



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

OALJ 24-04

U.S. DEPARTMENT OF JUSTICE  
FEDERAL BUREAU OF PRISONS  
FEDERAL CORRECTIONAL INSTITUTION  
MENDOTA, CALIFORNIA

RESPONDENT

AND

AMERICAN FEDERATION OF  
GOVERNMENT EMPLOYEES,  
LOCAL 1237, AFL-CIO

CHARGING PARTY

Case Nos. SF-CA-23-0120  
SF-CA-23-0121

Kelli Black  
For the General Counsel

Michael Markiewicz  
For the Respondent

Aaron McGlothin  
For the Charging Party

Before: LEISHA A. SELF  
Administrative Law Judge

**DECISION ON MOTION FOR SUMMARY JUDGMENT**

The Respondent in this case has failed timely to answer the Consolidated Complaint. As a result, the General Counsel moved for summary judgment because that failure means that the Respondent is 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.

## I. Factual and Procedural Background

On July 20, 2023, the Regional Director of the San Francisco Region of the Federal Labor Relations Authority (the Authority) issued a Consolidated Complaint and Notice of Hearing (Complaint), alleging that the U.S. Department of Justice, Federal Bureau of Prisons, Federal Correctional Institution, Mendota, California (the Respondent) violated § 7116(a)(1), (5), and (8) of the Federal Service Labor-Management Relations Statute (the Statute) by failing in two instances to provide information requested by the American Federation of Government Employees, Local 1237, AFL-CIO (the Charging Party or the Union) pursuant to § 7114(b)(4) of the Statute. GC Ex. 1. The Complaint advised the Respondent that an Answer to the Complaint was due no later than August 14, 2023. *Id.*

The Complaint was served upon the Respondent by Certified Mail. *Id.* United States Postal Service tracking shows that the Respondent received the Complaint on July 24, 2023. GC Ex. 2. The Respondent did not file an Answer to the Complaint by the due date and still has not filed an Answer.

On October 5, 2023, Counsel for the General Counsel (GC) filed a Motion for Summary Judgment (MSJ), based on the fact that the Respondent had failed to file an Answer to the Complaint, and arguing that the Respondent therefore had admitted all of the allegations of the Complaint. GC MSJ at 2. The GC asserts that, since there are no factual or legal issues in dispute, the case is ripe for summary judgment in its favor. *Id.* The Respondent has not filed a Response to the Motion for Summary Judgment.

## II. 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 of the Authority's Regulations, 5 C.F.R. § 2423.20, 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 was to have been sent, and references to the

applicable regulations; he 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; 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. 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, I make the following findings of fact, conclusions of law, and recommendations:

### III. Findings of Fact

1. The Union filed the charge in Case No. SF-CA-23-0120 on January 20, 2023, and a copy was served on the Respondent.
2. The Union filed the charge in Case No. SF-CA-23-0121 on January 20, 2023, and a copy was served on the Respondent.
3. These cases are consolidated because it is necessary to effectuate the purposes of 5 U.S.C. §§ 7101-7135 and to avoid unnecessary costs or delay pursuant to § 2429.2 of the Rules and Regulations of the Federal Labor Relations Authority (the Authority).
4. The Respondent is an agency within the meaning of § 7103(a)(3) of the Statute.
5. 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 a nationwide consolidated unit of Federal Bureau of Prisons employees, which includes employees of the Respondent (unit).
6. The Union is an agent of AFGE for the purpose of representing certain unit employees employed at the Respondent.
7. At all times material, the following individuals held the position opposite their names and have been supervisors or management officials of the Respondent within

the meaning of § 7103(a)(10) and (11) of the Statute, and agents of the Respondent acting upon its behalf:

Jennifer Johnson

Human Resources Manager

8. On October 27, 2022, the Union requested by email that the Respondent furnish the Union with the following information: certain overtime records, including log entries, from April 28, 2022 through October 17, 2022 for the Receiving and Discharge (SF-CA-23-0120) and Education/Recreation (SF-CA-23-0121) departments.
9. The information described in paragraph 8 is normally maintained by the Respondent in the regular course of business.
10. The information described in paragraph 8 is reasonably available.
11. The information described in paragraph 8 is necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of bargaining.
12. The information described in paragraph 8 does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining.
13. The information described in paragraph 8 is not prohibited from disclosure by law.
14. On January 10, 2023, the Respondent, by Johnson, provided information to the Union that was not responsive to its request for information described in paragraphs 8-13.
15. Since January 10, 2023, the Respondent has been failing and refusing to furnish the Union with the information it requested as described in paragraphs 8-13.
16. By the conduct described in paragraphs 14 and 15, the Respondent has been failing and refusing to comply with § 7114(b)(4) of the Statute.
17. By the conduct described in paragraphs 14, 15, and 16, the Respondent has been failing and refusing to negotiate in good faith with the Union and violating § 7116(a)(1) and (5) of the Statute.
18. By the conduct described in paragraphs 14, 15, and 16, the Respondent has been violating § 7116(a)(1) and (8) of the Statute.

