

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

OALJ 24-01

<p>U.S. DEPARTMENT OF JUSTICE FEDERAL BUREAU OF PRISONS FEDERAL CORRECTIONAL INSTITUTION WASECA, MINNESOTA</p> <p style="text-align: center;">RESPONDENT</p> <p>AND</p> <p>AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 801, AFL-CIO</p> <p style="text-align: center;">CHARGING PARTY</p>
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Case No. CH-CA-23-0088

Daniel A. Kornberg  
For the General Counsel

Kara Berlin  
For the Respondent

Ryan Burk  
For the Charging Party

Before: DAVID L. WELCH  
Chief Administrative Law Judge

**DECISION ON MOTION FOR SUMMARY JUDGMENT**

On June 2, 2023, the Regional Director of the Chicago Region of the Federal Labor Relations Authority (the Authority or the FLRA) issued a Complaint and Notice of Hearing in this matter on behalf of the Acting General Counsel (GC). The Complaint alleged that the U.S. Department of Justice, Federal Bureau of Prisons, Federal Correctional Institution, Waseca, Minnesota (the Respondent) implemented a work schedule change without providing the Union notice and an opportunity to negotiate over the change, in violation of § 7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute (the Statute). The Complaint further alleged that the Respondent has been failing and refusing to honor and abide by the

terms of the parties' agreements regarding compressed work schedules, in violation of § 7116(a)(1) and (5) of the Statute.

The Complaint indicated that a hearing on the allegations would be held on October 17, 2023, and that an Answer to the Complaint was due no later than June 27, 2023. The Complaint was sent by First Class Mail to the Respondent's designated representative, Isaac Thomas, Labor Relations Specialist, Labor Relations Office – South, 346 Marine Forces Drive, Grand Prairie, Texas 75051, and a courtesy copy of the Complaint was sent to Thomas via email.

On June 27, 2023, the Respondent sent the undersigned an email containing the Respondent's Answer. GC's Mot. for Summ. J., GC Ex. 2. Later that day, the Respondent used the FLRA's eFiling system to upload a document titled Respondent Answer to FLRA Complaint. Rather than e-filing this document as an Answer with the Office of Administrative Law Judges, the Respondent e-filed the document as an unfair labor practice (ULP) charge against an agency. GC's Mot. for Summ. J., GC Ex. 1.

On September 15, 2023, the GC filed a Motion for Summary Judgment based on the fact that the Respondent had failed to file a timely, properly filed, 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 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, and the hearing is hereby canceled. *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 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 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, 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).

In addition, documents must be filed and served in accordance with the Authority's Regulations. With respect to an answer to a complaint, a respondent shall file and serve, in accordance with part 2429 of the Authority's Regulations, an answer with the Office of Administrative Law Judges. 5 C.F.R. § 2423.20(b). The answer may be filed by a number of methods, including by commercial delivery, first-class mail, certified mail, or electronically through use of the eFiling system on the FLRA's Web site, but the Authority's Regulations do not permit a respondent to file an answer by email. *Id.* § 2429.24. Additionally, a party may not serve another party by email unless the receiving party has agreed to be served by email. *Id.* § 2429.27(a)-(b).

Documents that are not served or filed in accordance with the Authority's Regulations may not be considered or may result in dismissal, and the Authority's practice is not to consider documents that are improperly filed, including documents that are erroneously eFiled. *SSA, Region VII, Kan. City, Kan. City, Mo.*, 70 FLRA 106, 108 (2016) (*SSA Kansas*). For example, the Authority has refused to consider documents that were submitted via a method not authorized under the Authority's Regulations. *See U.S. DHS, U.S. CBP, Swanton, Vt.*, 66 FLRA 47, 47 n.1 (2011) (refusing to consider faxed opposition to a motion for reconsideration); *Nat'l Gallery of Art, Wash., D.C.*, 55 FLRA 480, 480-81 (1999) (declining to consider faxed opposition to exceptions). Likewise, the Authority has declined to consider eFiled documents that were not specifically permitted under the Authority's Regulations. *See SSA Kansas*, 70 FLRA at 108 (refusing to consider a response to a procedural order that was improperly eFiled). In addition, the Authority has decided not to consider documents that were filed with the wrong office or component of the FLRA. *See U.S. Dep't of VA, VA Med. Ctr., Hampton, Va.*, 63 FLRA 593, 594-95 (2009) (*VA Hampton*) (refusing to consider opposition that was initially sent to a Regional Office and was not timely filed with the Authority); *AFGE, Local 2004*, 33 FLRA 862, 863 (1989) (noting that a petition for review of negotiability issues may not be filed in a Regional Office).

