



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

OALJ 24-11

NATIONAL TREASURY EMPLOYEES UNION

RESPONDENT

AND

JAINA FALCON-LOPEZ

CHARGING PARTY/INDIVIDUAL

Case No. CH-CO-23-0187

Alicia E. Weber
For the General Counsel

Alicia Payne
For the Respondent

Jaina Falcon-Lopez
For the Charging Party

Before: RICHARD A. PEARSON
Administrative Law Judge

DECISION ON MOTION FOR SUMMARY JUDGMENT

The Respondent in this case has failed to answer the 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.

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 National Treasury Employees Union, Washington, DC (the Respondent)

violated §§ 7115 and 7116(b)(1) and (8) of the Federal Service Labor- Management Relations Statute (the Statute) by failing and refusing to timely process Jaina Falcon-Lopez's timely-submitted revocation of dues withholding. The Complaint indicated that a hearing on the allegations would be held on July 16, 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 October 22, 2023, Counsel for 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 in its favor. 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 United States District Courts under Rule 56 of the Federal Rules of Civil Procedure. *Dep't of Veterans Affairs, Veterans Affairs Med. Ctr., Nashville, Tenn.*, 50 FLRA 220, 222 (1995). If the pleadings, and additional evidence submitted in support, demonstrate that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law, the motion for summary judgment should be granted. *Id.*

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. 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 Veterans Affairs 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., Fed. Aviation Admin., Hous., Tex.*, 63 FLRA 34, 36 (2008); *U.S. Dep't of Veterans Affairs 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, I agree with the General Counsel that there is no genuine issue of material fact in this case and as such, it is appropriate to decide the case on the motion for summary judgment. The prehearing conference and hearing are hereby cancelled.

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

FINDINGS OF FACT

1. Respondent, the National Treasury Employees Union, Washington, DC., is a labor organization within the meaning of § 7103(a)(4) of the Statute and is the certified exclusive representative of a nationwide unit of employees of the Internal Revenue Service (the unit).
2. The Charging Party is an employee within the meaning of § 7103(a)(2) of the Statute and is in the bargaining unit described in Paragraph 1.
3. At all times material to this case, the following individuals held the positions opposite their names and have been agents of the Respondent:

Lorena Montan	President, NTEU Chapter 193
Eduardo Delannoy	Steward, NTEU Chapter 193
4. Respondent and the Internal Revenue Service (the Agency) are parties to a collective bargaining agreement (CBA) covering employees in the bargaining unit described in Paragraph 1, which has been in effect since 2022.

5. Article 10 of the CBA concerns dues withholdings and provides that the Respondent will forward an employee's revocation (SF-1188, Revocation of Voluntary Authorization of Allotment of Compensation for Payment of Employee Organization Dues) to the Agency's Payroll Center on a timely basis when such revocation is submitted to the Respondent. Revocations must be initialed by the Chapter President or her designee. For employees who have had dues allotments in effect for more than one year, such as Falcon-Lopez, revocations must be submitted to the Payroll Center during Pay Period 15, which ended July 30, 2022, to be effective that year.
6. On July 1, 2022, Falcon-Lopez submitted a completed revocation of dues withholding authorization (SF-1188) to Respondent, through Montan, for processing.
7. Falcon-Lopez's revocation of dues withholding authorization (SF-1188) was timely submitted to Respondent in accordance with the provisions of the CBA described in Paragraph 5.
8. Since July 1, 2022, Respondent has been failing and refusing to process Falcon-Lopez's revocation of dues withholding authorization (SF-1188).
9. By the conduct described in Paragraph 8, the Respondent has been interfering with, restraining, and coercing employees in the exercise of their right under section 7115 of the Statute to revoke their dues withholding authorization after one year.
10. By the conduct described in Paragraph 8, the Respondent has been interfering with, restraining, and coercing employees in the exercise of their right under section 7102 of the Statute to refrain from joining or assisting a labor organization.
11. By the conduct described in Paragraphs 8 and 9, Respondent has been violating section 7116(b)(8) of the Statute.
12. By the conduct described in Paragraphs 8 and 10, Respondent has been violating section 7116(b)(1) of the Statute.

CONCLUSIONS OF LAW

Section 7115 of the Statute authorizes employees both to establish and to revoke dues withholding allotments from their pay. *AFGE Local 2192, AFL-CIO*, 68 FLRA 481, 489 (2015). A union violates Section 7116(b)(1) and (8) of the Statute when it interferes with, restrains, or coerces an employee in the exercise of the right guaranteed in 7115 to revoke her

dues withholding authorization. *Id.* at 489; *AFGE, AFL-CIO*, 51 FLRA 1427, 1438 (1996). Here, the Respondent has admitted, by its failure to answer the Complaint, that it refused to process Ms. Falcon-Lopez's revocation request, and it has offered no justifiable basis for refusing to process her request. Accordingly, I conclude that the Respondent has violated Sections 7115 and 7116(b)(1) and (8) by its conduct.

When a union has unlawfully refused to process an employee's timely dues revocation request, the Authority has ordered the union to cease and desist its unlawful conduct, to process the request, and to make the employee whole for all dues and monies withheld from the employee's paycheck since the date of her request. In this case, Ms. Falcon-Lopez's request was submitted on July 1, 2022, in time to be processed in Pay Period 18.

Accordingly, the General Counsel's Motion for Summary Judgment is Granted. Therefore I recommend that the Authority adopt the following Order:

ORDER

Pursuant to § 2423.41(c) of the Rules and Regulations of the Authority and § 7118(a)(7) of the Federal Service Labor-Management Relations Statute (the Statute), the National Treasury Employees Union, shall:

1. Cease and desist from:
 - (a) Failing and refusing to process timely-submitted dues revocation requests (SF-1188s).
 - (b) In any like or related manner, interfering with, restraining, or coercing bargaining unit employees in the exercise of the rights assured by the Statute.
2. Take the following affirmative actions in order to effectuate the purposes and policies of the Statute:
 - (a) Timely process Jaina Falcon-Lopez's dues revocation request.
 - (b) Make Falcon-Lopez whole for any dues or monies withheld from her paycheck beginning in Pay Period 18 of 2022 through the date her revocation was or is processed.
 - (c) Post at its business office, at its normal meeting places, and at all other places where notices to bargaining unit employees and members represented by the Union are located, and employees of the Internal Revenue Service represented by Chapter 193. are normally posted, copies of the attached Notice on forms to be provided by the Federal Labor Relations Authority. Upon receipt of such forms, they shall be signed by the President of Chapter 193 and 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.

(d) In addition to physical posting of the paper notices, notices shall be distributed electronically, on the same day, such as by email, posting on an intranet or an internet site, or other electronic means if such is customarily used to communicate with bargaining unit employees.

(e) Submit appropriate signed copies of the Notice to the Agency for posting in conspicuous places where unit employees represented by NTEU Chapter 193 are located. Copies of the Notice should be maintained for a period of sixty (60) days from the date of the posting.

(f) Pursuant to § 2423.41(e) of the Rules and Regulations of the Authority, notify the Regional Director, Chicago 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., May 14, 2024



RICHARD A. PEARSON
Administrative Law Judge

