64 FLRA No. 209

UNITED STATES
DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
GREAT LAKES REGION
DES PLAINES, ILLINOIS
(Respondent)

and

NATIONAL AIR TRAFFIC
CONTROLLERS ASSOCIATION
AFL-CIO
(Charging Party/Union)

CH-CA-08-0266

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DECISION AND ORDER

July 30, 2010

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Before the Authority: Carol Waller Pope, Chairman, and Thomas M. Beck and Ernest DuBester, Members

I. Statement of the Case

This unfair labor practice (ULP) case is before the Authority on exceptions to the decision of the Administrative Law Judge (Judge) filed by the Respondent. The General Counsel (GC) filed an opposition to the Respondent's exceptions.

The complaint alleges that the Respondent violated § 7116 (a)(1) of the Federal Service Labor-Management Relations Statute (the Statute) by interfering with employees' and the Union's local President in the exercise of their rights under § 7102 of the Statute.[1] The complaint alleges that the Respondent interfered with employee rights to act for the Union as representatives in certain Union solicitation and distribution activities, and in discussing the Union's views on legislative issues with agency employees. The Judge found that there were no disputed factual or legal issues to be resolved and granted the GC's motion for summary judgment. The Judge concluded that the Respondent violated the Statute, as alleged.

Upon consideration of the Judge decision and the entire record, we adopt the Judge's findings, conclusions, and recommended Order.

II. Background and Judge's Decision

The GC issued a complaint that alleges that the Respondent interfered with employees in the exercise of their rights guaranteed by § 7102 of the Statute in violation of § 7116(a)(1). The complaint alleges that the Respondent violated the Statute in three ways. First, the complaint alleges that the Respondent improperly prohibited employees from soliciting signatures for a Union petition and from distributing Union flyers. Second, the complaint alleges that the Respondent improperly threatened employees with disciplinary action if they solicited signatures for a Union petition or distributed Union flyers. Third, the complaint alleges that the Respondent improperly informed the Union's local President that he was prohibited from discussing with employees the Union's views on legislative issues and from asking employees to support those views at any time while on the Respondent's premises. The Respondent did not file an answer to the complaint within the time prescribed by § 2423.20(b) of the Authority's Regulations.[2]

The GC filed a motion for summary judgment under § 2423.27(a) of the Authority's Regulations based on the Respondent's failure to file an answer. In the motion, the GC asserted that there were no factual or legal issues in dispute and that the Judge should grant summary judgment in the GC's favor. Motion for Summary Judgment (Motion) at 2. The

1. Section 7102 of the Statute provides, in pertinent part:

> Each employee shall have the right to . . . assist any labor organization, . . . freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right[,] . . . includ[ing] the right . . . to act for a labor organization in the capacity of a representative and the right, in that capacity, to present the views of the labor organization to heads of agencies and . . . other appropriate authorities[.]

5 U.S.C. § 7102.

2. Section 2423.20(b) of the Authority's Regulations provides, in pertinent part:

> *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.

5 C.F.R. § 2423.20(b).

GC requested that the Judge issue a remedial order that is consistent with the remedial orders issued by the Authority in similar cases. *Id.* at 2-3.

The Respondent filed a response to the motion. In its response, the Respondent contended that it did not timely file its answer because the Authority's regional office served the complaint on the incorrect representative of the Respondent. Response to Motion for Summary Judgment (Response) at 2.

In addition, the Respondent contended that this case involves "a significant legal dispute." *Id.* at 3. In the Respondent's view, the activity referenced in the complaint constitutes illegal "grass roots" lobbying in violation of the Anti-Lobbying Act, 18 U.S.C. § 1903 (the Anti-Lobbying Act).[3] *Id.* As part of its opposition, the Respondent attached a copy of a memorandum by the United States Department of Justice, Office of Legal Counsel (OLC) that addresses grass roots lobbying by union representatives. Response, Attach. 1 (OLC Memorandum).[4] The OLC Memorandum concludes that, under 18 U.S.C. § 1913: "federal employees who are union representatives may [not] use their official time to engage in 'grass roots' lobbying in which, on behalf of their unions, they ask members of the public to communicate with government officials in support of, or opposition to, legislation or other measures." OLC Memorandum at 1.

