



FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C. 20424

OALJ 23-04

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 2408 AFL-CIO

RESPONDENT

AND

Case No. CH-CO-21-0419

ANNETTE MARTINEZ-TORRES, AN
INDIVIDUAL

CHARGING PARTY

Kenneth Woodberry
For the General Counsel

Francisco J. Reyes Caparrós, Esq.
For the Respondent

Annette Martinez-Torres
For the Charging Party

Before: DAVID L. WELCH
Chief Administrative Law Judge

DECISION ON MOTION FOR SUMMARY JUDGMENT

On October 13, 2022, the Acting Regional Director of the Chicago Region of the Federal Labor Relations Authority (the Authority) issued a Complaint and Notice of Hearing in this matter. The Complaint alleged that the American Federation of Government Employees, Local 2408, AFL-CIO (the Respondent or Union) was failing and refusing to comply with its duty of fair representation under § 7114(a)(1) of the Federal Service Labor-Management Relations Statute (the Statute) in violation of § 7116(b)(1) and (8) of the Statute, and was interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in § 7102 of the Statute, in violation of § 7116(b)(1) of the Statute, by, among other things, providing a priority to the Union's paying members for eligibility to park in the parking lot of the VA Caribbean Healthcare System, San Juan, Puerto Rico (the Agency) as a benefit for being a member of the Union. The Complaint indicated that a hearing on the allegations would be held on January 12, 2023. The Complaint also advised the Respondent that an

Answer to the Complaint was due no later than November 7, 2022, and that a failure to file an answer or respond to any allegation would constitute an admission of those allegations, absent a showing of good cause. The Complaint was sent by mail to the Respondent's designated representative, Francisco J. Reyes Caparrós, Esq., P.O. Box 33150, San Juan, Puerto Rico 0933-3150, and a courtesy copy of the Complaint was sent to Caparrós via email. The Respondent did not file an Answer to the Complaint.

On December 6, 2022, Counsel for the General Counsel (GC) filed a Motion for Summary Judgment and a memorandum in support thereof, based on the fact that the Respondent failed to file an Answer to the Complaint, and arguing that the Respondent had admitted all allegations of the Complaint. The GC asserts that since there are no factual or legal issues in dispute, the case is ripe for summary judgment in its favor. The Motion for Summary Judgment was served on the Respondent by first class mail on December 6, 2022. A response was due on December 19, 2022. *See* 5 C.F.R. §§ 2423.27(b), 2429.21, 2429.22(a)

On December 14, 2022, the Respondent faxed an Opposition to the GC's Motion for Summary Judgment and a memorandum in support thereof. (Both were dated December 9, 2022.) The Respondent did not submit a statement of service, and there is no indication the Respondent served the Opposition on the other parties.

DISCUSSION OF MOTION FOR SUMMARY JUDGMENT

The Authority has held that motions for summary judgment, filed under § 2423.27 of its Regulations, 5 C.F.R. § 2423.27, serve the same purpose, and are governed by the same principles, as motions filed in United States District Courts under Rule 56 of the Federal Rules of Civil Procedure. *Dep't of VA, VA Med. Ctr., Nashville, Tenn.*, 50 FLRA 220, 222 (1995). Summary judgment is appropriate when there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

Section 2423.20(b) of the Authority's 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 Regulations also explain how to calculate filing deadlines and how to request extensions of time for filing answers and other required documents. *See, e.g.*, §§ 2429.21 through 2429.23. Furthermore, in the body of the Complaint, the Regional Director provided the Respondent with detailed instructions concerning the requirements for its Answer, including the date on which the Answer was due, persons to whom it must be sent, and references to the applicable regulations. The Regional Director also advised the Respondent

that, absent a showing of good cause, the failure to answer any allegation of the Complaint would constitute an admission.

Moreover, the Authority has held, in a variety of factual and legal contexts, that parties are responsible for being aware of the statutory and regulatory requirements in proceedings under the Statute. *U.S. EPA, Env'tl. Research Lab., Narragansett, R.I.*, 49 FLRA 33, 34-36 (1994) (answer to a complaint and an ALJ's order); *U.S. Dep't of VA, Med. Ctr., Waco, Tex.*, 43 FLRA 1149, 1150 (1992) (exceptions to an arbitrator's award); *U.S. Dep't of the Treasury, Customs Serv., Wash., D.C.*, 37 FLRA 603, 610 (1990) (failure to file an answer due to a clerical error is not good cause sufficient to prevent a summary judgment).

