



UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C. 20424

OALJ 25-5

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 2302, AFL-CIO

RESPONDENT/UNION

AND

DEPARTMENT OF THE ARMY
U.S. ARMY GARRISON
FORT KNOX, KENTUCKY

CHARGING PARTY/AGENCY

Case Nos. CH-CO-20-0212
CH-CO-21-0055
CH-CO-22-0360
CH-CO-22-0461
CH-CO-22-0494
CH-CO-22-0514
CH-CO-22-0583
CH-CO-23-0024

David Mithen
For the General Counsel

Vickie Pennington
For the Respondent/Union

G. Houston Parrish
For the Charging Party/Agency

Before: DAVID L. WELCH
Chief Administrative Law Judge

DECISION ON MOTION FOR SUMMARY JUDGMENT

The Respondent in this case has failed to answer the Complaint. The General Counsel moved for summary judgment, because that failure results in the Respondent being deemed to have admitted all of the allegations of the Complaint. With all of the allegations deemed admitted, there are no genuine issues of material fact, and the General Counsel is entitled to summary judgment as a matter of law.

Factual and Procedural Background

On July 20, 2023, the Regional Director of the Chicago Region of the Federal Labor Relations Authority (the Authority) issued a Complaint and notice of Hearing in this case, alleging that the American Federation of Government Employees, Local 2302, AFL-CIO (the Respondent or Union) violated § 7116(b)(1) and (5) of the Federal Service Labor-Management Relations Statute (the Statute) by refusing to negotiate in good faith with the Department of the Army, U.S. Army Garrison, Fort Knox, Kentucky (the Charging Party or Agency). The Complaint indicated that a hearing on the allegations would be held on July 24, 2024, and advised the Respondent that an Answer to the Complaint was due no later than August 14, 2023. The Respondent has not filed an Answer to the Complaint.

On July 3, 2024, Counsel of the General Counsel (GC) filed a Motion for Summary Judgment, based on the fact that the Respondent had failed to file an Answer to the Complaint, and arguing that the Respondent had, therefore, admitted all the 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. The Respondent has not filed a response to the Motion for Summary Judgment.

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 the 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.*, 5 C.F.R. §§ 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; he also advised 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, Envtl. Rsch. 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, nor has it demonstrated any good cause for its failure to do so. *See, e.g., U.S. Dep't of Transp., FAA, Hous., Tex.*, 63 FLRA 34, 36 (2008); *U.S. Dep't of VA Med. Ctr., Kan. City, Mo.*, 52 FLRA 282, 284 (1996), and the cases cited therein. Moreover, after the GC filed its Motion for Summary Judgment, the Respondent did not file a response or otherwise offer any explanation for its failure to answer the Complaint. 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.

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

FINDINGS OF FACT

1. The Department of the Army, U.S. Army Garrison, Fort Knox, Kentucky (the Charging Party or Agency) filed charges in Case No. CH-CO-20-0212 on July 13, 2020; Case No. CH-CO-21-0055 on January 11, 2021; Case No. CH-CO-22-0360 on June 3, 2022; Case No. CH-CO-22-0461 on July 26, 2022; Case No. CH-CO-22-0494 on August 9, 2022; Case No. CH-CO-22-0514 on August 17, 2022; Case No. CH-CO-22-0583 on September 27, 2022; and Case No. CH-CO-23-0024 on October 21, 2022 and copies were served on the American Federation of Government Employees, Local 2302, AFL-CIO (the Respondent or Union).
2. These cases are consolidated because it is necessary to effectuate the purposes of 5 U.S.C. §§ 7101-7135 of the Federal Service Labor-Management Relations Statute (the Statute) and to avoid unnecessary costs or delay pursuant to § 2429.2 of the Rules and Regulations of the Authority.
3. The Agency is an agency within the meaning of § 7103(a)(3) of the Statute.
4. Respondent is a labor organization within the meaning of § 7103(a)(4) of the Statute and is the certified exclusive representative of a unit of employees at the Agency.
5. Beginning in 2019, Respondent and the Agency began meeting for the purposes of negotiating a successor collective bargaining agreement.
6. On November 14, 2019, Respondent and the Agency agreed to ground rules for negotiating a successor collective bargaining agreement, and the ground rules were approved by the Department of Defense on January 24, 2020.
7. During the period beginning on or about June 23, 2020 through June 15, 2021, Respondent refused the Agency's attempts to resume the negotiations described in paragraph 5.