#### **IV. Conclusions of Law**

A union requesting information under § 7114(b)(4) of the Statute must establish a particularized need for the information; that is, it must show that the information is necessary for the union to adequately represent its members. *IRS, Wash., D.C.*, 50 FLRA 661, 669-70 (1995). A union must additionally satisfy the other requirements set forth in § 7114(b)(4). By virtue of its failure to file an Answer to the Complaint in this case, the Respondent has admitted that the

information requested by the Union in both instances was necessary for the Union to represent its members; that the information was normally maintained by the Respondent; that it was reasonably available; that it did not constitute guidance to management relating to collective bargaining; and that its disclosure was not prohibited by law. Further, the Respondent has admitted that on January 10, 2023, it provided information that was not responsive to both information requests made on October 27, 2022, and that it has, since January 10, 2023, been failing and refusing to furnish the Union with the information it requested. Therefore, it is evident that, by the Respondent's failure and refusal to furnish the information to the Union in both instances, it has failed to comply with § 7114(b)(4), and that it violated § 7116(a)(1), (5), and (8) of the Statute.

When an agency has unlawfully failed and refused to furnish information to a union, the traditional remedies include requiring the agency to provide that information, posting a notice signed by the highest-level official of the activity responsible for the violations, and emailing the notice to all bargaining unit employees. *FCI Ray Brook*, 68 FLRA 492, 509 (2015); *HUD and Fed. BOP, Fed. Transfer Ctr., Okla. City, Okla.*, 67 FLRA 221, 222-26 (2014). These are the remedies the GC seeks in this case, with the Notice to be signed by the Warden of FCI Mendota, the highest-level official of the activity responsible for the violations. GC MSJ at 4-5. Therefore, they are found to be appropriate.

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

#### V. 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), it is hereby ordered that the Respondent shall:

1. Cease and desist from:
  - (a) Failing and refusing to provide information requested by the American Federation of Government Employees, Local 1237, AFL-CIO (the Union), related to overtime records in the Receiving and Discharge and Education/Recreation Departments from April 28, 2022 through October 17, 2022.
  - (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) Produce copies of the requested overtime records in the Receiving and Discharge and Education/Recreation Departments from April 28, 2022 through October 17, 2022.
  - (b) Post at its facility, including in all places where notices to employees of the U.S. Department of Justice, Bureau of Prisons, Federal Correctional Institution,

Mendota, California are customarily 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 Warden, FCI Mendota, and shall be posted and maintained for sixty (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) In addition to physical posting of paper notices, disseminate a copy of the Notice signed by the Warden through the Respondent's email system to all bargaining unit employees represented by the Union.
- (d) Pursuant to § 2423.41(e) of the Rules and Regulations of the Authority, notify the Regional Director, San Francisco Regional Office, 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.  
October 24, 2023

Digitally signed by  
**LEISHA SELF**  
Date: 2023.10.24  
09:51:15 -04'00'

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LEISHA A. SELF  
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 Justice, Federal Bureau of Prisons, Federal Correctional Institution, Mendota, California has 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** furnish the American Federation of Government Employees, Local 1237, AFL-CIO (the Union) with the information the Union requested on October 27, 2022.

**WE WILL** produce information properly requested under Section 7114(b)(4) of the Statute within a reasonable amount of time.

**WE WILL NOT** fail or refuse to provide the Union with information properly requested under Section 7114(b)(4) of 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.

U.S. Department of Justice  
Federal Bureau of Prisons  
Federal Correctional Institution  
Mendota, California

\_\_\_\_\_  
(Agency/Activity)

Dated: \_\_\_\_\_ By: \_\_\_\_\_

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, San Francisco Regional Office, Federal Labor Relations Authority, whose address is: Ronald V. Dellums Federal Building, 1301 Clay St., Suite 1180N, Oakland, CA 94612, and whose telephone number is: (510) 982-5440.