanta Regional Director on July 19, 1991.
5. A first amended charge was filed by the Union with the Atlanta Regional Director on August 5, 1991.
6. Copies of the charges were served on the Respondents.
7. During the time period covered by this Complaint, these persons occupied the position opposite their names:

Blaine King (King)

Labor Counsellor  
Respondent-Fort Rucker

Captain Mary Kay Jones (Jones)

Chief,  
Administrative Services  
Division, Respondent-  
Fort Sam Houston

8. During the time period covered by this Complaint, the persons named in paragraph 7 were supervisors or management officials under 5 U.S.C. § 7103(a)(10) and (11).

9. During the time period covered by this Complaint, the persons named in paragraph 7 were acting on behalf of the Respondents.

10. The Union is the exclusive representative of a unit appropriate for collective bargaining at Respondent-Fort Rucker.

11. Ramon Dean is an employee under 5 U.S.C. § 7103(a)(2) and is in the bargaining unit described in paragraph 10.

12. During the time period covered by this Complaint, Ramon Dean was the Union President and acted on behalf of the Union.

13. In 1989 the Union filed an unfair labor practice charge, docketed as Case No. 4-CA-90858, alleging a unilateral change in Respondent-Fort Rucker's "on call" procedures. This case was settled by an agreement between Respondent-Fort Rucker and the Union to negotiate over the impact and implementation of the change. Thereafter, the Union withdrew its charge.

14. On December 1, 1989, the Union submitted its proposals on the subject matter. Respondent-Fort Rucker, by King, in essence, rejected the Union's proposals on December 26, 1989.

15. On or about January 3, 1990, the Union sought the services of the Federal Mediation and Conciliation Service (FMCS).

16. On January 25, 1990, representatives of the Union and King met with a mediator. With the mediator's assistance, an agreement was reached. However, King was unable to persuade Respondent-Fort Rucker to accept the agreement.

17. On or about February 2, 1990, the Union sought the assistance of the Federal Service Impasses Panel (FSIP). The request for assistance was docketed as Case No. 90 FSIP 98.

18. Pursuant to FSIP instructions, the Union submitted its proposals and position on the subject matter to Respondent-Fort Rucker on June 1, 1990.

19. By letter from King, dated June 1, 1990, Respondent-Fort Rucker took the position that FSIP lacked jurisdiction to resolve the parties' dispute. According to King, the dispute concerned an issue of negotiability. Further, by letter dated June 18, 1990, King advised the Union that its proposals would not be entertained until the jurisdictional issue was resolved.

20. Based on the Respondent-Fort Rucker's position as described in paragraph 19, on July 12, 1990, the Union withdrew its request for FSIP assistance.

21. By letter to King dated August 6, 1990, the Union requested a written declaration of those portions of its proposals deemed non-negotiable by Respondent-Fort Rucker.

22. By letter dated August 13, 1990, King advised the Union that all of its proposals were negotiable for purposes of impact and implementation bargaining.

23. Based upon the above letter, on or about August 17, 1990, the Union requested that FSIP reopen 90 FSIP 98. This request was docketed by FSIP as 90 FSIP 232.

24. Between August 29 and September 28, 1990, King and Dean had several conversations regarding the subject matter. At some point during these conversations, King informed Dean that certain of the Union's proposals were now being declared non-negotiable. Dean requested that Respondent-Fort Rucker's allegations of non-negotiability be set forth in writing.

25. By letter dated September 28, 1990, King set forth in writing the Union proposals that Respondent-Fort Rucker was now declaring to be non-negotiable.

26. On September 28, 1990, the Union, by Dean, requested withdrawal of 90 FSIP 232, based on Respondent-Fort Rucker's new assertions of non-negotiability.

27. By letter dated October 9, 1990, FSIP informed the Union that the case was closed.

28. On October 17, 1990, the Union filed a negotiability appeal, docketed by the Authority as Case No. O-NG-1885.

29. On December 22, 1990, Dean received a copy of a letter dated December 20, 1990, which had been sent to the Chairman of the Authority. This letter was signed by Charles E. Thomas, Chief, Labor and Employee Relations Division, Department of the Army, Office of the Deputy Chief of Staff for Personnel. In essence, the letter stated that after discussion of the subject matter with King, Respondent-Fort Rucker was withdrawing its allegation of non-negotiability. Thereafter, on December 27, 1990, the Authority issued an order dismissing Case No. O-NG-1885.

30. By letter dated January 18, 1991, the Union again sought the services of FSIP to resolve the parties' dispute. This request for assistance was docketed as Case No. 91 FSIP 115. By letter dated January 23, 1991, FSIP directed the parties to submit their proposals.

31. On May 30, 1991, FSIP issued its decision directing that the Union's proposals be adopted.

32. Thereafter, Respondent-Fort Sam Houston conducted an agency head review of the decision in Case No. 91 FSIP 115, under 5 U.S.C. § 7114(C)(2).