The Judge granted the GC's motion for summary judgment. The Judge stated that, because there was no dispute that the answer was untimely, the only issue to be determined was whether the Respondent had shown "good cause" for its late submission. Judge's Decision at 3. The Judge found that the Respondent's arguments did not support a finding of "good cause" for the delay in filing the answer.[5] *Id.* at 4, 6.

The Judge found that, under § 2423.20(b) of the Authority's Regulations, the Respondent's failure to file an answer constituted "an admission of each of the allegations of the complaint." *Id.* at 4. Therefore, the Judge found that "there are no disputed factual or legal matters in this matter." *Id.* Accordingly, the Judge granted the GC's motion for summary judgment. *Id.* at 6. The Judge did not address the Respondent's legal argument that the conduct of employees and the Union's local president constituted "grass roots" lobbying in violation of the Anti-Lobbying Act.

As requested by the GC, the Judge recommended a remedial order, including a cease and desist order and the posting of a notice at the Respondent's relevant facilities. *Id.* at 6-8. The Judge's recommended order directed the Respondent to "[p]ermit employees to engage in union solicitation during nonworking time and to engage in union solicitation or distribution in nonworking areas during nonworking time." *Id.* at 7. The recommended order also required the Respondent to "[p]ermit the local [Union] President, and any other Union representative, to discuss with employees the Union's views and positions on legislative issues and ask employees to support the Union's views and positions on legislative issues during nonworking time." *Id.*

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3. The Anti Lobbying Act is a criminal statute that provides, in pertinent part:

> No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, a jurisdiction, or an official of any government, to favor, adopt, or oppose, by vote or otherwise, any legislation, law, ratification, policy or appropriation, whether before or after the introduction of any bill, measure, or resolution proposing such legislation, law, ratification, policy or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to any such Member or official, at his request, or to Congress or such official, through the proper official channels, requests for any legislation, law, ratification, policy or appropriations which they deem necessary for the efficient conduct of the public business, or from making any communication whose prohibition by this section might, in the opinion of the Attorney General, violate the Constitution or interfere with the conduct of foreign policy, counter-intelligence, intelligence, or national security activities.

18 U.S.C. § 1913.

4. This attachment is entitled "Application of 28 U.S.C. § 1913 To 'Grass Roots' Lobbying by Union Representatives" and is dated November 23, 2005. *See* OLC Memorandum at 1.

5. The Respondent does not contend that the Judge erred in finding that Respondent failed to establish "good cause" for the delay in filing its answer under § 2423.20(b) of the Authority's Regulations.

III. Positions of the Parties

A. Respondent's Exceptions

The Respondent excepts to the Judge's recommended remedy. The Respondent contends that the Judge's remedy would require the Respondent to allow employees to engage in illegal "grass roots" lobbying. Exceptions at 1. The Respondent argues that such "grass roots" lobbying activity violates the Anti-Lobbying Act. *Id*. at 4. As part of its exceptions, the Respondent attaches a copy of the same OLC memorandum that it attached to its response to the motion for summary judgment. Exceptions, Attach. 1.

B. GC's Opposition

The GC argues that the Respondent's argument that the recommended remedial order permits employees and Union representatives to engage in illegal conduct is not properly before the Authority because the Respondent failed to raise that argument before the Judge in its response to the motion for summary judgment. Opp'n at 2-3. Alternatively, the GC argues that the Anti-Lobbying Act does not prohibit the conduct that the remedial order permits. *Id.* at 3-4.

IV. Analysis and Conclusions

A. The Respondent's exceptions are properly before the Authority.

The GC contends that the Respondent is precluded from challenging the recommended remedy's legality because the Respondent failed to present its argument to the Judge. Opp'n at 3. The GC asserts that the Respondent's "sole argument on the proposed remedial order was as follows: 'Additionally, the requested remedy would allow union representatives to engage in otherwise illegal behavior.'" *Id.* (citing Response at 4). The GC concludes that § 2429.5 of the Authority Regulations therefore bars the Respondent from raising its "grass roots" lobbying argument in its exceptions. *Id.*

Section 2429.5 of the Authority's regulations provides, in pertinent part, that "[t]he Authority will not consider evidence . . . or any issue which was not presented in proceedings before the . . . Judge [.]" 5 C.F.R. § 2429.5. Authority precedent applying § 2429.5 makes clear that the Authority will not consider any issue that could have been, but was not presented to a Judge. *See, e.g., U.S. Dep't of Transp., FAA, Wash. D.C.*, 64 FLRA 410, 412-13 (2010).