The Respondent in this case made two attempts to file its Answer, but the Respondent failed to file and serve the Answer in accordance with the Authority's Regulations. In its first attempt, the Respondent submitted its Answer to the undersigned by email. However, email is not an authorized method of filing documents with the Office of Administrative Law Judges. 5 C.F.R. § 2429.24. Moreover, the email was not valid service on the GC, as the GC had not consented to service by email. GC's Mot. for Summ. J. at 3; 5 C.F.R. § 2429.27(b). Because

the Respondent's emailed Answer was not properly filed or served, the undersigned will not consider it. *See SSA Kansas*, 70 FLRA at 108; 5 C.F.R. §§ 2423.20(b), 2429.24, 2429.27.

The Respondent also tried to file its Answer through the FLRA's eFiling system, but the Respondent filled out the wrong form, resulting in the Answer going to the wrong office. Rather than using the eFiling system to submit an Answer to the Office of Administrative Law Judges, the Respondent erroneously used the eFiling system to fill out a ULP charge against an agency and upload the Answer. This was then erroneously submitted by the Respondent to the FLRA's Chicago Regional Office. GC's Mot. for Summ. J., GC Ex. 1. As the Respondent improperly eFiled Answer with the wrong component of the FLRA, the undersigned will not consider that Answer either. *See SSA Kansas*, 70 FLRA at 108; *VA Hampton*, 63 FLRA at 594-95.

In sum, the Respondent has failed to properly file and serve an Answer by the June 27, 2023 deadline. Moreover, the Respondent did not file a response to the GC's Motion for Summary Judgement, and it has not otherwise demonstrated good cause for its failure to properly file and serve a timely Answer.

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 record, I make the following findings of fact, conclusions of law, and recommendations:

### **FINDINGS OF FACT**

1. The American Federation of Government Employees, Local 801, AFL-CIO (the Union) filed the charge in this proceeding on November 25, 2022, and a copy was served on the U.S. Department of Justice, Federal Bureau of Prisons, Federal Correctional Institution, Waseca, Minnesota (the Respondent).
2. The Respondent is an agency within the meaning of § 7103(a)(3) of the Statute.
3. 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 nationwide unit of employees of the Federal Bureau of Prisons (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 names and have been supervisors or management officials of Respondent within the meaning

of § 7103(a)(10) and (11) of the Statute and agents of the Respondent acting upon its behalf:

Travis Dann  
Kristin Hess

Acting Supervisor of Education  
Human Resource Manager

6. On May 14, 2021, the Respondent and the Union entered into a Memorandum of Understanding, providing that the Vocational Training (VT) Woodworking Instructor would be on a compressed work schedule with the hours of 7 a.m. to 5:30 p.m. from Tuesday through Friday, with Saturday through Monday off.
7. On January 27, 2012, the Respondent and the Union agreed to change the scheduled work hours for the VT Woodworking Instructor position to from 6 a.m. to 4:30 p.m.
8. On July 28, 2022, the Respondent agreed to a temporary change in the VT Woodworking Instructor's scheduled work days to Monday through Thursday, with Friday through Saturday off.
9. On October 25, 2022, the Respondent, by Dann, informed Todd Berthiaume, VT Woodworking Instructor, that his work schedule would change to five, eight-hour days from Monday through Friday, effective Monday, October 31, 2022.
10. The Respondent implemented the schedule described in paragraph 9 on or about November 7, 2022.
11. The work schedules described in paragraphs 6, 7, and 8 are compressed work schedules subject to § 6131 of the Work Schedules Act (5 U.S.C. §§ 6120-6133).
12. The Respondent implemented the change in unit employees' conditions of employment described in paragraphs 9 and 10 without providing the Union with notice and an opportunity to negotiate over the change.
13. By the conduct described in paragraphs 9, 10, and 12, the Respondent has been refusing to negotiate in good faith with the Union and violating § 7116(a)(1) and (5) of the Statute.
14. Since October 31, 2022, the Respondent has been failing and refusing to honor and abide by the terms of the parties' agreements described in paragraphs 6 and 7.
15. By the conduct described in paragraph 14, the Respondent is repudiating the terms of the parties' agreements as described in paragraphs 6 and 7.