33. On June 27, 1991, Respondent-Fort Sam Houston, by Jones, refused to approve the provisions ordered adopted in the FSIP's final order and made a written allegation of non-negotiability on the basis that the FSIP decision in Case No. 91 FSIP 115 was violative of management's right to determine its mission, to direct work, and to assign work.

34. In the Complaint and Notice of Hearing which issued in this case on November 20, 1992, the Regional Director alleged the facts set forth above in paragraphs 1 through 33 and further alleged:

(a) By the course of conduct described in paragraphs 19, 22, 23, 24, 28, and 33, Respondent-Fort Rucker engaged in bad faith bargaining, inconsistent with a good faith effort to reach agreement over matters appropriate for collective bargaining, thereby committing an unfair labor practice in violation of 5 U.S.C. § 7116(a)(1) and (5); and

(b) By the conduct described in paragraph 33, Respondent-Fort Sam Houston failed to cooperate with the final order of the FSIP, thereby committing an unfair labor practice in violation of 5 U.S.C. § 7116(a)(1) and (6).

35. Section 2423.13(a) of the Authority's Rules and Regulations requires that, except in extraordinary circumstances as determined by the Regional Director, a respondent shall file an answer to a complaint within 20 days after the complaint is served on the respondent.

36. Respondents did not file an Answer to the Complaint herein until it was incorporated in the February 23, 1993, Response to counsel for the General Council's Motion for Summary Judgment.

#### Discussion and Conclusions

In the Motion for Summary Judgment counsel for the General Counsel, relying on section 2423.13(b) of the Authority's Rules and Regulations, requests judgement since Respondent failed to file an Answer to the Complaint.<sup>1/</sup> As a remedy counsel for the General Counsel seeks: an order requiring that Respondents comply with the May 30, 1991 decision of the FSIP in Case No. 91 FSIP 115; a cease and desist order; and an order requiring a Notice posting signed by the Activity heads of both Respondents.

Respondents in their reply state that no response was filed to the original Complaint through Respondents' "internal miscommunication." Respondent argues, however, that summary judgement involving a question of negotiability would be "inappropriate", contending that no prejudice resulted from the failure to answer the complaint in a timely manner, citing American Federation of Government Employees, AFL-CIO, 4 FLRA 272 (1980). Respondents further suggest a hearing be rescheduled to address Respondents' allegation that the Union's proposal was not negotiable.

Respondents' reason for failure to file an Answer to the Complaint until after the Motion for Summary Judgment was made does not constitute good cause for its failure to follow the

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<sup>1/</sup> Section 2423.13(b) of the Regulations provides:

(b) The answer: (1) Shall specifically admit, deny, or explain each of the allegations of the complaint unless the respondent is without knowledge, in which case the answer shall so state; or (2) Shall state that the respondent admits all of the allegations in the complaint. Failure to file an answer or to plead specifically to or explain any allegation shall constitute an admission of such allegation and shall be so found by the Authority, unless good cause to the contrary is shown.

Authority's Rules and Regulations. Indeed, to allow such an explanation to excuse the timely filing of an answer would be to invite wholesale abuse of the Authority's processes regarding the orderly litigation of unfair labor practice charges. See U.S. Department of Treasury, Customs Service, Washington, D.C. and Customs Service, Region IV, Miami, Florida, 37 FLRA 603 (1990) wherein Administrative Law Judge Oliver granted the General Counsel's Motion for Summary Judgment based upon the agency's failure to file an Answer to the Complaint and the Authority affirmed his rulings. See also U.S. Department of the Treasury, Customs Service, Washington, D.C., 38 FLRA 875 (1990) and American Federation of Government Employees, Local 1457, 36 FLRA 253 (1990) wherein the Authority strictly adhered to time limitations set forth in the Rules and Regulations.

Respondents' reliance on AFGE, AFL-CIO is misplaced since that case is clearly distinguishable. AFGE, AFL-CIO involved an all-party stipulation of facts in which the stipulation reflected a denial of the allegations of the complaint; the issue of failure to answer the complaint was raised for the first time by the charging party in its brief; and there was no showing of prejudice since both charging party and the General Counsel not only entered into the stipulation but were aware of the agency's position as evidenced by their submissions of the stipulation to the Authority.

