

ATTACHMENT 1N1

UNITED STATES OF AMERICA

BEFORE THE FEDERAL LABOR RELATIONS AUTHORITY

OFFICE OF ADMINISTRATIVE LAW JUDGES

U.S. DEPARTMENT OF VETERANS AFFAIRS
(Respondent)

-and-

NATIONAL ASSOCIATION OF GOVERNMENT
EMPLOYEES, SEIU, LOCAL R5-136, AFL-CIO
(Charging Party)

CASE NO. AT-CA-90578

MOTION TO COMPEL MORE DEFINITIVE PRE-HEARING DISCLOSURE

On November 15, 1999, the Chicago Regional Director issued a Complaint and Notice of Hearing in this matter. The hearing is scheduled for Wednesday January 19, 2000, at 9:00 a.m. On January 5, 2000, Counsel for the General Counsel provided copies of its Prehearing Disclosure to all parties, as required by § 2423.23 of the Rules and Regulations of the Federal Labor Relations Authority. Respondent provided what purported to be its Prehearing Disclosure to the Regional Director of the Federal Labor Relations Authority, Chicago Region, on January 5, 2000. (Attachment A). Respondent's witness list did not provide a "brief synopsis" of the expected testimony of each of its witnesses as required by section 2423.23(a) of the Regulations. Instead, Respondent provided a single sentence statement of the witnesses' expected testimony, e.g., "Smith will testify concerning grievance practices"- "Groom will testify concerning his role as Agency representative, Agency practices, and specifics of the event". These general, vague and ambiguous descriptions of expected testimony are woefully deficient and fall far short of compliance with section 2423.23(a).

In promulgating the ULP regulations in 1997, the Authority stated in the comments that were provided as supporting supplementary material regarding the prehearing disclosure regulation: "early prehearing disclosure will enable the parties to knowledgeably and more effectively prepare their cases without having to guess what evidence or theories others in litigation will offer." (62 Fed. Reg. 40911, 40912 July 31, 1997).

With regard to the requirement that parties provide a brief synopsis of their witnesses' expected testimony, the Authority noted as follows:

One commenter questioned the meaning of the requirement to disclose "synopsis of testimony," suggesting that this phrase could be subjected to different interpretations, e.g., the facts about which the witness would testify, a summary of the testimony the witness would offer, or the allegation(s) in the complaint the witness would address. The first two examples would satisfy the "synopsis of testimony" requirement, but the third would be insufficient because it would not disclose the substance of the expected testimony. (62 Fed. Reg. 40911, 40913 July 31, 1997)

Respondent's failure to provide a synopsis of its witnesses' expected testimony puts the General Counsel and the Charging Party at a disadvantage having to guess what evidence Respondent will offer at hearing. As a result, Respondent has prevented the parties from knowledgeably and effectively preparing for the January 12 prehearing conference and the January 19 hearing date. This is totally inconsistent with the purpose of section 2423.23.

Accordingly, the General Counsel moves that Respondent be ordered to comply forthwith with section 2423.23(a) and disclose in writing the substance of the expected testimony of its witnesses. In view of the January 12 prehearing conference, it is requested that Respondent be directed to provide this information to the parties by facsimile no later than noon EST January 11, 2000. Should Respondent fail to comply, the General Counsel will move for appropriate sanctions under section 2423.24(e) of the Regulations.

Respectfully submitted,

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Dated:

Note: In this case, the ALJ granted the Trial Attorney's motion and cautioned Respondent's counsel that sanctions may be imposed for failure to comply with the regulation.