

UNITED STATES OF AMERICA  
**FEDERAL LABOR RELATIONS AUTHORITY**  
Office of Administrative Law Judges  
WASHINGTON, D.C. 20424-0001

MEMORANDUM

DATE:

November 5, 2007

TO: The Federal Labor Relations Authority

FROM: RICHARD A. PEARSON  
Administrative Law Judge

SUBJECT: U.S. ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.

Respondent

AND

Case

No. CH-CA-07-0370

AMERICAN FEDERATION OF GOVERNMENT  
EMPLOYEES, COUNCIL 238, AFL-CIO

Charging Party

Pursuant to section 2423.27(c) of the Final Rules and Regulations, 5 C.F.R.  $\ni$  2423.27(c), I am hereby transferring the above case to the Authority. Enclosed are copies of my Decision, the service sheet, and the transmittal form sent to the parties. Also enclosed is a Motion for Summary Judgment and other supporting documents filed by the parties.

Enclosures

UNITED STATES OF AMERICA  
**FEDERAL LABOR RELATIONS AUTHORITY**  
Office of Administrative Law Judges  
WASHINGTON, D.C. 20424-0001

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U.S. ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.

Respondent

AND

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AMERICAN FEDERATION OF GOVERNMENT  
EMPLOYEES, COUNCIL 238, AFL-CIO

Charging Party

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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 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 Federal Labor Relations Authority pursuant to 5 C.F.R.  $\ni$  2423.34(b).

PLEASE BE ADVISED that the filing of exceptions to the attached Decision is governed by 5 C.F.R.  $\ni$  2423.40-2423.41, 2429.12, 2429.21-2429.22, 2429.24-2429.25, and 2429.27.

Any such exceptions must be filed on or before **DECEMBER 5, 2007**, and addressed to:

Office of Case Control  
Federal Labor Relations Authority  
1400 K Street, NW, 2<sup>nd</sup> Floor  
Washington, DC 20424-0001

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RICHARD A. PEARSON  
Administrative Law Judge

Dated: November 5, 2007  
Washington, DC

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

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U.S. ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.

Respondent

AND

Case No. CH-CA-07-0370

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EMPLOYEES, COUNCIL 238, AFL-CIO

Charging Party

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Greg A. Weddle  
For the General Counsel

Lee W. Clark  
For the Respondent

Before: RICHARD A. PEARSON  
Administrative Law Judge

**DECISION ON MOTION FOR SUMMARY JUDGMENT**

On August 30, 2007, the Regional Director of the Chicago Region of the Federal Labor Relations Authority (the Authority), issued a Complaint and Notice of Hearing alleging that the U.S. Environmental Protection Agency, Washington, D.C. (the Respondent), violated section 7116(a)(1), (5) and (8) of the Federal Service Labor-Management Relations Statute (the Statute). The complaint alleged that the Respondent failed to respond to a request for information from the American Federation of Government Employees, Council 238, AFL-CIO (the Charging Party or Union) and that it refused to furnish the Union with the requested information.

The complaint, which was served on the Respondent by certified mail, specified that Respondent's answer was to be filed by September 24, 2007, and that a failure to file an

answer would constitute an admission of the allegations of the complaint. A hearing was scheduled for October 30, 2007.

The Respondent did not submit anything in response to the complaint.

On October 2, 2007, Counsel for the General Counsel filed a Motion, which I construe as a Motion for Summary Judgment, requesting that the Respondent be found to have committed an unfair labor practice, by virtue of its failure to file an answer to the complaint, and that Respondent be ordered to take certain actions to remedy the unfair labor practice.

On October 9, 2007, the Respondent filed a Response to Motion, in which it explained its actions regarding the Union's original information request; it also stated that it would not oppose posting a notice concerning the alleged unfair labor practice but that it believed its Director of Human Resources or Director of Labor Relations should sign the notice, not the Administrator, as requested by the General Counsel. The Respondent did not offer any explanation for its failure to file a timely answer to the complaint, nor did it directly object to the issuance of summary judgment on the underlying unfair labor practice.

#### **Discussion of Motion for Summary Judgment**

Section 2423.20(b) of the Authority's Rules and 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. . . .

In this case, the Respondent has not filed an answer to the complaint. Moreover, it has not sought, in its response to the General Counsel's summary judgment motion, to show any good cause for its failure to answer. Therefore, it is appropriate to treat the allegations of the complaint as admitted. Accordingly, there are no factual issues in

dispute, and this case can be resolved by summary judgment. *U.S. Department of Treasury, Customs Service, Washington, D.C. and Customs Service, Region IV, Miami, Florida*, 37 FLRA 603, 610 (1990). Based on the existing record, I make the following findings of fact, conclusions of law, and recommendations.

### **Findings of Fact**

The Respondent is an agency as defined by 5 U.S.C. § 7103(a)(3). The Charging Party is a labor organization as defined by 5 U.S.C. § 7103(a)(4) and is the exclusive representative of a nationwide bargaining unit of the Respondent's employees.

On or about October 11, 2006, the Union requested that Respondent furnish data concerning employee overpayment and overpayment waivers; incorrect grade and step increases granted employees; and Respondent's policies on overpayments and debt collection. The Respondent failed to respond to the Union's information request, and it failed and refused to furnish the Union with all or some of the information requested.

### **Conclusions**

Based on the Respondent's failure to file an answer, it has also admitted the following allegations of the complaint. The information requested by the Union is normally maintained by the Respondent in the regular course of business; is reasonably available; is necessary for full and proper discussion, understanding and negotiation of subjects within the scope of collective bargaining; does not constitute guidance, advice, counsel or training provided for management officials or supervisors, relating to collective bargaining; and is not prohibited from disclosure by law. Thus, the Respondent's admitted refusal to provide the requested information to the Union was an unfair labor practice.