The GC's objection that the Respondent's "grass roots" lobbying exceptions are barred by § 2429.5 reflects an inaccurate view of the Respondent's response to the GC's motion for summary judgment. In its response, the Respondent made clear that the allegedly "illegal behavior" that the GC's requested remedy would allow was "grass roots" lobbying. Response at 3. Additionally, the Respondent argued that "[s]ection 7102 of the Statute allows an exception [to the Anti-Lobbying Act] for lobbying but no exception for 'grass roots' lobbying." *Id.* Further, the Respondent asserted that "[a] violation of the Anti-Lobbying Act could result in substantial civil penalties." *Id.* In short, we find that the Respondent adequately presented its "grass roots" lobbying argument in proceedings before the Judge, and accordingly may raise that issue in its exceptions.

Accordingly, we find that the Respondent's exceptions are properly before the Authority.

B. The Judge's recommended remedy is not contrary to law.

The Respondent argues that the Judge's recommended remedy is contrary to law because it would require the Respondent to permit allegedly illegal "grass roots" lobbying. Exceptions at 5-9. Specifically, the Respondent objects to the part of the recommended remedy that "directs the Agency to permit Union representatives to 'ask employees to support the Union's views and positions on legislative issues during nonworking times.'" *Id.* at 5 (quoting Judge's Decision at 7). The Respondent asserts that "[s]uch conduct is considered grass roots lobbying and is prohibited by [the Anti-Lobbying Act]." Exceptions at 5.

The Respondent's argument is not supported by the OCL Memorandum it relies on, or by Comptroller General case law, to which the Memorandum refers. The OCL Memorandum states that "grass roots" lobbying occurs when "union representatives . . . on behalf of their unions, . . . ask members of the public to communicate with government officials in support of, or opposition to, legislation or other measures." OLC Memorandum at 1. Comptroller General case law is to the same effect. The Comptroller General defines "grass roots" lobbying as "an indirect attempt to influence pending legislation by urging members of the public to contact legislators to express support of, or opposition to the legislation or to request them to vote in a particular manner." *See Ass'n of Civilian Technicians, Razorback Chapter 117,* 56 FLRA 427, 428 (2000) (quoting *Alleged Grass Roots by a CSA Recipient*, B-202787(1) (unpublished 1981)).

The remedial provision to which the Respondent objects would only require the Respondent to "[p]ermit Union representatives to 'ask employees to support the Union's views and positions on legislative issues during nonworking times.'" Exceptions at 5 (quoting Judge's Decision at 7). For the following two reasons, we conclude that the part of the recommended remedy to which the Respondent objects does not address "grass roots" lobbying as the OLC Memorandum defines it.

First, the provision does not mention in any way urging communications with government officials or legislators to express either support of, or opposition to, pending legislation. Second, the remedial provision does not make any reference to contacting members of the public. The only communications covered by the recommended remedy are between Union representatives and unit employees. As the GC argues in support of the Judge's recommended remedial order, "[w]hen employees serving as union representatives ask their fellow unit employees to support the union's views and positions on legislative issues during non-work time, they are exercising a fundamental right under [§] 7102 of the Statute." Opp'n at 4-5. When a union is communicating with those whom it represents, it is dealing with persons with whom it has a special relationship -- a relationship that distinguishes those persons from "members of the public."

