



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

OALJ 15-14

U.S. DEPARTMENT OF HEALTH AND HUMAN
SERVICES, NATIONAL INSTITUTES OF
HEALTH, NATIONAL INSTITUTE OF
ENVIRONMENTAL HEALTH SCIENCES

RESPONDENT

AND

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 2923, AFL-CIO

CHARGING PARTY

Case No. WA-CA-14-0513

Melissa K. Owens
For the General Counsel

Lisa M. Powers
For the Respondent

William Jirles
For the Charging Party

Before: CHARLES R. CENTER
Chief Administrative Law Judge

DECISION ON MOTION FOR SUMMARY JUDGMENT

On October 31, 2014, the Regional Director of the Washington Region of the Federal Labor Relations Authority (FLRA/Authority), issued a Complaint and Notice of Hearing, alleging that the U.S. Department of Health and Human Services, National Institutes of Health, National Institute of Environmental Health Sciences, violated § 7116(a)(1), (5) and (8) of the Federal Service Labor-Management Relations Statute (Statute). The Complaint alleged that the Respondent failed to furnish data in violation of 5 U.S.C. § 7114(b)(4).

The Complaint indicated that a hearing on the allegations would be held on February 5, 2015, and advised the Respondent that an Answer to the Complaint was due no later than November 25, 2014. The Complaint was served by first class mail on Respondent's designated agent, Lisa M. Powers, Employee and Labor Relations Workforce Relations Division, National Institutes of Health, 31 Center Drive, MSC 2211, Building 31, B3C07, Bethesda, MD 20892, and the Respondent failed to file an Answer to the Complaint.

On January 9, 2015, Counsel for the FLRA General Counsel (GC) filed and properly served a Motion for Summary Judgment based upon the Respondent's failure to file an Answer to the Complaint, contending that by application of 5 C.F.R. § 2423.20(b), the Respondent admitted all the allegations of the Complaint. Accordingly, the GC asserted that there were no factual or legal issues in dispute and summary judgment pursuant to 5 C.F.R. § 2423.27(a) was proper. The Respondent failed to file a response to the Motion for Summary Judgment.

DISCUSSION OF MOTION FOR SUMMARY JUDGMENT

The relevant portion of the Authority's Rules and Regulations provides:

(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 the required documents. *See, e.g.*, sections 2429.21 through 2429.23.

In the text 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, 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. Envtl. Prot. Agency, Envtl. 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, nor has it demonstrated any "good cause" for the failure to do so. In *U.S. Dep't of Transp., FAA, Hous., Tex.*, 63 FLRA 34, 36 (2008), the Authority held that the agency's misfiling of a complaint, resulting in its filing an answer two weeks after the deadline, did not demonstrate "extraordinary circumstances" that might constitute "good cause" for the late filing. *See also U.S. Dep't of VA Med. Ctr., Kan. City, Mo.*, 52 FLRA 282, 284 (1996) and the cases cited therein. Moreover, after the General Counsel 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. Given the Respondent's failure to respond to the complaint and motion for summary judgment, and the absence of good cause for such failures, application of the admission provision of 5 C.F.R. § 2423.20(b) is appropriate. Thus, Respondent has admitted each of the allegations set forth in the Complaint. Accordingly, there are no disputed factual issues in this case, and summary judgment in favor of the General Counsel is justified. Based on the existing record, I make the following findings of fact, conclusions of law, and recommendations:

FINDINGS OF FACT

1. The Respondent is an agency within the meaning of section 7103(a)(3) of the Statute.
2. The American Federation of Government Employees, Local 2923, AFL-CIO (Union) is a labor organization within the meaning of section 7103(a)(4) of the Statute and is the certified exclusive representative of a bargaining unit appropriate for collective bargaining at the Respondent.
3. The charge in this proceeding was filed by the Union on May 9, 2014.
4. A copy of the charge was served on the Respondent.
5. On March 24, 2014, the Union requested that Respondent furnish information concerning the amount of training funds it spent in the past three fiscal years and grade and bargaining unit status employees who received training funds.
6. The information described in paragraph 5 is normally maintained by the Respondent in the regular course of business.
7. The information described in paragraph 5 is reasonably available.
8. The information described in paragraph 5 is necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining.
9. The information described in paragraph 5 does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining.