In this case, the Respondent has not filed an Answer as required under 5 C.F.R. § 2423.20(b). And while the Respondent did submit an Opposition to the GC's Motion for Summary Judgment to the undersigned, the Respondent failed to file a statement of service with its Opposition, and there is no indication that the Respondent served its Opposition on the other parties, as required. *See* 5 C.F.R. §§ 2423.21, 2429.27.

Even if the Respondent had met these procedural requirements, the Respondent has not established good cause for its failure to file an Answer. *See, e.g., U.S. Dep't of Transp., FAA, Hous., Tex.*, 63 FLRA 34, 35-36 (2008). The Respondent argues that it "answered the complaint" by discussing allegations with the GC in response to the unfair labor practice charge and/or the Complaint. Resp. Opp'n at 1, 3-4. But such conversations do not satisfy the requirements for filing an answer. *See* 5 C.F.R. § 2423.20(b) (requiring, among other things, that an answer be *filed and served* with the Office of Administrative Law Judges). The Respondent also argues that summary judgment is inappropriate because there are material facts in dispute, and because parking is not a condition of employment. *See* Resp. Opp'n at 1-3. But consideration of those issues is not appropriate where, as here, the Respondent has failed to establish good cause for its failure to file an Answer. *See* 5 C.F.R. § 2423.20(b).

In sum, the Respondent has not filed an Answer and has failed to demonstrate any good cause for its failure to do so. In these circumstances, § 2423.20(b) clearly requires that the Respondent's failure to file an Answer be treated as an admission of each of the allegations of the Complaint. Accordingly, there are no disputed factual issues in this case, and summary judgment against the Respondent is justified. Therefore, the GC's Motion for Summary Judgment is granted, and the hearing scheduled for January 12, 2023, which was postponed indefinitely, is vacated.

Based on the existing record, the undersigned makes the following findings of fact, conclusions of law, and recommendations.

FINDINGS OF FACT

1. The charge in this proceeding was filed by Annette Martinez-Torres, an Individual (the Charging Party), on August 2, 2021, and a copy was served on the Respondent.
2. The American Federation of Government Employees, AFL-CIO (AFGE) is a labor organization within the meaning of § 7103(a)(4) of the Statute and is the certified exclusive representative of nationwide consolidated units of Department of Veterans Affairs (VA) employees, including employees of the VA Caribbean Healthcare System, San Juan, Puerto Rico (the units).
3. The Respondent is an agent of AFGE for the purpose of representing the unit employees employed in the units at the VA Caribbean Healthcare System, San Juan, Puerto Rico (the Agency).
4. The Charging Party is an employee under § 7103(a)(2) of the Statute and is in one of the bargaining units described in paragraph 2.
5. At all material times, the following individuals held the positions set opposite their names and have been agents of the Respondent acting on its behalf:

Luis De Jesus-Mattos	President
Francisco J. Reyes Caparrós, Esq.	Counsel
6. On or about July 16, 2021, the Respondent, by De Jesus-Mattos, sent the Charging Party and other bargaining unit employees an email detailing that the Agency was eliminating parking spaces in the Agency's parking lot known as the OPA B1 and that the Union would be retaining dues paying members in the lot. De Jesus-Mattos told employees to join the Union to avoid losing their parking spaces.
7. On July 19, 2021, De Jesus-Mattos affirmed that the Union's Executive Board had determined the lot was for Union members only.
8. On July 20, 2021, the Respondent by Reyes Caparrós affirmed that the Union was providing a priority to its paying members for eligibility to park in the Agency's parking lot as a benefit for being a member of the Union.
9. By the conduct described in paragraphs 6, 7, and 8, the Respondent has been failing and refusing to comply with its duty of fair representation under § 7114(a)(1) of the Statute.

