

OFFICE OF ADMINISTRATIVE LAW JUDGES

WASHINGTON, D.C. 20424-0001

THE ADJUTANT GENERAL, STATE  
OF GEORGIA, ATLANTA, GEORGIA  
Respondent

and

Case No. AT-CA-40382

SOUTH GEORGIA ARMACT, CHAPTER 56  
Charging Party

Linda J. Norwood, Esq.            For the General Counsel  
Charles L. Moulton, LTC, GaARNG, LRS            For the Respondent  
Before: ELI NASH, JR.            Administrative Law Judge

DECISION

*Statement of the Case*

On June 24, 1994, the Acting Regional Director of the Atlanta Region of the Federal Labor Relations Authority (herein called the FLRA), issued a Complaint and Notice of Hearing which was duly served by certified mail upon the named Respondent. The Complaint alleged that Respondent violated section 7116(a)(1) and (5) of the Statute by refusing to provide grievants with written decisions to their grievances at Step 4 of the grievance procedure, as required by the collective bargaining agreement between the parties and thereby, revoked and repudiated the grievance and arbitration section of the parties collective bargaining agreement.

The Complaint allowed Respondent the requisite 20 days, until July 19, 1994 to file an answer pursuant to section 2423.13 of the Rules and Regulations of the FLRA. Respondent filed no answer within the required period.

Thereafter, on or around August 9, 1994, Counsel for the General Counsel moved for summary judgment based on Respondent's failure to file an answer in the captioned matter. On that same day, the Regional Director of the Atlanta Region, in accordance with section 2423.22(b) of the Rules and Regulations of the FLRA referred the motion to the Chief Administrative Law Judge. Thereafter, on August 12, 1994, the Chief Administrative Law Judge issued an Order granting all parties until August 29, 1994, to file any further pleadings or briefs in the matter. The matter was assigned to the undersigned for disposition pursuant to section 2423.19(t) and section 2423.22(b)(3) of the Rules and Regulations of the FLRA. Thereafter, on August 26, 1994 Respondent filed a submission stating that failure to file an answer was the result of inexperience and an oversight on the part of its representative. Respondent does not deny that no material issues are in dispute in this matter, but instead questioned the adequacy of the FLRA's investigation of the case. Respondent also requested that the matter be held in abeyance until September 20, 1994 until it had an opportunity to resolve the pending unfair labor practices. Respondent, however, failed to notify the Chief Administrative Law Judge by the date it requested, of the status of its attempts to resolve the matter. Respondent's action certainly appears insensitive to deadlines, even those established by itself. To the

undersigned, Respondent seems to view itself as immune from FLRA processes.

Since Respondent failed to reply to the Complaint, and its response to the Order of the Chief Administrative Law Judge does not deny that any material facts are in dispute, it is recommended that the motion for summary judgment be granted for the following reasons:

***Findings of Fact***

The admitted, uncontested facts establish the following:

1. The Union is the certified exclusive representative of a unit of employees appropriate for collective bargaining at Respondent's facility.
2. Respondent and the Union are parties to a collective bargaining agreement covering Respondent's employees in a unit appropriate for collective bargaining.
3. The collective bargaining agreement under Article XVII, "Grievance and Arbitration," Section 2(b)(3) (STEP 4)(b) reads as follows:

At Step 4 of the Negotiated Grievance Procedure, the Adjutant General or designated representative will offer an opportunity to the State Chairman's Office to present any pertinent information, after which The Adjutant General will take whatever action deemed necessary to resolve the problem. The Adjutant General or representative will give the grievant a written decision within 15 calendar days after receipt of information from the State Chairman's Office.

4. Beginning in 1993, and continuing during the period December 1993 through February 1994, the Respondent through its agents William P. Bland and/or Charles L. Moulton, has refused to provide grievants with written decisions to their grievances at Step 4 of the grievance procedure, as required by, and notwithstanding, Article XVII, "Grievance and Arbitration," Section 2(b)(3)(STEP 4)(b).
5. Since December 1993, Respondent has refused to comply with and has revoked and repudiated,

Article XVII, "Grievance and Arbitration," Section 2(b)(3) (STEP 4)(b), of the collective bargaining agreement by not responding to grievances filed by unit employees on November 2, 1993, June 11, 1993, December 27, 1993 and March 25, 1993, respectively.<sup>(1)</sup>

### *Conclusions*

Section 2423.13(b) of the Rules and Regulations of the FLRA provides, in pertinent part:

Failure to file an answer or to plead specifically to or explain any allegation shall constitute an admission of such allegation and shall be so found by the Authority, unless good cause to the contrary is shown.