8. During the negotiations described in paragraphs 5 through 7, and continuing, Respondent has engaged in the following conduct: cancelling scheduled negotiation sessions; failing to appoint chief negotiators; failing to initial agreements; and attending negotiation sessions unprepared to bargain.
9. In disposition of Case Nos. CH-CO-20-0212 and CH-CO-21-0055, Respondent and the Agency entered into an informal settlement agreement, which was approved on December 7, 2021.
10. Since March 29, 2022, Respondent has been refusing to comply fully with the settlement agreement described in paragraph 9 by failing to negotiate in good faith and by failing to comply with the negotiated ground rules described in paragraph 6.
11. By the conduct described in paragraph 10, Respondent has been violating the terms of the settlement agreement described in paragraph 9. Accordingly, the undersigned orders, pursuant to § 2423.25(a) of the Authority's Regulations, that the settlement agreement be set aside and that formal proceedings be reinstated in this case.
12. By the conduct described in paragraph 7 and 8, Respondent has been refusing to negotiate in good faith with the Agency in violation of § 7116(b)(1) and (5) of the Statute.

CONCLUSIONS OF LAW

By the conduct set forth in Case Nos. CH-CO-20-0212, CH-CO-21-0055, CH-CO-22-0360, CH-CO-22-0461, CH-CO-22-0494, CH-CO-22-0514, CH-CO-22-0583, & CH-CO-23-0024, 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 refused to negotiate in good faith with the Agency in violation of § 7116(b)(1) and (5) of the Statute.

Finally, the undersigned finds the GC's requested remedies, including a cease-and-desist order and an order that, upon request, the Respondent bargain in good faith with the Agency over a successor term collective bargaining agreement. *See AFGE, Nat'l Joint Council of Food Inspection Locals, AFL-CIO*, 71 FLRA 69, 71 (2019); *U.S. Dep't of the Air Force, Headquarters, Air Force Logistics Command, Wright-Patterson AFB, Ohio*, 36 FLRA 524, 534-34 (1990). I therefore recommend that the Authority grant the GC'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 2302, AFL-CIO (the Respondent or Union), shall:

1. Cease and desist from:

- (a) Failing and refusing to negotiate in good faith with the Department of the Army, U.S. Army Garrison, Fort Knox, Kentucky (the Charging Party or Agency) over a successor term collective bargaining agreement.

- (b) 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) Upon request, bargain in good faith with the Agency over a successor term collective bargaining agreement, adhering to both the terms of the parties' Ground Rules for these negotiations and the settlement agreement for Case Nos. CH-CO-20-0212 and CH-CO-21-0055.
- (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 represented by the Union are normally posted, copies of the attached Notice on forms to be furnished by the Regional Director of the Federal Labor Relations Authority. Upon receipt of such forms, they shall be signed by the Union President and shall be posted and 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) 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 the Union customarily communicates with employees by such means.
- (e) Pursuant to § 2423.41(e) of the Authority's Regulations, notify the Regional Director, Chicago Regional Office, Federal Labor Relations Authority, in writing within 30 days from the date of the Authority's Order, as to what steps have been taken to comply.

Issued, Washington, D.C.
January 28, 2025

**David L.
Welch**

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L. Welch
Date: 2025.01.28
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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 2302, AFL-CIO (the Respondent or Union) violated the Federal Service Labor-Management Relations Statute (Statute) and has ordered us to post and abide by this notice.

WE HEREBY NOTIFY EMPLOYEES THAT:

WE WILL NOT fail and refuse to negotiate in good faith with the Department of the Army, U.S. Army Garrison, Fort Knox, Kentucky (the Charging Party or Agency) over a successor term collective bargaining agreement.

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 Statute.

WE WILL, upon request, bargain in good faith with the Agency over a successor term collective bargaining agreement, adhering to both the terms of the parties' Ground Rules for these negotiations and the settlement agreement for Case Nos. CH-CO-20-0212 and CH-CO-21-0055.

(Union)

Dated: _____ By: _____

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.