



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

OALJ 17-22

DEPARTMENT OF VETERANS AFFAIRS
VETERANS AFFAIRS MEDICAL CENTER
HOUSTON, TEXAS

RESPONDENT

AND

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 1633, AFL-CIO

CHARGING PARTY

Case No. DA-CA-17-0153

Elizabeth Wiseman
For the General Counsel

Clifton C. Jackson
For the Respondent

Clara Achilefu
For the Charging Party

Before: CHARLES R. CENTER
Administrative Law Judge

DECISION ON MOTION FOR SUMMARY JUDGMENT

On June 16, 2017, the Regional Director of the Dallas Region of the Federal Labor Relations Authority (FLRA/Authority) issued a Complaint and Notice of Hearing, alleging that the Department of Veterans Affairs, Veterans Affairs Medical Center, Houston, Texas (Agency/Respondent), violated § 7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute (Statute). The Complaint alleged that the Respondent refused to negotiate with the American Federation of Government Employees, Local 1633 AFL-CIO (Union/Local), over the establishment of a compressed work schedule for Emergency Department Health Technicians.

The Complaint advised the Respondent that an Answer was due no later than July 11, 2017. The Complaint was served by certified mail on the Respondent's agent, Clifton C. Jackson, Employee & Labor Relations Specialist, Veterans Affairs Medical Center, 2002 Holcombe Blvd., Houston, Texas 77030. The Respondent failed to file an Answer by the required date.

On August 14, 2017, the General Counsel (GC) filed 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 of the allegations set forth therein. The GC contends that there are no factual or legal issues in dispute and summary judgment pursuant to 5 C.F.R. § 2423.27(a) is proper. The Respondent did not file a response to the motion for summary judgment. As I have determined that summary judgment in this matter is proper, the hearing scheduled for September 21, 2017, is cancelled.

DISCUSSION OF MOTION FOR SUMMARY JUDGMENT

Section 2423.20(b) of the Authority's Rules and Regulations provides, in relevant 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. Absent a showing of good cause to the contrary, failure to file an answer or respond to any allegation shall constitute an admission.

Within the Complaint, the Regional Director included detailed instructions on the requirements for filing an Answer, including the number of copies that needed to be filed, the date the Answer needed to be filed, and the means of submission. The fact that there was a section in the Complaint devoted to the Answer requirement leaves no doubt that filing an Answer was necessary.

Despite the detailed instructions, the Respondent did not file an Answer. While Section 2429.23 of the Authority's regulations permit extensions or waivers of time limits, the Respondent did not present good cause for an extension or extraordinary circumstance for a waiver of the failure to file an Answer, nor did the Respondent file a response to the motion for summary judgment.

Based on the existing record, I make the following findings of fact, conclusions of law, and recommendations.

FINDINGS OF FACT

1. The Union filed the charge on February 17, 2017, and a copy was served on the Respondent.
2. The Union filed an amended charge on June 12, 2017, and a copy was served on the Respondent.
3. The Respondent is an agency within the meaning of § 7103(a)(3) of the Statute.
4. The American Federation of Government Employees, AFL-CIO (AFGE) is a labor organization within the meaning of 5 U.S.C. § 7103(a)(4) and is the

certified exclusive representative of nationwide consolidated units of Department of Veterans Affairs employees, which includes the employees of the Respondent.

5. The Union is an agent of AFGE for the purpose of representing the unit employees employed at the Respondent.
6. At all material times, the persons listed below occupied the positions opposite their names and they were a supervisor or management official of the Respondent within the meaning of § 7103(a)(10) and (11) of the Statute and agents of the Respondent acting on its behalf:

Howard Green	Emergency Room Nurse Manager
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Sherri-Lynne A. Almeida	Ambulatory Care Nursing Executive
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7. On November 14, 2016, the Union requested that the Respondent, by Howard Green, negotiate with the Union over establishing a compressed work schedule for the health technicians working in the Respondent's emergency room.
8. The work schedule described in paragraph 7 is a compressed work schedule subject to § 6131 of the Work Schedules Act, 5 U.S.C. §§ 6120-6133.
9. The subject described in paragraph 7 is a mandatory subject of bargaining under the Statute.
10. Since January 12, 2017, the Respondent by Green and Almeida, has refused to negotiate with the Union over the compressed work schedule described in paragraph 7.
11. By the conduct described in paragraph 10, the Respondent has refused to negotiate in good faith with the Union in violation of § 7116(a)(1) and (5) of the Statute.

CONCLUSIONS OF LAW

Pursuant to the admission provision of 5 C.F.R. § 2423.20(b), the Respondent's failure to file an Answer constitutes an admission of the allegations set forth in the Complaint. *Dep't of VA Med. Ctr., Asheville, N.C.*, 51 FLRA 1572, 1594 (1996). Therefore, the Respondent admitted the violations alleged in the Complaint. Accordingly, the General Counsel's Motion for Summary Judgment is Granted.

As a remedy, the Respondent is ordered to cease and desist from refusing to bargain in good faith over the substance of a compressed work schedule for Emergency Room Health Technicians at the Veterans Affairs Medical Center, Houston, Texas, unless the Respondent

first seeks a determination from the Federal Service Impasses Panel that the proposals would cause an adverse agency impact. The Respondent must post a notice of this violation for sixty (60) consecutive days and distribute the notice to bargaining unit employees by email or other electronic media customarily used to communicate with bargaining unit employees. The Respondent must also notify the Regional Director of the implementation of the 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 (Statute), the Department of Veterans Affairs, Veterans Affairs Medical Center, Houston, Texas, shall:

1. Cease and desist from:

(a) Failing and refusing to bargain with the Union over compressed work schedules for Emergency Room Health Technicians.

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

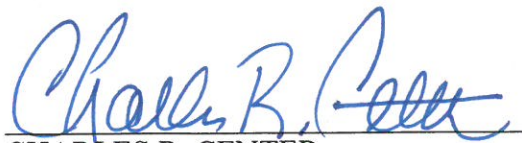
2. Take the following affirmative actions in order to effectuate the purposes and policies of the Statute:

(a) Post at its facilities where bargaining unit employees represented by the Union 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, Michael E. DeBakey, Veterans Affairs Center, Houston, Texas, and shall be posted and maintained for sixty (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.

(b) On the same date the Notice is posted, it must be disseminated to all bargaining unit employees by email or other electronic media customarily used to communicate with bargaining unit employees.

(c) Pursuant to § 2423.41(e) of the Rules and Regulations of the Authority, notify the Regional Director, Dallas Region, Federal Labor Relations Authority, in writing, within thirty (30) days from the date of this Order, as to what steps have been taken to comply.

Issued, Washington, D.C., August 28, 2017



CHARLES R. CENTER
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 Department of Veterans Affairs, Michael E. DeBakey Veterans Affairs Medical Center, Houston, Texas, 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 NOT refuse to bargain in good faith with the American Federation of Government Employees, Local 1633, AFL-CIO, the exclusive representative of bargaining unit employees, regarding the establishment of a compressed work schedule for Emergency Room Health Technicians to the extent required by the Statute.

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

Michael E. DeBakey Veterans Affairs Medical Center

Dated: _____

By: _____
(Signature) (Title)

This Notice must remain posted for sixty (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, Dallas Region, Federal Labor Relations Authority, whose address is: 525 S. Griffin Street, Suite 926, Dallas, TX 75202, and whose telephone number is: 214-767-6266.