



UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C. 20424

FEDERAL BUREAU OF PRISONS
FEDERAL MEDICAL CENTER FORT WORTH
FORT WORTH, TEXAS

RESPONDENT

AND

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, COUNCIL OF PRISON LOCALS 33,
LOCAL 12928, AFL-CIO

CHARGING PARTY

Case No. DE-CA-20-0189

NOTICE OF TRANSMITTAL OF DECISION

The above-entitled case having been submitted to the undersigned Administrative Law Judge pursuant to the Statute and the Rules and Regulations of the Federal Labor Relations Authority (Authority), the undersigned herein serves his Decision, a copy of which is attached hereto, on all parties to the proceeding on this date and this case is hereby transferred to the Authority pursuant to 5 C.F.R. § 2423.34(b).

PLEASE BE ADVISED that the filing of exceptions is governed by 5 C.F.R. Part 2423, Subpart D.

Any such exceptions must be filed on or before **June 5, 2023**, electronically at www.flra.gov, by selecting **eFile** under the **Filing a Case** tab and following the instructions, or by U.S. Mail to:

Office of Case Intake & Publication
Federal Labor Relations Authority
1400 K Street, N.W., 2nd Floor
Washington, DC 20424-0001

Richard A.
Pearson

Digitally signed by Richard A.
Pearson
Date: 2023.05.03 10:08:11 -0400

RICHARD A. PEARSON
Administrative Law Judge

Dated: May 3, 2023
Washington, D.C.



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

OALJ 23-06

FEDERAL BUREAU OF PRISONS
FEDERAL MEDICAL CENTER FORT WORTH
FORT WORTH, TEXAS

RESPONDENT

AND

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, COUNCIL OF PRISON LOCALS 33,
LOCAL 1298, AFL-CIO

CHARGING PARTY

Case No. DE-CA-20-0189

Whitney McOwen
For the General Counsel

John W. Weeks
For the Respondent

Gregory E. Watts, Jr.
Zachary Ward
For the Charging Party

Before: RICHARD A. PEARSON
Administrative Law Judge

DECISION

On March 3, 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 Medical Center Fort Worth, Fort Worth, Texas (the Respondent) violated § 7116(a)(1), (5), and (8) of the Federal Service Labor-Management Relations Statute (the Statute) by failing to provide information requested by the Charging Party pursuant to § 7114(b)(4) of the Statute. The Complaint indicated that a hearing on the allegations would be held on May 24, 2023, and advised the Respondent that an Answer to the Complaint was due no later than March 23, 2023. The Respondent did not file an Answer to the Complaint.

On March 29, 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 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; 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, 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, Council of Prison Locals, 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 unit of employees of the Respondent (the unit).
2. AFGE Local 1298 (the Union) is an agent of AFGE for the purpose of representing the unit employees employed at the Respondent.
3. The Respondent is an agency within the meaning of § 7103(a)(3) of the Statute.
4. The Union filed the charge in this proceeding on February 27, 2020, and a copy was served on the Respondent.
5. At all times material to this case, the following individuals held the positions opposite their names and have been supervisors or management officials of Respondent within the meaning of § 7103(a)(10) and (11) of the Statute and/or agents of Respondent acting upon its behalf:

Eric Wilson	Warden
Monica Limbrick	Human Resources Manager
Terrance McGill	Human Resources Manager
6. On August 8, 2019, the Union requested by letter that Respondent furnish the Union with the following information: Sanitized copies of any and all statistics, documents, reports, and information gathered by Respondent, relating to workplace violence or allegations of workplace violence at FMC Fort Worth and for the Bureau of Prisons for the past five years.
7. The information described in paragraph 6 is normally maintained by the Respondent in the regular course of business.
8. The information described in paragraph 6 is reasonably available.
9. The information described in paragraph 6 is necessary for full and proper

discussion, understanding, and negotiation of subjects within the scope of bargaining.

10. The information described in paragraph 6 does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining.
11. The information described in paragraph 6 is not prohibited from disclosure by law.
12. Since August 8, 2019, the Respondent has not responded to the request for information described in paragraph 6.
13. Since August 8, 2019, the Respondent has failed and refused to furnish the Union with the information it requested as described in paragraph 6.

CONCLUSIONS OF LAW

A union requesting information under § 7114(b)(4) of the Statute must establish a particularized need for the information; that is, it must show that the information is necessary for the union to adequately represent its members. *IRS, Wash., D.C.*, 50 FLRA 661, 669-70 (1995). A union must additionally satisfy the other requirements set forth in § 7114(b)(4). By virtue of its failure to file an Answer to the Complaint in this case, the Respondent has admitted that the information requested by the Union was necessary for the Union to represent its members; that the information was normally maintained by the Respondent; that it was reasonably available; that it did not constitute guidance to management relating to collective bargaining; and that its disclosure was not prohibited by law. Similarly, the Respondent has admitted that it has failed to respond to the Union's August 8, 2019 information request and that it has continued to fail and refuse to furnish the requested information. It is evident, therefore, that by these actions the Respondent has failed to comply with § 7114(b)(4), and that it violated § 7116(a)(1), (5), and (8) of the Statute.

When an agency has unlawfully refused to furnish information to a union, the Authority requires the agency to provide that information and to post a notice (both electronically and on its bulletin boards) to employees of its violation of the Statute, advising employees that it will not refuse to furnish information properly requested under § 7114(b)(4).

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 Federal Bureau of Prisons, Federal Medical Center Fort Worth, Fort Worth, Texas (the Agency), shall:

1. Cease and desist from:

(a) Failing to respond to information requests made by the American Federation of Government Employees, Council of Prison Locals 33, Local 1298, AFL-CIO (the Union) under § 7114(b)(4) of the Statute.

(b) Failing or refusing to provide information requested by the Union under § 7114(b)(4) of the Statute.

(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) Furnish the Union with the information it requested on August 8, 2019: sanitized copies of all statistics, documents, reports, and information gathered by the Agency relating to workplace violence or allegations of workplace violence at FMC Fort Worth and by the Bureau of Prisons for the last five years.
- (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 or Director of the Federal Medical Center Fort Worth 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 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 DE-CA-20-0189."
- (d) Pursuant to § 2423.41(e) of the Rules and Regulations of the Authority, notify the Regional Director, Denver Region, of the 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 3, 2023

**Richard A.
Pearson**
Digitally signed by Richard
A. Pearson
Date: 2023.05.03 10:07:12
-04'00'

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 Federal Bureau of Prisons, Federal Medical Center Fort Worth, Fort Worth, Texas (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 furnish the American Federation of Government Employees, Council of Prison Locals 33, Local 1298, AFL- CIO (the Union) with the information the Union requested on August 8, 2019: sanitized copies of all statistics, documents, reports, and information gathered by the Agency relating to workplace violence or allegations of workplace violence at FMC Fort Worth and for the Bureau of Prisons for the last five years

WE WILL NOT fail or refuse to provide the American Federation of Government Employees, Local 228, AFL-CIO (the Union), with information requested under § 7114(b)(4) of the Statute.

WE WILL NOT fail or refuse to respond to information requests made by the Union under § 7114(b)(4) of the Statute.

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.

(Agency/Activity)

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, Denver Region, Federal Labor Relations Authority, whose address is 1244 Speer Blvd., Suite 446, Denver, CO 80204, and whose telephone number is (303) 844-5224.