There is nothing in the OLC Memorandum or Comptroller General case law it cites that equates federal employees represented by a union with "members of the public." *Soc. Sec. Admin.- Grassroots Lobby Allegations*, B-304715 Comp. Gen. (April 22, 2005); *Lobbying Activity in Support of China Permanent Normal Trade Relations*, B-285298 Comp. Gen. (May 22 2000). Although the OLC Memorandum discusses as "grass roots" lobbying circumstances where federal employees using official time contact members of the public, *e.g.*, OCL Memorandum at 1, 6-8, the OLC Memorandum does not discuss as instances of "grass roots" lobbying any situations where federal employees contact other federal employees.[6] In short, the Respondent has read into the recommended remedy's general wording a meaning that the remedy does not require.[7]

Finally, the Respondent's reliance on evidence that was not presented in the proceeding before the Judge is misplaced. As part of its exceptions, the Respondent cites an email message from the Union's president, to establish that a Union representative had sought to engage in "grass roots" lobbying. *See* Exceptions at 4, 8. Consideration of such material is barred by § 2429.5 of the Authority's regulations. As indicated previously, § 2429.5 provides that the Authority "will not consider evidence . . . not presented in the proceeding before the . . . Judge[.]"

Accordingly, we deny the Respondent's exceptions claiming that the Judge's recommended remedy is contrary to law.

V. Order

Pursuant to § 2423.41(c) of our Regulations and § 7118 of the Federal Service Labor-Management Relations Statute (the Statute), the United States Department of Transportation, Federal Aviation Administration, Great Lakes Region, Des Plaines, Illinois, shall:

1. Cease and desist from:

(a) Prohibiting employees from engaging in union solicitation during nonworking time and from engaging in union solicitation or distribution in nonworking areas during nonworking time.

(b) Threatening employees with discipline for engaging in union solicitation during nonworking time or for engaging in union solicitation or distribution in nonworking areas during nonworking time.

(c) Telling the local Union President that he was prohibited from discussing with bargaining unit

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6. Member Beck observes that OLC opinions are generally viewed as binding within the Executive Branch. *See, e.g.*, OLC Memorandum for Attorneys of the Office RE: Best Practices for OLC Opinions (May 16, 2005) at 1 (asserting that "OLC opinions are controlling on questions of law within the Executive Branch"). Member Beck notes that, as an independent, quasi-judicial agency, the Authority "cannot in any proper sense be characterized as an arm or an eye of the executive. Its duties are performed without executive leave and, in the contemplation of the statute, must be free from executive control." *Humphrey's Executor v. U.S.*, 295 U.S. 602, 628 (1935).

7. In view of this result, there is no need to address whether the OLC Memorandum is binding on the Authority. However, we note that decisions of the Comptroller General are not binding on the Authority. "Although a Comptroller General opinion serves as an expert opinion that should be prudently considered, a prior assessment of the Comptroller General is not one to which deference must be given." *AFGE, Local 1458*, 63 FLRA 469, 471 (2009) (citations omitted).

employees the Union's views and positions on legislative issues during nonworking time.

(d) 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) Permit employees to engage in union solicitation during nonworking time and to engage in union solicitation or distribution in nonworking areas during nonworking time.

(b) Permit the local Union President, and any other Union representative, to discuss with employees the Union's views and positions on legislative issues and ask employees to support the Union's views and positions on legislative issues during nonworking time.

(c) Post copies of the attached Notice for 60 days at the FAA Great Lakes Regional Office, where bargaining unit employees are located, on forms to be furnished by the Authority. Upon receipt, the Notice is to be signed by the Regional Counsel, and is to 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.

(d) 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 this Order as to what steps have been taken to comply.

NOTICE TO ALL EMPLOYEES
POSTED BY ORDER OF THE
FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the United States Department of Transportation, Federal Aviation Administration, Great Lakes Region, Des Plaines, Illinois, 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 prohibit employees from engaging in union solicitation during nonworking times or from engaging in union solicitation or distribution in nonworking areas during nonworking time.

WE WILL NOT threaten employees with discipline for engaging in union solicitation during nonworking time or for engaging in union solicitation or distribution in nonworking areas during nonworking time.

WE WILL NOT prohibit the local National Air Traffic Controllers Association (NATCA) President, or any other Union representative, from discussing with employees the Union's views and positions on legislative issues and asking employees to support the Union's views and positions on legislative issues during nonworking time.

