



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

OALJ 24-05

U.S. DEPARTMENT OF VETERANS AFFAIRS  
PHILADELPHIA REGIONAL OFFICE  
PHILADELPHIA, PENNSYLVANIA

RESPONDENT

AND

AMERICAN FEDERATION OF  
GOVERNMENT EMPLOYEES  
LOCAL 940, AFL-CIO

CHARGING PARTY

Case No. WA-CA-22-0238

Sarah Kurfis  
For the General Counsel

Melissa Fegely  
For the Respondent

Joseph Malizia  
For the Charging Party

Before: RICHARD A. PEARSON  
Administrative Law Judge

**DECISION ON MOTION FOR SUMMARY JUDGMENT**

The Respondent in this case has failed to answer the Complaint. As a result, the General Counsel moved for summary judgment, because that failure means that the Respondent is deemed to have admitted all of the allegations of the Complaint. With all of the allegations deemed admitted, there are no genuine issues of material fact, and the General Counsel is entitled to summary judgment as a matter of law.

## Factual and Procedural Background

On July 25, 2023, the Regional Director of the Washington Regional Office of the Federal Labor Relations Authority (the Authority) issued a Complaint and Notice of Hearing in this case. The Complaint alleged that the U.S. Department of Veterans Affairs, Philadelphia Regional Office, Philadelphia, Pennsylvania (the Respondent or the Agency) violated § 7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute (the Statute) by failing to negotiate with the American Federation of Government Employees, Local 940, AFL-CIO (the Charging Party or the Union) before terminating alternative work schedules for bargaining unit employees at the Respondent's National Call Center. Complaint ¶¶ 6, 8. The Complaint advised the Respondent that an Answer to the Complaint was due no later than August 21, 2023. The Respondent has not filed an Answer to the Complaint.

On September 13, 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, and arguing that the Respondent therefore had admitted all of 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. GC MSJ at 1. The Respondent has not filed a Response to the Motion for Summary Judgment. Accordingly, on September 28, 2023, I issued an order indefinitely postponing the hearing.

### Discussion of Motions 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 of the Authority's Regulations 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 was to have been sent, and references to the applicable regulations; she 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 this case, the Respondent has not filed an Answer, and since it has not responded to the Motion for Summary Judgment, it also has not 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), and the cases cited therein. 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 Union filed the charge in this proceeding on March 7, 2022 and a copy was served on 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, AFL-CIO (AFGE) is a labor organization within the meaning of § 7103(a)(4) of the Statute and is the certified exclusive representative of nationwide consolidated units of VA employees, which include 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 names and have been supervisors or management officials of the Respondent within the meaning of § 7103(a)(10) and (11) of the Statute and agents of the Respondent acting upon its behalf:
 

Pedro Riveria-Batista	Assistant Director
Rashetta Smith	Assistant Director
6. On January 31, 2022, the Respondent discontinued the alternative work schedule for unit employees in the National Call Center.

7. The work schedules described in Paragraph 6 are work schedules subject to Section 6131 of the Work Schedules Act (5 U.S.C. §§ 6120-6133).
8. The Respondent implemented the change in employees' conditions of employment described in Paragraph 6 without providing the Union with the opportunity to negotiate over the change.
9. By the conduct described in paragraphs 6 and 8, the Respondent has been refusing to negotiate in good faith with the Union and violating Section 7116(a)(1) and (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 adequate notice of the change and an opportunity to bargain over those aspects of the change that are within the duty to bargain. *See, e.g., U.S. Penitentiary, Leavenworth, Kan.*, 55 FLRA 704, 715 (1999). Moreover, the Authority has held that, under the Work Schedules Act, alternative work schedules for bargaining unit employees are fully negotiable, subject only to the Work Schedules Act itself or other laws superseding it. *Nat'l Fed'n of Fed. Employees Local 1998, IAMAW*, 60 FLRA 141, 143 (2004). Accordingly, matters relating to the implementation, administration, or termination of alternative work schedules may not be changed without bargaining over the substance of that change. *NTEU*, 52 FLRA 1265, 1293 (1997).

By virtue of its failure to file an Answer, the Respondent has admitted that it discontinued the alternative work schedules for employees in the National Call Center, and that it did so without providing the Union with an opportunity to negotiate over the matter. Thus it violated § 7116(a)(1) and (5) of the Statute, as alleged by the General Counsel.

### **Remedy**

The only remaining question is that of remedy. Although such a unilateral change in alternative work schedules might warrant the rescission of the unlawful action and a resumption of bargaining, the GC asserts that the Union does not desire such a remedy; events in the intervening time would make such an action unduly disruptive to employees. Motion for Summary Judgment at 7. I will defer to the request of the Charging Party and instead require that the Respondent cease its unlawful conduct and post the attached Notice to Employees.

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 (Statute), the U.S. Department of Veterans Affairs, Philadelphia Regional Office, Philadelphia, Pennsylvania, shall:

1. Cease and desist from:
  - (a) Changing employees' conditions of employment, including alternative work schedules, without first providing the American Federation of Government Employees, Local 940, AFL-CIO with notice and an opportunity to bargain to the extent required by law;
  - (b) 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) Post at the U.S. Department of Veterans Affairs, Philadelphia Regional Office, where bargaining unit employees 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 Lillie Nuble, Director of the Philadelphia Regional Office, 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. A copy of the Notice shall also be electronically mailed to all bargaining unit employees. Reasonable steps shall be taken to ensure that such Notices are not altered, defaced, or covered by any other material.
  - (b) Pursuant to § 2423.41(e) of the Authority's Regulations, notify the Regional Director, Washington Regional Office, Federal Labor Relations Authority, in writing, within fifteen (15) days from the date of this Order and again after sixty (60) days, as to what steps have been taken to comply.

Issued, Washington, D.C.  
November 1, 2023

**Richard A.  
Pearson** Digitally signed by  
Richard A. Pearson  
Date: 2023.11.01  
09:12:00 -04'00'

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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 Veterans Affairs, Philadelphia Regional Office, Philadelphia, Pennsylvania violated the Federal Service Labor-Management Relations Statute (Statute) and has ordered us to post and abide by this notice.

We hereby notify bargaining unit employees that:

WE WILL NOT refuse to negotiate with the American Federation of Government Employees, Local 940, AFL-CIO (the Union), the exclusive collective bargaining representative of our employees, over alternative work schedules for employees who work in the National Call Center.

WE WILL provide the Union with notice and an opportunity to bargain, to the extent required by the Statute, prior to implementing changes in working conditions.

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

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(Agency/Activity)

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
Lillie Nuble, Director

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.

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.