



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

OALJ 24-17

U.S. DEPARTMENT OF JUSTICE, FEDERAL BUREAU
OF PRISONS, FEDERAL CORRECTIONAL COMPLEX
BUTNER, NORTH CAROLINA

RESPONDENT

AND

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 408, AFL-CIO

CHARGING PARTY

Case No. AT-CA-22-0563

Carrie L. McCready
For the General Counsel

Kevin D. Watson
For the Respondent

Danielle S. Garner
For the Charging Party

Before: RICHARD A. PEARSON
Administrative Law Judge

DECISION ON MOTION FOR SUMMARY JUDGMENT

On July 21, 2023, the Regional Director of the Denver Region of the Federal Labor Relations Authority (the Authority) issued a Complaint and Notice of Hearing in this case, alleging that the Federal Bureau of Prisons, Federal Correctional Complex, Butner, North Carolina (the Respondent or the Agency) violated § 7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute (the Statute) by unilaterally implementing a new procedure for requesting leave without pay. The Complaint indicated that a hearing on the allegations would be held on July 2, 2024, and advised the Respondent that an Answer to the Complaint was due no later than August 15, 2023. The Respondent did not file an Answer to the Complaint.

On May 24, 2024, 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. On June 12, 2024, I issued an order postponing the hearing in this case indefinitely.

PROCEDURAL BACKGROUND

This is an unfair labor practice (ULP) proceeding under the Federal Service Labor-Management Relations Statute (the Statute), Chapter 71 of Title 5 of the U.S. Code, 5 U.S.C. §§ 7101-7135, and the Rules and Regulations of the Federal Labor Relations Authority (the Authority or FLRA), 5 C.F.R. parts 2423 and 2429.

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, Veterans Affairs 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.*, 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. The Regional Director 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, 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:

FINDINGS OF FACT

1. The American Federation of Government Employees, Local 408, AFL-CIO (the Union or Charging Party) filed the charge in this proceeding on September 15, 2022, and a copy was served on the Respondent.
2. 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 (the unit).
3. The Union is an agent of AFGE for the purpose of representing the unit employees employed at the Respondent.
4. The Respondent is an agency within the meaning of § 7103(a)(3) of the Statute.
5. At all times material to this case, the following individual held the position opposite her name and has been a supervisor or management official of

Respondent within the meaning of § 7103(a)(10) and (11) of the Statute and an agent of Respondent acting on its behalf:

Lynne B. Kelly

Warden, FCI II

6. Beginning March 2022, the Respondent, through Warden Kelly, implemented a routing slip requirement whereby bargaining unit employees must obtain the signature of supervisors, the Deputy Captain, Complex Captain, Associate Warden, the Warden's Secretary, and the Executive Assistant before the Warden receives the employees' requests for leave without pay.
7. The impact of the change described in Paragraph 6 is substantial.
8. Respondent implemented the change in unit employees' conditions of employment described in Paragraph 6 without providing the Union with notice and an opportunity to negotiate over the procedures and appropriate arrangements of the change.
9. By the conduct described in paragraphs 6 and 8, the Respondent has been failing and refusing to negotiate in good faith with the Union in violation of § 7116(a)(1), (5) of the Statute.

CONCLUSIONS OF LAW

Prior to implementing a change in conditions of employment, an agency is required to provide the exclusive representative with notice of the change and an opportunity to bargain over those aspects of the change that are within the duty to bargain. *Dep't of the Air Force, Scott AFB, Ill.*, 5 FLRA 9, 9-11 (1981). Even when the change involves the exercise of a management right under § 7106(a) of the Statute, the agency still must bargain with the union over procedures for implementing the change and appropriate arrangements for employees adversely affected by the change.

By virtue of its failure to file an Answer to the Complaint in this case, the Respondent has admitted that it changed the requirements for employees to submit requests for leave without pay, and that this change had a substantial impact on employees. Furthermore, it has admitted that it implemented the change without giving the Union notice or an opportunity to bargain over the changes. It is evident, therefore, that by these actions the Respondent violated § 7116(a)(1) and (5) of the Statute.

In order to remedy the Respondent's unfair labor practice, I agree with the General Counsel's request that Respondent be ordered to engage in prospective bargaining with the Union over procedures and arrangements relating to its leave without pay policy. While the Authority sometimes orders changes to be rescinded and that parties engage in retroactive bargaining, the Authority has emphasized that the appropriate remedy depends on the circumstances of each case, and that sometimes prospective bargaining is the preferable

recourse. *See U.S. Dep't of the Treasury, Customs Serv., Wash., D.C.*, 38 FLRA 989, 992-93 (1990). Here, the GC concedes that since the leave without pay policy changed two years ago, the parties have adjusted to it, and that prospective bargaining will better enable the parties to address ongoing issues. Additionally, I will order the Respondent to cease and desist its unlawful conduct and post a notice to employees regarding their conduct.

I therefore recommend that the Authority grant the General Counsel's Motion for Summary Judgment and issue the following 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 (the Statute), the U.S. Department of Justice, Federal Bureau of Prisons, Federal Correctional Complex, Butner, North Carolina (the Agency), shall:

1. Cease and desist from:

(a) Unilaterally implementing a routing slip requirement whereby bargaining unit employees must obtain the signatures of supervisors, the Deputy Captain, Complex Captain, Associate Warden, the Warden's Secretary, and the Executive Assistant before the Warden receives the employees' requests for leave without pay.

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

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

(a) Bargain prospectively with the American Federation of Government Employees, Local 408, AFL-CIO, over the procedures and appropriate arrangements regarding the March 2022 change in the leave-without-pay policy.

(b) Post 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 Warden of Federal Correctional Complex Butner, 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.

(c) In addition to the physical posting of paper notices, disseminate a copy of the Notice electronically, on the same day as the physical posting, through the Agency's email, intranet, or other electronic media customarily used to communicate with bargaining unit employees. The message of the email transmitted with the Notice shall state, "We are distributing the attached Notice to you pursuant to an order of an Administrative Law Judge of the Federal Labor Relations Authority in Case Number AT-CA-22-0563."

(d) Pursuant to § 2423.41(e) of the Rules and Regulations of the Authority, notify the Regional Director, Denver 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., July 2, 2024



RICHARD A. PEARSON
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 Complex, Butner, North Carolina (the Agency), 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 bargain prospectively with the American Federation of Government Employees, Local 408, AFL- CIO (the Union), regarding the impact and implementation of the March 2022 change in the leave-without-pay policy.

WE WILL NOT fail or refuse to bargain with the Union concerning changes in conditions of employment.

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

(Agency/Activity)

Date: _____ 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, Denver Region, Federal Labor Relations Authority, whose address is: 1244 Speer Boulevard, Suite 446, Denver, CO, 80204, and whose telephone number is: (303) 225-0340.