



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

OALJ 17-05

DEPARTMENT OF VETERANS AFFAIRS
RALPH H. JOHNSON MEDICAL CENTER
CHARLESTON, SOUTH CAROLINA

RESPONDENT

AND

Case No. AT-CA-16-0609

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 523

CHARGING PARTY

Brent S. Hudspeth
For the General Counsel

L. Patricia Smith
For the Respondent

Irene Coley
For the Charging Party

Before: CHARLES R. CENTER
Chief Administrative Law Judge

DECISION ON MOTION FOR SUMMARY JUDGMENT

On October 14, 2016, the Regional Director of the Atlanta Region of the Federal Labor Relations Authority (Authority) issued a Complaint and Notice of Hearing alleging that the Department of Veterans Affairs, Ralph H. Johnson Medical Center, Charleston, South Carolina (Respondent) failed to comply with § 7114(a)(2)(A) of the Federal Service Labor-Management Relations Statute (Statute), and violated § 7116(a)(1) and (8) of the Statute, when it did not allow the American Federation of Government Employees, Local 523 to actively participate in a formal meeting that management held with bargaining unit employees.

The Complaint indicated that a hearing on the allegations would be held on November 29, 2016, and advised the Respondent that an Answer to the Complaint was due no later than November 8, 2016. The Complaint was served by first class mail on the Respondent's agent, Renae A. Jacobson, Agency Rep, Department of Veterans Affairs, Ralph H. Johnson Medical Center, 109 Bee Street, Charleston, SC 29401-5799. The Respondent failed to file an Answer on or before November 8, 2016, as directed by the Complaint.

On November 15, 2015, Counsel for 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 in the Complaint. Accordingly, the GC contends that there are no factual or legal issues in dispute and that summary judgment pursuant to 5 C.F.R. § 2423.27 is proper.

On November 21, 2016, L. Patricia Smith, the official who replaced Jacobson as the Agency's representative in this matter, submitted a letter in response to the GC's motion for summary judgment, from L. Patricia Smith.¹ (Respondent's Letter). In the letter, Smith asserted that the Agency did not file an Answer on or before November 8, 2016, because there was "confusion regarding the . . . due date."² Smith requested that the Respondent be given additional time to file an Answer, and that the hearing date be postponed. *Id.*

As I determined that summary judgment in this matter was appropriate, the hearing was indefinitely postponed and the need for a hearing is obviated.

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:

(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. . . .

¹ Smith certifies that the letter was served upon "the interested parties." Respondent's Letter, Attach., Certificate of Service. I note, however, that while the list of recipients includes Peter A. Sutton, the Federal Labor Relations Authority's Deputy General Counsel, it does not include Counsel of record, Brent S. Hudspeth. See 5 C.F.R. § 2429.27 (any party filing a document is responsible for serving a copy upon all counsel of record).

² Jacobson elaborates slightly on Smith's explanation in a declaration submitted with the letter. In the declaration, Jacobson asserts: "I am acting as the Agency Representative for several cases and failed to respond to AT-CA-16-0609. I have several responses due and got the dates confused. I thought the response date was November 22, 2016." Respondent's Letter, Attach., Decl.

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.

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).

Further, in *U.S. Dep't of Transp., FAA, Hous., Tex.*, 63 FLRA 34, 36 (2008) (*FAA*), 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 cases cited therein.

Here, the Respondent asserts that it did not file its Answer on time because there was confusion regarding the due date. But the Respondent's confusion about the due date is similar to misfiling a document – it does not demonstrate good cause for failing to file an Answer on time, and it does not constitute "extraordinary circumstances" under 5 C.F.R. § 2429.23(b) warranting a waiver of the time limit for filing an Answer. *See FAA*, 63 FLRA at 36.

Given the Respondent's failure to file an Answer on time, the absence of good cause for that failure, and the absence of extraordinary circumstances warranting a waiver of the time limit for filing an Answer, the application of the admission provision of 5 C.F.R. § 2423.20(b) is appropriate. Thus, the Respondent has admitted each of the allegations set forth in the Complaint. Accordingly, there are no disputed factual issues and summary judgment in favor of the General Counsel is granted.