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

WE WILL permit employees to engage in union solicitation during nonworking time and to engage in union solicitation or distribution in nonworking areas during nonworking time.

WE WILL permit the local NATCA President, and any other Union representative, to discuss with employees the Union's views and positions on legislative issues and ask employees to support the Union's views and positions on legislative issues during nonworking time.

_____
(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, Chicago Regional Office, Federal Labor Relations Authority, whose address is: 55 West Monroe Street, Suite 1150, Chicago, IL 60603-9729, and whose telephone number is: (312) 886-3465.

Office of Administrative Law Judges

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
GREAT LAKES REGION
DES PLAINES, ILLINOIS
Respondent

AND

NATIONAL AIR TRAFFIC CONTROLLERS
ASSOCATION, AFL-CIO
Charging Party

Case No. CH-CA-08-0266

Sandra LeBold
For the General Counsel

Patrick D. McGlone
For the Respondent

Before: SUSAN E. JELEN
Administrative Law Judge

DECISION ON MOTION FOR SUMMARY JUDGMENT

On October 2, 2009, the Regional Director of the Chicago Region issued a Complaint and Notice of Hearing in the above case. The complaint set forth a hearing date of November 16, 2009, and stated the Answer to the Complaint was due no later than October 27, 2009. The complaint was served on Jamie Olson, Esq., Labor and Employee Relations, FAA Great Lakes Region, 2300 East Devon Avenue, Des Plaines, Illinois.

On October 16, 2009, Joyce Peppers, a Human Resources Specialist from the FAA Great Lakes Region filed a Motion to Postpone the Hearing due to the unavailability of a witness. This motion was denied by the Chief Administrative Law Judge because of failure to comply with the filing requirements of §2423.21 of the Rules and Regulations of the Federal Labor Relations Authority (the Authority/FLRA).

On October 23, 2009, the Respondent filed another Motion to Postpone the Hearing due to the unavailability of a witness. This motion was granted on October 27, 2009, with the prehearing conference

call rescheduled for November 17, 2009 and the hearing rescheduled for November 24, 2009.

On November 4, 2009, 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, therefore, the Respondent had admitted all the allegations of the Complaint. The GC asserted that there were no factual or legal issues in dispute and the case was ripe for summary judgment in the GC's favor.

On November 6, 2009, the Respondent filed an Opposition to Motion for Summary Judgment. The Respondent first asserted that it did not file its answer due to an administrative error on the part of the Chicago Region of the Authority. Specifically, the Respondent noted that the complaint was served on Jamie Olson of the Great Lakes Regional Office of the FAA. However, the Agency representative on this case was Joyce Peppers and not Jamie Olson and the Chicago Region had been communicating with Ms. Peppers during the course of the investigation. The Respondent further argued that this case involves a significant legal dispute that needs to be determined by the Authority at hearing. The Respondent finally argued that, if the Motion for Summary Judgment was granted, there would be no resolution to the underlying legal issue and the requested remedy would allow union representatives to engage in otherwise illegal behavior.

On November 6, 2009, the Respondent also filed its Response to Complaint and Notice of Hearing, in which it both admitted and denied certain allegations of the complaint.

On November 9, 2009, the GC filed a Motion to Strike, requesting that the Respondent's answer filed on November 6, 2009 be struck as untimely. The GC asserted that the Respondent was well aware of the complaint since it filed two motions to reschedule the hearing. The GC also pointed out that the Respondent does not claim that it was prevented from timely filing its answer at any time prior to the October 27 due date. The GC asserted that the Respondent has failed to establish the required extraordinary circumstances permitting the untimely filing.

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.

It is undisputed that the Respondent's answer was not timely filed. Therefore, the issue is whether the Respondent has shown "good cause" for its late submission. As noted above, in its Opposition to the Motion for Summary Judgment, the Respondent argued that the Chicago Regional Office of the FLRA served the complaint on the incorrect representative, specifically, Jaime Olson rather than Joyce Peppers, both located in the FAA Great Lakes Region Office in Des Plaines, Illinois. The Respondent does not assert that the complaint was served on the wrong address. Further, the Respondent does not deny that it was in possession of the complaint when it filed motions requesting that the hearing be postponed. As noted above, the first motion was filed on October 16, 2009, and the second was filed on October 23, 2009. Both of these dates were prior to the date that the answer was due,
October 27, 2009.

