



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

OALJ 17-19

DEPARTMENT OF VETERANS AFFAIRS
VETERANS AFFAIRS CANTEEN SERVICE
KERRVILLE, TEXAS

RESPONDENT

Case No. DA-CA-17-0044

AND

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, AFL-CIO, LOCAL 2281

CHARGING PARTY

Zachary Wooley
For the General Counsel

Abner Martinez
For the Respondent

Raymond Gillen
For the Charging Party

Before: CHARLES R. CENTER
Chief Administrative Law Judge

DECISION ON MOTION FOR SUMMARY JUDGMENT

On May 31, 2017, the Regional Director of the Dallas Region of the Federal Labor Relations Authority (FLRA/Authority) issued a Complaint and Notice of Hearing, alleging that the U.S. Department of Veterans Affairs, Veterans Affairs Canteen Service, Kerrville, Texas (Agency/Respondent), violated § 7116(a)(1) of the Federal Service Labor-Management Relations Statute (Statute). The Complaint alleged that the Respondent told employees to not talk to Union officers and threatened to bar Union officers from the Canteen if they spoke with Canteen Service employees.

The Complaint advised the Respondent that an Answer was due no later than June 26, 2017. The Complaint was served by certified mail on the Respondent's agent, Abner Martinez, #1 Jefferson Barracks Road, Building #25, St. Louis, MO, 63125-4194. The Respondent failed to file an Answer by the required date.

On July 18, 2017, 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. The GC contends that there are no factual or legal issues in dispute and summary judgment pursuant to 5 C.F.R. § 2423.27(a) is proper. The Respondent failed to file a response to the motion for summary judgment. As I have determined that summary judgment in this matter is proper, the scheduled hearing is cancelled.

DISCUSSION OF MOTION FOR SUMMARY JUDGMENT

Section 2423.20(b) of the Authority's Rules and Regulations provides, in relevant 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. Absent a showing of good cause to the contrary, failure to file an answer or respond to any allegation shall constitute an admission.

Within the Complaint, the Acting Regional Director included detailed instructions on the requirements for filing an Answer, including the number of copies that needed to be filed, the date the Answer needed to be filed, and the means of submission. The fact that there was a section in the Complaint devoted to the Answer requirement leaves no doubt that filing an Answer was necessary.

Despite the detailed instructions, the Respondent met none of the requirements, nor did it request an extension of time to respond. Section 2429.23 of the Authority's Regulations permits extensions or waivers of time limits. However, the Respondent did not present good cause for an extension or extraordinary circumstance for a waiver of the failure to file an Answer, nor did the Respondent file a response to the motion for summary judgment.

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

FINDINGS OF FACT

1. The Union filed the charge on November 10, 2016, and a copy of the charge was served on Respondent.
2. The Respondent is an agency within the meaning of § 7103(a)(3) of the Statute.
3. The American Federation of Government Employees, AFL-CIO (AFGE) is a labor organization within the meaning of 5 U.S.C. § 7103(a)(4) and is the certified exclusive representative of nationwide consolidated units of VA employees, which includes the Respondent.

4. The Union is an agent of AFGE for the purpose of representing the unit employees employed at the Respondent.
5. At all material times, Michael Woodcox was the Chief of the Canteen Service, Kerrville, Texas and was a supervisor or management official of Respondent within the meaning of § 7103(a)(10) and (11) of the Statute and an agent of the Respondent acting on its behalf.
6. On or about October 11, 2016, Respondent, by Michael Woodcox told employees not to talk to Union officers and threatened to bar Union officers from the Canteen if they spoke with Canteen employees.
7. By the conduct described in paragraph 6, Respondent interfered with, restrained, and coerced bargaining unit employees in the exercise of the rights guaranteed in § 7102 of the Statute in violation of § 7116(a)(1) of the Statute.

CONCLUSIONS OF LAW

Pursuant to the admission provision of 5 C.F.R. § 2423.20(b), the Respondent's failure to file an Answer constitutes an admission to the allegations set forth in the Complaint. *Dep't of VA Med. Ctr., Asheville, N.C.*, 51 FLRA 1572, 1594 (1996). Therefore, the Respondent admitted the violations alleged in the Complaint. Accordingly, the General Counsel's Motion for Summary Judgment is **GRANTED**.

As a remedy, the Respondent is ordered to cease and desist from making statements or comments that interfere with, restrain, or coerce employees in the exercise of their rights under the Statute, including their right to seek assistance from the American Federation of Government Employees, AFL-CIO, Local 2281. To cease and desist from threatening to bar Union officials from the Kerrville Canteen if they speak with bargaining unit employees, or in any like or related manner, interfering with, restraining, or coercing bargaining unit employees in the exercise of their rights under the Statute. The Respondent must post a notice of this violation for sixty (60) consecutive days and distribute the notice to bargaining unit employees by email or other electronic media customarily used to communicate with bargaining unit employees. The Respondent must also notify the Regional Director of the implementation of the 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 (Statute), the Department of Veterans Affairs, Veterans Affairs Canteen Service, Kerrville, Texas, shall:

1. Cease and desist from:

(a) Making statements or comments that interfere with, restrain or coerce employees in the exercise of their rights under the Statute, including their right to seek assistance from the American Federation of Government Employees, AFL-CIO, Local 2281.

(b) Threatening to bar Union officials from the Kerrville Canteen if they speak with bargaining unit employees.

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

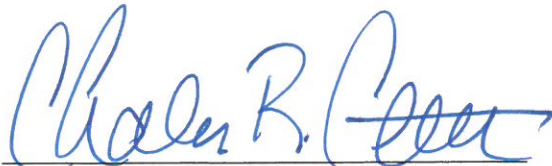
2. Take the following affirmative actions in order to effectuate the purposes and policies of the Statute:

(a) Post at its facility, including all places where notices to 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 Regional Manager for the Veterans Affairs Canteen Service, 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) Disseminate a copy of the Notice signed by the Regional Manager by email or other electronic media 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, Dallas 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 31, 2017



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, Veterans Affairs Canteen Service, Kerrville, Texas, violated the Federal Service Labor-Management Relations Statute (Statute), and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT make statements or comments that interfere with, restrain or coerce employees in the exercise of their rights under the Statute, including their right to seek assistance from the American Federation of Government Employees, AFL-CIO, Local 2281.

WE WILL NOT threaten to bar Union officials from the Kerrville Canteen if they speak with bargaining unit employees.

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.

Veterans Affairs Canteen Service

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 its provisions, they may communicate directly with the Regional Director, Dallas Region, Federal Labor Relations Authority, whose address is: 525 S. Griffin Street, Suite 926, Dallas, TX 75202, and whose telephone number is: 214-767-6266.