Accordingly, I conclude Respondents' failure to timely answer the allegations of the Complaint herein as required by section 2423.13(b) of the Regulations constitutes an admission that section 7116(a)(1) and (5) of the Statute was violated regarding the allegations of the Complaint concerning Respondent-Fort Rucker engaging in bad faith bargaining by its course of conduct as set forth in Paragraph 30, above, under Findings of Facts.<sup>2/</sup>

However, I reject counsel for the General Counsel's contention that Respondents' failure to timely answer the Complaint supports a conclusion that Respondents thereby failed to cooperate with the final order of the FSIP in violation of section 7116(a)(1) and (6) of the Statute. Unless a determination of negotiability has been made by the Authority, the agency head, herein Respondent-Fort Sam Houston, retained the right to contest the negotiability of the proposal ordered adopted by the FSIP. See Department of the Treasury and Internal Revenue Service, 22 FLRA 821, 827-

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<sup>2/</sup> See Veterans Administration, Washington, D.C. and Veterans Administration Medical Center, Leavenworth, Kansas, 32 FLRA 855 (1988).

828 (1986). The Complaint does not allege that the matter encompassed in the Union's proposal was previously found by the Authority to be negotiable nor substantially similar to one previously found to be negotiable by the Authority, nor did the Complaint allege the FSIP specifically treated the negotiability of the Union's proposal. Such a finding is necessary before a conclusion that failure to adopt the proposal violated the Statute. Cf. U.S. Department of Defense, National Guard Bureau, Alexandria, Virginia, 42 FLRA 877, 884 (1991). Thus, admission of the factual allegations set forth in the Complaint does not support a legal conclusion that the Union's proposal was negotiable. Cf. Veterans Administration Medical Center, Leavenworth, Kansas, 40 FLRA 592, 597 (1991). Therefore, I deny counsel for the General Counsel's Motion for Summary Judgment regarding the allegations of the Complaint that Respondent-Fort Sam Houston violated the Statute when it refused to approve the final order of the FSIP that the Union's proposal should be adopted.

Accordingly, in view of the foregoing and record herein, I recommend the Authority dismiss the allegation in the Complaint that Respondent-Fort Sam Houston violated the Statute and I recommend the Authority issue the following:

#### ORDER

Pursuant to section 2423.29 of the Authority's Rules and Regulations and section 7118 of the Federal Service Labor-Management Relations Statute, the U.S. Army Aeromedical Center, Fort Rucker, Alabama, shall:

1. Cease and desist from:

(a) Failing and refusing to bargain in good faith with American Federation of Government Employees, AFL-CIO, Local 1815, the exclusive representative of their employees at Fort Rucker, Alabama, concerning "on-call" procedures of bargaining unit employees.

(b) In any like or related manner, interfering with, restraining, or coercing its employees in the exercise of the rights assured them by the Statute.

2. Take the following affirmative actions in order to effectuate the purposes and policies of the Statute:

(a) Upon request by American Federation of Government Employees, AFL-CIO, Local 1815, the exclusive representative of their employees at Fort Rucker, Alabama, bargain in good faith concerning "on-call" procedures, including, if requested, submitting to the Authority for a

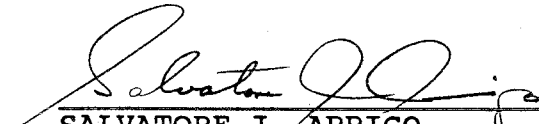


negotiability determination the proposal contained in the final order of the FSIP in Case No. 91 FSIP 115.

(b) Post at all facilities where bargaining unit employees represented by American Federation of Government Employees, AFL-CIO, Local 1815 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 Commanding Officer of Fort Rucker, Alabama, and shall be posted in conspicuous places, including all bulletin boards and other places where notices to employees are customarily posted, and shall be maintained for 60 consecutive days thereafter. Reasonable steps shall be taken to ensure that such notices are not altered, defaced, or covered by any other material.

(c) Pursuant to section 2423.30 of the Authority's Rules and Regulations, notify the Regional Director, Atlanta 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.

Issued, Washington, D.C., April 23, 1993

  
SALVATORE J. ARRIGO  
Administrative Law Judge

NOTICE TO ALL EMPLOYEES  
AS ORDERED BY THE FEDERAL LABOR RELATIONS AUTHORITY  
AND TO EFFECTUATE THE POLICIES OF THE  
FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS STATUTE

WE NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT fail and refuse to bargain in good faith with American Federation of Government Employees, AFL-CIO, Local 1815, the exclusive representative of our employees at Fort Rucker, Alabama, concerning "on-call" procedures of bargaining unit employees.

WE WILL NOT, in any like or related manner, interfere with, restrain, or coerce our employees in the exercise of their rights assured them by the Federal Service Labor-Management Relations Statute.

WE WILL, upon request by American Federation of Government Employees, AFL-CIO, Local 1815, the exclusive representative of our employees at Fort Rucker, Alabama, bargain in good faith concerning "on-call" procedures, including, if requested, submitting to the Authority for a negotiability determination the proposal contained in the final order of the FSIP in Case No. 91 FSIP 115.

\_\_\_\_\_  
(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 its provisions, they may communicate directly with the Regional Director, Atlanta Regional Office, whose address is: 1371 Peachtree Street, NE., Suite 122, Atlanta, GA 30367 and whose telephone number is (404) 347-2324.