The standard for determining whether to waive an expired time limit is set forth in 5 C.F.R. §2429.23(b), which permits waiver "in extraordinary circumstances." *See United States Dep't of Transportation, Federal Aviation Administration, Houston, Tx,* 63 FLRA 34, 35 (2008); *United States Dep't of Hous. & Urban Dev., Ky. State Office, Louisville, KY*, 58 FLRA 73, 73 n.2 (2002).

In the text of the complaint and notice of hearing, the Regional Director provided the Respondent with detailed instructions concerning the requirements for its answer, including the date on which the answer was due, the persons to whom it must be sent, and references to the applicable regulations. The plain language of the notice leaves no doubt that Respondent was required to file an answer to the complaint.

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. Environmental Protection Agency, Environmental Research Laboratory, Narragansett, Rhodes Island*, 49 FLRA 33, 34-36 (1994)(answer to a complaint and an ALJ's order); *U.S. Department of Veterans Affairs Medical Center, Waco, Texas and American Federation of Government Employees, Local 1822*, 43 FLRA 1149, 1150 (1992)(exceptions to an arbitrator's award)*; U.S. Department of the Treasury, Customs Service, Washington, D.C. and Customs Service, Region IV, Miami, Florida*, 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 by the Regulations. Nor has the Respondent presented any "good cause" for its failure to do so. The assertion that the complaint was not issued to the correct representative in the Respondent's Great Lakes Region does not support a finding of good cause or relieve the Respondent of its responsibilities for being aware of statutory and regulatory requirements. The Respondent does not deny that it was in possession of the complaint, with the information on the required due date for the answer, prior to that due date. In accordance with section 2423.20(b) of the Authority's Rules and Regulations, failure to file an answer to the complaint 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). Accordingly, there are no disputed factual or legal issues in this matter.

FINDINGS OF FACTS

The uncontested facts establish the following:

1. The Respondent is an agency as defined by 5 U.S.C. §7103(a)(3).

2. The National Air Traffic Controllers Association, AFL-CIO, is a labor organization as defined by 5 U.S.C. §7103(a)4) and is the exclusive representative of a unit of employees appropriate for collective bargaining at the Respondent.

3. During the time period covered by the complaint, the following individuals occupied the positions set opposite their names and have been agents of the Respondent acting upon its behalf:

Barry Cooper	Regional Administrator
Joyce B. Scott	Deputy Regional Administrator
George Bloomingbird	Staff Manager
Jeffrey Klang	Regional Counsel

4. During the time period covered by the complaint, the individuals named in paragraph 3 have been supervisors or management officials within the meaning of 5 U.S.C. §7103(a)(10) and/or (11).

5. On or about October 16, 2007, the Respondent, by Cooper and Klang, informed employees that employees were prohibited from soliciting signatures for a Union petition or distributing Union flyers at any time while upon the Respondent's premises.

6. On or about October 16, 2007, the Respondent, by Klang, threatened employees with discipline if they solicited signatures for a Union petition or distributed Union flyers at any time while upon the Respondent's premises.

7. On or about October 18, 2007, the Respondent, by Klang, informed Local Union President Troy Swanberg that he was prohibited from discussing with employees the Union's views and positions on legislative issues and asking employees to support the Union's views and positions on legislative issues at any time while upon Respondent's premises.

8. By the conduct described in paragraphs 5, 6, and 7 above, the Respondent has interfered with, restrained, and coerced employees in the exercise of their rights guaranteed in section 7102 of the Statute in violation of 5 U.S.C. §7116(a)(1).

In conclusion, the Respondent has admitted that it has violated section 7116(a)(1) of the Statute by informing employees that employees were prohibited from soliciting signatures for a Union petition or distributing Union flyers at any time while upon the Respondent's premises, by threatening employees with discipline if they solicited signatures for a Union petition or distributed Union flyers at any time while upon the Respondent's premises, and by informing the Local Union President that he was prohibited from discussing with employees the Union's views and positions on legislative issues and asking employees to support the Union's views and positions on legislative issues at any time while upon the Respondent's premises.