16. By the conduct described in paragraphs 14 and 15, the Respondent has been refusing to negotiate in good faith with the Union and violating § 7116(a)(1) and (5) of the Statute.

### CONCLUSIONS OF LAW

By the conduct set forth in Case No. CH-CA-23-0088, 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 violated § 7116(a)(1) and (5) of the Statute by implementing the change in unit employees' conditions of employment without providing the Union with notice and an opportunity to negotiate over the change, and by repudiating the terms of the parties' agreements.

The remedy requested by the GC, including that the Respondent be ordered to restore Berthiaume's compressed work schedule, has been applied in similar cases and will therefore be granted. *See U.S. DOJ, INS, L.A., Cal.*, 59 FLRA 387, 389 (2003).

In conclusion, the undersigned recommends that the Authority grant the GC's Motion for Summary Judgment, and vacate all other pending hearings and deadlines, 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 Institution, Waseca, Minnesota (the Respondent), shall:

1. Cease and desist from:
  - (a) Unilaterally terminating bargaining unit employees' compressed work schedules.
  - (b) Repudiating agreements the Respondent negotiated with the American Federation of Government Employees, Local 801, AFL-CIO, concerning compressed work schedules.
  - (c) In any like or related manner, interfering with, restraining, or coercing its employees in the exercise of their rights assured by the Statute.
2. Take the following affirmative action in order to effectuate the purposes and policies of the Statute:
  - (a) Within 20 business days of the issuance of this order, the Respondent will restore VT Woodworking Instructor Todd Berthiaume to a compressed

work schedule with the hours of 6 a.m. to 4:30 p.m. on Monday through Thursday, with Friday through Sunday off.

- (b) Within 30 business days of the issuance of this order, the Respondent will restore any annual or sick leave that Todd Berthiaume took for the time during which he would have been off work if his compressed work schedule had not been terminated in November 2022.
- (c) Post at the Respondent, copies of the attached notice on forms to be furnished by the Federal Labor Relations Authority. Upon receipt of such forms, they must be signed by the Respondent's Warden and posted and maintained for 60 consecutive days thereafter, in conspicuous places, including all bulletin boards and other places where notices to employees are customarily posted. Reasonable steps must be taken to ensure that such notices are not altered, defaced, or covered by any other material.
- (d) In addition to physically posting paper notices, distribute the notice electronically, such as by email, posting on an intranet or an internet site, or other electronic means, if the Respondent customarily communicates with employees by such means.
- (e) Pursuant to § 2423.41(e) of the Authority's Regulations, notify the Regional Director, Chicago Regional Office, 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., October 4, 2023

**David L.  
Welch**

Digitally signed by David L.  
Welch  
Date: 2023.10.04 11:52:43  
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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 U.S. Department of Justice, Federal Bureau of Prisons, Federal Correctional Institution, Waseca, Minnesota (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 NOT** unilaterally terminate bargaining unit employees' compressed work schedules.

**WE WILL NOT** repudiate agreements we negotiated with the American Federation of Government Employees, Local 801, AFL-CIO, concerning compressed work schedules.

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

**WE WILL** reinstate the compressed work schedule for the VT Woodworking Instructor and make him whole for any leave he used as a result of the change.

\_\_\_\_\_  
(Agency)

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. Questions about this notice or compliance with its terms may be directed to the Regional Director, Chicago Regional Office, Federal Labor Relations Authority by mail: 224 S. Michigan Ave., Suite 445, Chicago, IL 60604, or phone: (872) 627-0020.