Section 7114(b)(4) requires an agency to furnish certain types of information to a union; the Authority has also interpreted this provision to require an agency to affirmatively respond to a union's request for information, even if the requested information does not exist or its disclosure is prohibited by law. *Department of Health and Human Services, Social Security Administration, New York Region, New York, New York*, 52 FLRA 1133, 1149-50 (1997); *U.S.*

*Naval Supply Center, San Diego, California*, 26 FLRA 324, 326-27 (1987). The failure to respond to an information request in a timely manner is an independent violation of section 7116(a)(1), (5) and (8) of the Statute. *Social Security Administration, Baltimore, Maryland*, 60 FLRA 674, 679 (2005).

As a remedy for the Respondent=s violations, the General Counsel requests, and I find it is appropriate, that a cease and desist order be issued and that the Respondent post a notice to employees at all its locations nationwide where bargaining unit employees are located. The order shall require the Respondent to reply to information requests from the Union in a timely manner and to furnish the Union with the information it requested on October 11, 2006. The only remaining dispute is over who should sign that notice. This same issue recently arose in another case involving the same parties, and my words in that case are equally applicable here. *U.S. Environmental Protection Agency, Washington, D.C.*, Case No. CH-CA-07-0425 (September 25, 2007). The Authority has held that the remedial purposes of a notice are best served by requiring the head of the activity responsible for the violation to sign the notice. *Department of Health and Human Services, Regional Personnel Office, Seattle, Washington*, 48 FLRA 410, 411 (1993). While the Administrator of the EPA is the highest official of the Respondent, the complaint identified an attorney in the Office of Labor and Employee Relations and the Acting Deputy Director of Human Resources as the agency officials who refused to furnish the requested information to the Union; it would therefore appear that it was these two offices (Labor and Employee Relations and Human Resources) which are the activities responsible for the violation. See *Department of Housing and Urban Development, San Francisco, California*, 41 FLRA 480, 483 (1991). While I do not give any weight to the past practices of the parties in settling charges, I do agree with the Respondent that in this case the notice should be signed by either the Director of Human Resources or the Director of Labor Relations.

I therefore recommend that the Authority grant the General Counsel=s Motion for Summary Judgment and issue the following Order:

#### **ORDER**

Pursuant to section 2423.41(c) of the Authority's Rules

and Regulations and section 7118 of the Federal Service Labor-Management Relations Statute (the Statute), it is hereby ordered that the U.S. Environmental Protection Agency, Washington, D.C. (the Agency), shall:

1. Cease and desist from:

(a) Failing and refusing to respond to requests for information by the American Federation of Government Employees, Council 238, AFL-CIO (the Union), the employees' exclusive representative.

(b) Failing and refusing to furnish to the Union, on request, the data it requested on October 11, 2006, concerning employee overpayment waivers, incorrect grade and step increases granted employees, and the Agency's policies on overpayments and debt collection.

(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) Respond in a timely manner to information requests made by the Union.

(b) Furnish the Union with the information requested by the Union on October 11, 2006 and described above.

(c) Post at all of its facilities where 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 Director of Human Resources or the Director of Employee and Labor Relations, and shall be 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 shall be taken to ensure that such Notices are not altered, defaced, or covered by any other material.

(d) Pursuant to section 2423.41(e) of the Authority's Rules and Regulations, notify the Regional Director, Chicago Region, 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, DC, November 5, 2007.

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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. Environmental Protection Agency, Washington, D.C. (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 OUR EMPLOYEES THAT:**

**WE WILL NOT** fail or refuse to respond to requests for information by the American Federation of Government Employees, Council 238, AFL-CIO (the Union), the exclusive representative of a unit of our employees.

**WE WILL NOT** fail or refuse to furnish to the Union, on request, the data it requested on October 11, 2006, concerning employee overpayment waivers, incorrect grade and step increases granted employees, and the Agency's policies on overpayments and debt collection.

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

**WE WILL** respond in a timely manner to information requests made by the Union.

**WE WILL** furnish the Union, upon request, with the information it requested on October 11, 2006, and described above.

\_\_\_\_\_  
(Activity)

Date: \_\_\_\_\_ 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.

If employees have any questions concerning this Notice or compliance with its provisions, they may communicate directly with the Regional Director, Chicago Regional Office, Federal Labor Relations Authority, whose address is: 55 West Monroe Street, Suite 1150, Chicago, IL 60603-9729, and whose telephone number is: 312-886-3465

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the **DECISION** issued by RICHARD A. PEARSON, Administrative Law Judge, in Case No. CH-CA-07-0370, were sent to the following parties:

**CERTIFIED MAIL & RETURN RECEIPT**

**CERTIFIED NOS:**

Greg A. Weddle, Esq.  
Counsel for the General Counsel  
Federal Labor Relations Authority  
55 West Monroe Street, Suite 1150  
Chicago, IL 60603-9729

**7000 2570 0001 8450 3764**

Lee W. Clark, Attorney/Advisor  
Labor and Employee Relations  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

**7000 2570 0001 8450 3757**

**REGULAR MAIL:**

Jeffrey Bratko  
AFGE, Counsel 238  
P.O. Box 1127  
Chicago, IL 60690

President  
American Federation of Government  
Employees, AFL-CIO  
80 F Street, NW  
Washington, DC 20001

DATED: November 5, 2007

Washington, DC