The Respondent has not shown good cause for its failure to file a timely answer to the complaint. The General Counsel's motion to strike the

Respondent's late filed answer is granted and it has not been considered. I find that the Respondent violated section 7116(a)(1) of the Statute, as alleged, and the General Counsel's Motion for Summary Judgment is granted.

REMEDY

Counsel for the General Counsel proposed a recommended remedy requiring the Respondent to recognize its obligations under the Statute, to cease and desist from certain activities and to take affirmative action in order to effectuate the purposes and policies of the Statute. Further, the Respondent would be required to post a Notice To All Employees at the FAA Great Lakes Regional Office, signed by the Regional Administrator and the Regional Counsel, for 60 consecutive days. The GC notes that its recommended remedy is consistent with the remedy ordered by the Authority in similar cases. *See Dep't of Commerce, Bureau of the Census,* 26 FLRA 719 (1987); *Dep't of Commerce, Bureau of the Census,* 26 FLRA 311 (1987); *Social Security Administration,* 13 FLRA 409 (1983; *General Services Administration,* 9 FLRA 213 (1982); *Internal Revenue Service, North Atlantic Service Center, Andover, Massachusetts,* 7 FLRA 596 (1982) and *Oklahoma City Air Logistics Center, Tinker Air Force Base, Oklahoma,* 6 FLRA 159 (1981).

Since I have found that the Respondent has violated the Statute as alleged in the Complaint, I find the General Counsel's recommended remedy to be appropriate.

Accordingly, I recommend that the Authority grant the General Counsel's Motion for Summary Judgment and issue 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 (the Statute), it is hereby ordered that the U.S. Department of Transportation, Federal Aviation Administration, Great Lakes Region, Des Plaines, Illinois, shall:

1. Cease and desist from:

(a) Prohibiting employees from engaging in union solicitation during nonworking time and from engaging in union solicitation or distribution in nonworking areas during nonworking time.

(b) Threatening employees with discipline for engaging in union solicitation during nonworking time and for engaging in union solicitation or distribution in nonworking areas during nonworking time.

(c) Telling the local NATCA President that he was prohibited from discussing with employees the Union's views and positions on legislative issues during nonworking time.

(d) 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 Statute:

(a) Permit employees to engage in union solicitation during nonworking time and to engage in union solicitation or distribution in nonworking areas during nonworking time.

(b) Permit the local NATCA President, and any other Union representative, to discuss with employees the Union's views and positions on legislative issues and ask employees to support the Union's views and positions on legislative issues during nonworking time.

(c) Post at the FAA Great Lakes Regional Office, where bargaining unit employees 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 Regional Counsel, 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.

(d) Pursuant to section 2423.41(e) of the Authority's Rules and Regulations, 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, DC, November 13, 2009.

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 U.S. Department of Transportation, Federal Aviation Administration, Great Lakes Region, Des Plaines, Illinois, violated the Federal Service Labor-Management Relations Statute (the Statute), and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT prohibit employees from engaging in union solicitation during nonworking times and from engaging in union solicitation or distribution in nonworking areas during nonworking time.

WE WILL NOT threaten employees with discipline for engaging in union solicitation during nonworking time and for engaging in union solicitation or distribution in nonworking areas during nonworking time.

WE WILL NOT prohibit Local NATCA President Troy Swanberg, or any other Union representative, from discussing with employees the Union's views and positions on legislative issues and asking employees to support the Union's views and positions on legislative issues during nonworking time.

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

WE WILL permit employees to engage in union solicitation during nonworking time and to engage in union solicitation or distribution in nonworking areas during nonworking time.

WE WILL permit the local NATCA President, and any other Union representative, to discuss with employees the Union's views and positions on legislative issues and ask employees to support the Union's views and positions on legislative issues during nonworking time.

_____
(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, Chicago Regional Office, Federal Labor Relations Authority, whose address is: 55 West Monroe Street, Suite 1150, Chicago, IL 60603-9729, and whose telephone number is: 312-886-3465