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 under § 7103(a)(3) of the Statute.
2. The American Federation of Government Employees (AFGE) is a labor organization under § 7103(a)(4) of the Statute and is the exclusive representative of a unit of employees appropriate for collective bargaining at the Respondent.
3. AFGE, Local 523 (the Union) is an agent of AFGE for the purpose of representing Respondent's employees within the unit described in Paragraph 2.
4. The Union filed the charge in Case No. AT-CA-16-0609 with the Atlanta Regional Director on June 8, 2016.
5. Copies of the charge described in paragraph 4 were served on the Respondent.³
6. At all material times, Dr. Simon Scalia held the position of Assistant Chief of Primary Care for the Respondent, and is a supervisor or management official of the Respondent within the meaning of § 7103(a)(10) and (11) of the Statute, and an agent of the Respondent acting upon its behalf.
7. On or about January 19, 2016, the Respondent, through Scalia and other Respondent officials, held a meeting with bargaining unit employees.
8. During the meeting described in paragraph 7, Respondent, through Scalia and other Respondent officials, discussed recommendations on how to improve the Patient Aligned Care Team (PACT) and protocol for PACT Nursing and PACT models.
9. The meeting described in paragraph 7 was formal in nature.
10. The Respondent notified the Union of the meeting described in paragraph 7 and Union President Irene Coley (Coley) was in attendance at the meeting.
11. At the meeting described in paragraph 7, the Respondent, through Scalia, told Coley that the meeting did not involve a Union issue, that Coley could not participate in the meeting, and that Coley was not allowed to sit at the table with other meeting participants.

³ The Complaint refers to paragraph 5 instead of paragraph 4, but it is clear from context that the reference to paragraph 5 is a typographical error.

12. Through the conduct described in paragraph 11, the Respondent, through Scalia, did not allow the Union to actively participate in the meeting described in paragraph 7.
13. By the conduct described in paragraphs 9 through 12, the Respondent failed to comply with § 7114(a)(2)(A) of the Statute.
14. By the conduct described in paragraphs 8 through 13, the Respondent violated § 7116(a)(1) and (8) of the Statute.

CONCLUSIONS OF LAW

By the conduct described in the facts set forth in the Complaint containing allegations to which the Respondent has failed to file an Answer or otherwise demonstrate good cause for such failure, the Respondent admits that it did not allow the Union to actively participate in a formal meeting that management held with bargaining unit employees. Therefore, the Respondent failed to comply with § 7114(a)(2)(A) of the Statute and violated § 7116(a)(1) and (8) of the Statute.

As a remedy, the Respondent is ordered to cease and desist from preventing union representatives from participating in formal discussions in violation of the Statute. In addition, the Respondent is ordered to post a notice, signed by the Respondent's Director, on all bulletin boards at the Respondent's facility where notices to employees are customarily posted, and to email the notice to all bargaining unit employees at the facility.

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 (Statute), the Department of Veterans Affairs, Ralph H. Johnson Medical Center, Charleston, South Carolina, shall:

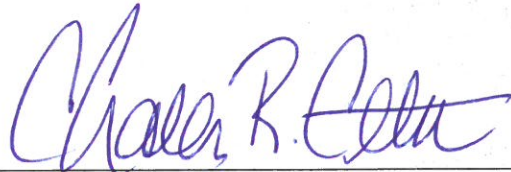
1. Cease and desist from:
 - (a) Preventing union representatives from participating in formal discussions in violation of the Statute.
 - (b) In any like or related manner, interfering with, restraining, or coercing bargaining unit employees in the exercise of rights assured by the Statute.
2. Take 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, Ralph H. Johnson Medical Center, Charleston, South Carolina, 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) 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.

(c) Pursuant to § 2423.41(e) of the Rules and Regulations of the Authority, notify the Regional Director, Atlanta 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., December 20, 2016



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 Department of Veterans Affairs, Ralph H. Johnson Medical Center, Charleston, South Carolina, violated the Federal Service Labor-Management Relations Statute (Statute), and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY EMPLOYEES THAT:

WE WILL NOT fail to allow representatives of the American Federation of Government Employees, Local 523, the designated representative of a unit of employees, to participate in formal discussions with bargaining unit employees and managers as 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 the rights assured by the Statute.

(Agency/Respondent)

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 any of its provisions, they may communicate directly with the Regional Director, Atlanta Region, Federal Labor Relations Authority, whose address is: 225 Peachtree Street, Suite 1950, Atlanta, GA 30303, and whose telephone number is: (404) 331-5300.