10. The information described in paragraph 5 is not prohibited from disclosure by law.
11. On June 3, 2014, and September 16, 2014, the Respondent provided some of the information described in paragraph 5.
12. Since September 16, 2014, the Respondent has failed to provide a complete response to the Union's request for information described in paragraph 5.
13. Since September 16, 2014, the Respondent has refused or failed to timely furnish the Union with the information described in paragraph 5.
14. By the conduct described in paragraphs 12 and 13, the Respondent has failed to comply with the requirements of 5 U.S.C. § 7114(b)(4).
15. By the conduct described in paragraphs 12 and 13, the Respondent committed unfair labor practices in violation of 5 U.S.C. § 7116(a)(1), (5) and (8).

CONCLUSIONS OF LAW

By the conduct described in the facts set forth above as drawn from the Complaint containing allegations to which the Respondent failed to file an Answer or otherwise demonstrate good cause for such failure, the Respondent admits that it did not comply with the obligations set forth in § 7114 of the Statute requiring it to provide information necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining. Therefore the Respondent violated § 7116(a)(1), (5) and (8) of the Statute.

As a remedy, the Respondent is ordered to provide the information requested by the Union.

Accordingly, I recommend that the Authority grant the General Counsel's Motion for Summary Judgment and adopt the following Order:

ORDER

Pursuant to § 2423.41(c) of the Authority's Rules and Regulations and § 7118 of the Federal Service Labor-Management Relations Statute (Statute), the U.S. Department of Health and Human Services, National Institutes of Health, National Institute of Environmental Health Sciences, shall:

1. Cease and desist from:

(a) Failing to timely furnish the American Federation of Government Employees, Local 2923, AFL-CIO (AFGE/Union) with information it requested under the Statute.

(b) In any like or related manner, interfering with, restraining, or coercing bargaining unit employees in the exercise of their rights assured by the Statute.

2. Take the following affirmative actions in order to effectuate the purposes and policies of the Statute:

(a) Provide the information requested by the Union in its March 24, 2014, information request for data related to fiscal years (2011, 2012 & 2013):

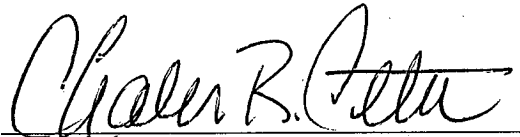
Grade of employees who received training funds and the amount given by fiscal year; and

Specify bargaining unit employees (BUE) and non-BUE who were given training funds by fiscal year.

(b) Post at its facilities where bargaining unit employees represented by the AFGE Local 2923 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 of the National Institute of Environmental Health Sciences, NIH, 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. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or internet site, or other electronic means, if the Respondent customarily communicates with employees by such means.

(c) Pursuant to § 2423.41(e) of the Authority's Rules and Regulations, notify the Regional Director, Washington 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, D.C., January 30, 2015



CHARLES R. CENTER
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 U.S. Department of Health and Human Services, National Institutes of Health, National Institute of Environmental Health Sciences, violated the Federal Service Labor-Management Relations Statute (Statute), and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL recognize our obligation to timely comply with 5 U.S.C. § 7114(b) of the Statute.

WE WILL furnish the remaining information requested by the American Federation of Government Employees, Local 2923, AFL-CIO, on March 24, 2014, concerning the grades of employees who received training funds, the amount given by fiscal year and bargaining unit status of the training recipient.

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.

(Agency/Respondent)

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.

If employees have any questions concerning this Notice or compliance with its provisions, they may communicate directly with the Regional Director, Washington Regional Office, Federal Labor Relations Authority, whose address is: 1400 K Street, NW., 2nd Fl., Washington, D.C. 20424, and whose telephone number is: (202) 357-6029 Ext. 6024.