

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 MIAMI, FLORIDA Respondent and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 515 Charging Party	Case No. AT-CA-02-0084

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/her 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 28, 2002**, and addressed to:

Office of Case Control
Federal Labor Relations Authority
607 14th Street, N.W., Suite 415
Washington, D.C. 20424

SUSAN E. JELEN
Administrative Law Judge

Dated: September 26, 2002
Washington, DC

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges

WASHINGTON, D.C. 20424-0001

MEMORANDUM
2002

DATE: September 26,

TO: The Federal Labor Relations Authority

FROM: SUSAN E. JELEN
Administrative Law Judge

SUBJECT: DEPARTMENT OF VETERANS AFFAIRS
VETERANS AFFAIRS MEDICAL CENTER
MIAMI, FLORIDA

Respondent

and
CA-02-0084

Case No. AT-

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 515

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

FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges OALJ 02-64
WASHINGTON, D.C.

DEPARTMENT OF VETERANS AFFAIRS VETERANS AFFAIRS MEDICAL CENTER MIAMI, FLORIDA <p style="text-align: center;">Respondent</p> and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 515 <p style="text-align: center;">Charging Party</p>	Case No. AT-CA-02-0084

Melissa L. Libertini, Esq.
For the General Counsel

Gregory Ochalek, Labor Relations Specialist
For the Respondent

Charles Mantei, Esq.
For the Charging Party

Before: SUSAN E. JELEN
 Administrative Law Judge

DECISION ON MOTION FOR SUMMARY JUDGMENT

On July 17, 2002, the Regional Director of the Atlanta Region of the Federal Labor Relations Authority issued a Complaint and Notice of Hearing, which was duly served by certified mail upon the Department of Veterans Affairs, Veterans Affairs Medical Center, Miami, Florida (the Respondent). The Complaint alleged that Respondent violated section 7114(b)(4) and 7116(a)(1), (5) and (8) of the Federal Service Labor-Management Relations Statute (the Statute), by refusing to provide the American Federation of Government Employees, Local 515 (the Union), with a copy of the rating/crediting plan used in the selection of an employee for the position of Air Conditioning Equipment Mechanic Helper. The Complaint was sent by certified mail to the Respondent's representative and the certified mail receipt, demonstrating service upon the Respondent, was

returned to the Atlanta Region. (G.C. Ex. 1(b) and 1(c). The Complaint also specified that, in accordance with the Authority's Rules and Regulations, the Respondent must file an Answer to the Complaint no later than August 12, 2002, and that a failure to file an answer shall constitute an admission of the allegations of the Complaint. Respondent did not file an answer, either in person or by mail, within the required period or at any time thereafter.

On September 10, 2002, Counsel for the General Counsel filed a Motion for Summary Judgment, based on the Respondent's failure to file a timely answer. A facsimile copy of this motion was received in the Office of Administrative Law Judges on September 10, 2002. No answer has been received from the Respondent in this matter. The Respondent has also failed to file any response to the General Counsel's Motion for Summary Judgment within the time period provided by Regulations. See 5 C.F.R. § 2423.27 (b).

Discussion of Motion for Summary Judgment

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 with the Office of Administrative Law Judges. The answer shall admit, deny, or explain each allegation of the complaint. . . . Absent a showing of good cause to the contrary, failure to file an answer or respond to any allegation shall constitute an admission.

The Rules and Regulations also explain how to calculate filing deadlines and how to request extensions of time for filing the required documents. See, e.g., sections 2429.21 through 2429.23.

In this case the Respondent has not filed an answer as required by the Regulations. In accordance with section 2423.20(b) of the Rules and Regulations, this failure constitutes an admission of each of the allegations of the Complaint. *Department of Veterans Affairs Medical Center, Asheville, North Carolina*, 51 FLRA 1572, 1594 (1996). Furthermore, the Respondent has not filed any 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 the Respondent has admitted that it has refused to comply with the provisions of section 7114(b)(4) of the Statute by failing to provide the Union with the requested information, specifically a copy of the rating/crediting plan used in the selection of an employee for the position of Air Conditioning Equipment Mechanic Helper. Respondent has admitted that the requested data was: (1) normally maintained in the regular course of business; (2) reasonably available and necessary for collective bargaining; (3) devoid of any guidance, advice, counsel, or training provided for management officials or supervisors related to collective bargaining; and (4) not otherwise in conflict with any law, such as the Privacy Act. *Health Care Financing Administration*, 56 FLRA 503, 506 (2000).

Therefore, I find that the Respondent violated section 7116(a)(1), (5) and (8) of the Statute, as alleged, and the General Counsel's Motion for Summary Judgment is hereby, granted.

Remedy

Counsel for the General Counsel proposed a recommended remedy requiring the Respondent to provide the requested information and to post a facility-wide notice signed by the Chief of Human Resources Management Services.

Accordingly, I recommend that the Authority adopt 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, Miami, Florida, shall:

1. Cease and desist from:

(a) Failing and refusing to furnish the American Federation of Government Employees, Local 515, information to which it is entitled to under the Federal Service Labor-Management Relations Statute, specifically the rating/crediting plan for the Air Conditioning Equipment Mechanic Helper position.

(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) Furnish the American Federation of Government Employees, Local 515, a copy of the rating/crediting plan requested in its letter dated September 4, 2001.

(b) Post at its Miami, Florida facility, where bargaining unit employees represented by the American Federation of Government Employees, Local 515, 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, 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, Atlanta Region, 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, DC, September 26, 2002.

SUSAN E. JELEN
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, Miami, Florida, 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 fail and refuse to furnish the American Federation of Government Employees, Local 515, the exclusive representative of certain of our employees, information to which it is entitled to under the Federal Service Labor-Management Relations Statute, specifically the rating/crediting plan for the Air Conditioning Equipment Mechanic Helper position.

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 furnish the American Federation of Government Employees, Local 515, the exclusive representative of certain of our employees, a copy of the rating/crediting plan requested in its letter dated September 4, 2001.

(Activity)

Date:

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, Federal Labor Relations Authority, whose address is: Marquis Two Tower, 285 Peachtree Center Avenue, Suite 701, Atlanta, GA 30303, and whose telephone number is: (404) 331-5380.

CERTIFICATE OF SERVICE

I hereby certify that copies of this **DECISION** issued by SUSAN E. JELEN, Administrative Law Judge, in Case No. AT-CA-02-0084, were sent to the following parties:

CERTIFIED MAIL:

CERTIFIED NOS:

Melissa L. Libertini, Esquire 7000-1670-0000-1175-6605
Federal Labor Relations Authority
285 Peachtree Center Avenue, Suite 701
Atlanta, GA 30303

Gregory Ochalek, LRS
7000-1670-0000-1175-6629
Veterans Affairs Medical Center
Human Resources Management (05)
1201 N.W. 16th Street
Miami, FL 33125

Charles Mantei, Esquire
7000-1670-0000-1175-6636
Law Office of Charles Mantei, PA
1 N.E. 2nd Avenue
Miami, FL 33132

REGULAR MAIL:

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

CATHERINE L. TURNER, LEGAL TECHNICIAN

DATED: SEPTEMBER 26, 2002
WASHINGTON, DC