



UNITED STATES OF AMERICA  
**FEDERAL LABOR RELATIONS AUTHORITY** OALJ 24-07  
Office of Administrative Law Judges  
WASHINGTON, D.C. 20424

DEPARTMENT OF VETERANS AFFAIRS  
ATLANTA VETERANS AFFAIRS  
HEALTHCARE SYSTEM, DECATUR, GEORGIA

RESPONDENT

AND

AMERICAN FEDERATION OF GOVERNMENT  
EMPLOYEES, LOCAL 2778, AFL-CIO

CHARGING PARTY

Case No. AT-CA-22-0379

Jack W. Roberts  
For the General Counsel

Brittani D. Watts-Cephas  
For the Respondent

Ibidun Roberts  
For the Charging Party

Before: DAVID L. WELCH  
Chief Administrative Law Judge

**DECISION ON MOTION FOR SUMMARY JUDGMENT**

On June 16, 2023, the Acting Regional Director of the Atlanta Region of the Federal Labor Relations Authority (the Authority) issued a Complaint and Notice of Hearing in this matter. The Complaint alleged that the Department of Veterans Affairs, Atlanta Veterans Affairs Healthcare System, Decatur, Georgia (the Respondent) communicated directly with a bargaining unit employee rather than the attorney designated by the American Federation of Government Employees, Local 2778, AFL-CIO (the Union) as its representative concerning a grievance, and that the Respondent had thus interfered with the Union's right to designate the representative of its choosing and thereby failed to recognize the Union's designated representative, in violation of § 7116(a)(1) and (5) of the Federal Service Labor-Management

Relations Statute (the Statute). The Complaint further alleged, in the alternative, that by communicating directly with the bargaining unit employee, the Respondent bypassed the Union and dealt directly with unit employees on matters affecting conditions of employment, and that the Respondent thereby violated § 7116(a)(1) and (5) of the Statute by refusing to negotiate in good faith, and independently violated § 7116(a)(1) of the Statute by interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in § 7102 of the Statute.

The Complaint indicated that a hearing on the allegations would be held on January 9, 2024. The Complaint also advised the Respondent that an Answer to the Complaint was due no later than July 11, 2023, and that a failure to file an answer or respond to any allegation would constitute an admission of those allegations, absent a showing of good cause. The Complaint was sent by regular mail to the Respondent's designated representative, Brittani D. Cephas, Human Resources Specialist, Veterans Health Administration, Atlanta VA Healthcare System, 1670 Clairmont Road, Decatur, GA 30033, and a courtesy copy of the Complaint was sent to Cephas via email on the same day. The Respondent did not file an Answer to the Complaint.

On July 24, 2023, the General Counsel (GC) filed a Motion for Summary Judgment, along with a Brief in Support of Motion for Summary Judgment. The GC notes that the Respondent failed to file an Answer to the Complaint, and the GC argues that the Respondent has 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 GC's 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 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(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.*, §§ 2429.21 through 2429.23. Furthermore, in the body of the Complaint, the Acting 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. The Acting Regional Director 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 did not file 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). 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 file an Answer to the Complaint. In these circumstances, § 2423.20(b) clearly requires that the Respondent's failure to file a timely 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 appropriate. Therefore, the GC's Motion for Summary Judgment is granted.

Based on the existing record, the undersigned makes the following findings of fact, conclusions of law, and recommendations.

### FINDINGS OF FACT

1. The American Federation of Government Employees, Local 2778, AFL-CIO (the Union) filed the charge in this proceeding on May 24, 2022, and a copy was served on the Department of Veterans Affairs, Atlanta Veterans Affairs Healthcare System, Decatur, Georgia (the Respondent).
2. The Respondent is an agency within the meaning of § 7103(a)(3) of the Federal Service Labor-Management Relations Statute (the Statute).
3. 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 Department of Veterans Affairs employees, which includes employees of the Respondent (the unit).
4. The Union is an agent of AFGE for the purpose of representing the unit employees employed at the Respondent.

5. At all times material, the following individuals held the positions opposite their name and have been supervisors or management officials of the Respondent within the meaning of § 7103(a)(10)1 and (11) of the Statute and/or agents of the Respondent acting upon its behalf:

Deroyddrick McGuire                      Human Resources Specialist (ER/LR – SBU)

6. On or about May 11, 2022, the Union filed a grievance and designated an attorney as its representative for a grievance.
7. On or around May 12, 2022, the Respondent, by Mr. McGuire, communicated directly with a bargaining unit employee, not the attorney designated by the Union as its representative, concerning the grievance described in paragraph 6.
8. By the conduct described in paragraph 7, the Respondent has interfered with the Union's right to designate the representative of its choosing.
9. By the conduct described in paragraphs 7 and 8, the Respondent has been failing to recognize the Union's designated representative in violation of § 7116(a)(1) and (5) of the Statute.