10. By the conduct described in paragraphs 6, 7, 8, and 9, the Respondent has been violating § 7116(b)(1) and (8) of the Statute.
11. By the conduct described in paragraphs 6, 7, and 8, the Respondent has been interfering with, restraining and coercing employees in the exercise of the rights guaranteed in § 7102 of the Statute in violation of § 7116(b)(1) of the Statute.

CONCLUSIONS OF LAW

By the conduct set forth in Case No. CH-CO-21-0419, which contains allegations to which the Respondent has failed to file an Answer or otherwise demonstrate good cause for such failure, the Respondent admits that it failed and refused to comply with its duty of fair representation under § 7114(a)(1) of the Statute, in violation of § 7116(b)(1) and (8) of the Statute, and interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in § 7102 of the Statute, in violation of § 7116(b)(1) of the Statute.

As a remedy, the Respondent will, among other things, be ordered to provide the Charging Party and other non-dues paying bargaining unit employees access to the parking lot without consideration of their Union membership status. *See Antilles Consol. Educ. Ass'n, (OEA/NEA), San Juan, P.R.*, 36 FLRA 776, 801 (1990) (ordering, among other things, that all non-member unit employees be provided with an opportunity to participate in insurance plans on the same basis as member participants).

I therefore recommend that the Authority grant the General Counsel's Motion for Summary judgment and issue the following Order:

ORDER

Pursuant to § 2423.41(c) of the Rules and Regulations of the Authority and § 7118 of the Federal Service Labor-Management Relations Statute (the Statute), the American Federation of Government Employees, Local 2408, AFL-CIO (the Union) shall:

1. Cease and desist from:
 - (a) Discriminating against non-dues paying bargaining unit employees by restricting access to the Veterans Affairs Caribbean Healthcare System, San Juan, Puerto Rico's (Agency's) parking lot OPA B1 to dues paying Union members.
 - (b) Requiring bargaining unit employees to become dues paying Union members to gain access to Agency parking lots or any Agency benefit.

- (c) In any like or related manner, interfering with, restraining, or coercing its employees in the exercise of their rights assured by the Statute.
2. Take the following affirmative action in order to effectuate the purposes and policies of the Statute:
- (a) Provide Annette Martinez-Torres and other non-dues paying bargaining unit employees access to parking lot OPA B1 without consideration of their Union membership status.
 - (b) Post at its business office, at its normal meeting places, and at all other places where notices to members and to employees of the Agency are normally 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 Union's President 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) Submit appropriate signed copies of the Notice to the Agency for posting in conspicuous places where unit employees represented by the Union are located. Copies of the Notice should be maintained for a period of 60 days from the date of the posting.
 - (d) In addition to physical posting of paper notices, the Notice shall be distributed electronically, on the same day as the physical posting, such as by email, posting on an intranet or internet site, or other electronic means, if such is customarily used to communicate with bargaining unit employees.
 - (e) Pursuant to § 2423.41(e) of the Rules and Regulations of the Authority, notify the Regional Director, Chicago 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., January 4, 2023

DAVID L. WELCH
Chief 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 American Federation of Government Employees, Local 2408, AFL-CIO (the Union), violated the Federal Service Labor-Management Relations Statute (the Statute) and has ordered us to post and abide by this notice.

WE HEREBY NOTIFY EMPLOYEES THAT:

WE WILL NOT discriminate against non-dues paying bargaining unit employees by restricting access to the Veterans Affairs Caribbean Healthcare System, San Juan, Puerto Rico's (the Agency's) parking lot OPA B1 to dues paying Union members.

WE WILL NOT require bargaining unit employees to become dues paying Union members to gain access to Agency parking lots or any Agency benefit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce bargaining unit employees in the exercise of their rights assured by the Statute.

WE WILL represent the interests of all employees in the bargaining unit that we represent without discrimination and without regard to labor organization status or membership.

WE WILL distribute parking fairly to all bargaining unit employees without consideration of their union membership status.

(Union)

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.

Questions about this notice or compliance with its terms may be directed to the Regional Director, Chicago Regional Office, Federal Labor Relations Authority by mail: 224 S. Michigan Ave., Suite 445, Chicago, IL 60604, or phone: (872) 627-0020.