OR, IN THE ALTERNATIVE,

10. By the conduct described in paragraph 7, the Respondent bypassed the Union and dealt directly with unit employees on matters affecting conditions of employment.
11. By the conduct described in paragraphs 7 and 10, the Respondent has been refusing to negotiate in good faith with the Union and violating § 7116(a)(1) and (5) of the Statute.
12. By the conduct described in paragraphs 7 and 10, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in § 7102 of the Statute and violating § 7116(a)(1) of the Statute.

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<sup>1</sup> In the Complaint, the GC erroneously references § 7103(a)(1), which defines a "person," rather than § 7103(a)(10), which defines a "supervisor," but it is clear from context that the GC intended to reference § 7103(a)(10) and that the reference to § 7103(a)(1) was a typographical error.

## CONCLUSIONS OF LAW

By the conduct set forth in Case No. AT-CA-22-0379, which contains allegations to which the Respondent has failed to file an Answer or otherwise demonstrate good cause for such failure, the Respondent admits that it interfered with the Union's right to designate the representative of its choosing and thus failed to recognize the Union's designated representative in violation of § 7116(a)(1) and (5) of the Statute, and likewise admits that it bypassed the Union and dealt directly with unit employees on matters affecting conditions of employment and thus refused to negotiate in good faith with the Union, in violation of § 7116(a)(1) and (5) of the Statute, and also interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in § 7102 of the Statute and thus independently violated § 7116(a)(1) of the Statute.

Finally, the undersigned finds the GC's requested remedies, including a cease-and-desist order and notice posting, are appropriate, as those remedies are provided in virtually all cases where an unfair labor practice is found. *E.g., U.S. DOJ, Fed. BOP, Fed. Transfer Ctr., Okla. City, Okla.*, 67 FLRA 221, 223, 226 (2014).

## ORDER

Pursuant to § 2423.41(c) of the Rules and Regulations of the Authority and § 7118 of the Statute, it is hereby ordered that the Department of Veterans Affairs, Atlanta Veterans Affairs Healthcare System, Decatur, Georgia (the Respondent), shall:

1. Cease and desist from:
  - (a) failing to recognize the designated representative of the American Federation of Government Employees, Local 2778, AFL-CIO (the Union);
  - (b) bypassing the Union by dealing directly with unit employees on matters affecting conditions of employment to the extent required by the Statute;
  - (c) in any like or related manner interfering with, restraining, or coercing employees in the exercise of rights assured by the Statute.
2. Take the following affirmative action in order to effectuate the purposes and policies of the Statute:
  - (a) Post the attached Notice, signed by the Atlanta Veterans Affairs Health Care System Medical Center Director, on bulletin boards where it customarily posts notices to employees, for 60 days and distribute the Notice by email to all bargaining unit employees of the Atlanta Veterans Affairs Health Care System. The forms for the Notice will be supplied by the Federal Labor Relations Authority;

- (b) Pursuant to § 2423.41(e) of the Authority's Rules and Regulations, notify the Acting Regional Director, Atlanta 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., December 14, 2023

**David L.  
Welch**

Digitally signed by  
David L. Welch  
Date: 2023.12.14  
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DAVID L. WELCH  
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, Atlanta Veterans Affairs Healthcare System, Decatur, Georgia, 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 NOT** fail to recognize the designated representative of the American Federation of Government Employees, Local 2778, AFL-CIO (the Union).

**WE WILL NOT** bypass the Union by dealing directly with bargaining unit employees on matters affecting conditions of employment to the extent required by the Statute.

**WE WILL NOT** in any like or related manner interfere with, restrain, or coerce employees in the exercise of their rights assured by the Statute.

Department of Veterans Affairs  
Atlanta Veterans Affairs Health Care System  
Decatur, Georgia

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 any of its provisions, they may communicate directly with the Acting Regional Director of the Atlanta Regional Office, Federal Labor Relations Authority, whose address is: 229 Peachtree Street NE, Ste. 900, Atlanta, GA 30303, and whose telephone number is: 470-681-7630.