The failure of Respondent to file any answer in this case requires a finding that it has admitted all the allegations of the instant Complaint. Where a party has failed to meet a filing requirement under the Statute, that failure may be excused where good cause is shown. The Authority has previously warned parties filing actions with it that they "are responsible for being knowledgeable of the statutory and regulatory requirements." U.S. Environmental Protection Agency, Environmental Research Laboratory, Narragansett, Rhode Island, 49 FLRA No. 7 (1994); National Association of Government Employees, Local R1-109, 43 FLRA 1140 (1992). Respondent serves as its primary reason for failing to file an answer to the Complaint as "inexperience and oversight". Under FLRA guidelines Respondent's reason for not filing an answer would not constitute a good cause showing which would excuse its failure to timely file an answer in the matter. Moreover, Respondent's August 26, 1994 response to the order of the Chief Administrative Law Judge does not contain any denial that any material facts were at issue in the case nor does it reveal any good cause reason for its failure to file a timely answer. Therefore, no genuine issue of fact exists in the matter and disposition by summary judgment is proper. U.S. Department of Treasury, Customs Service, Washington, D.C. and Customs Service, Region IV, Miami, Florida, 37 FLRA 603, 610 (1990).

The undisputed facts are that Respondent failed to provide the required, written answer to grievances on four different occasions and that it offered no defense for its actions.<sup>(2)</sup> It is alleged that Respondent's failure to provide answers to the grievances at the final step before arbitration results in the Union having to make a choice between allowing the grievances to fade without resolution or of absorbing the costs of arbitration.<sup>(3)</sup> In support of its position, the General Counsel argues that Respondent's conduct "strikes at the heart of the grievance procedure and directly interferes with the statutory mandate that grievance procedures should provide for an effective way to resolve grievances."

The facts disclose that Respondent refused to follow the clear language of the contract on four different occasions. The General Counsel asserts that Respondent's repeated, intentional failure to provide a written answer to the grievances at the Adjutant General's step of the grievance procedure constitutes a repudiation of the contract in violation of the Statute. See, Warner Robins Air Logistics Center, Warner Robins, Georgia, 40 FLRA 1211 (1991). I agree with the General Counsel's assessment of the matter. In view of the above, it is found that Respondent's failure to provide written answers to the four grievances herein constituted a

repudiation of the collective bargaining agreement.

Inasmuch as Respondent has admitted all allegations of the Complaint, which if undenied establish a violation of the Statute, it is found to have committed the alleged unfair labor practice in violation of section 7116(a)(1) and (5) of the Statute.

Accordingly, it is recommended that the Authority grant Counsel for the General Counsel's motion for summary judgment and issue the following:

***ORDER***

Pursuant to section 2423.29 of the Federal Labor Relations Authority's Rules and Regulations and section 7118 of the Statute, it is hereby ordered that The Adjutant General State Of Georgia, Atlanta, Georgia, shall:

1. Cease and desist from:

(a) Failing and refusing to honor the collective bargaining agreement it negotiated with South Georgia ARMACT, Chapter 56, the employees' exclusive representative, by failing and refusing to provide the required, written answers to grievances at the Adjutant General's level of the grievance procedure.

(b) In any like or related manner, interfering with, restraining or coercing its employees in the exercise of their rights assured by the Federal Service Labor-Management Relations Statute.

2. Take the following affirmative action in order to effectuate the purposes and policies of the Federal Service Labor-Management Relations Statute:

(a) Upon request of South Georgia ARMACT, Chapter 56, provide the required written answer to the grievances herein at the Adjutant General's level of the grievance procedure.

(b) Post at its Adjutant General, State Of Georgia, Atlanta, Georgia facilities where employees in the bargaining unit 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 Adjutant General, 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 insure that such Notices are not altered, defaced, or covered by any other material.

(c) Pursuant to section 2423.30 of the Authority's Rules and Regulations, notify the Regional Director of the Atlanta Region, 1371 Peachtree Street, NE, Suite 122, Atlanta, GA 30309-3102, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

Issued, Washington, DC, September 26, 1994

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ELI NASH, JR.

Administrative Law Judge

**NOTICE TO ALL EMPLOYEES**  
**AS ORDERED BY THE FEDERAL LABOR RELATIONS AUTHORITY**  
**AND TO EFFECTUATE THE POLICIES OF THE**  
**FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS STATUTE**

**WE HEREBY NOTIFY OUR EMPLOYEES THAT:**

WE WILL NOT fail and refuse to honor the collective bargaining agreement we negotiated with South Georgia ARMACT, Chapter 56, the employees' exclusive representative, by failing and refusing to provide the required, written answers to grievances at the Adjutant General's level of the grievance procedure.

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 Federal Service Labor-Management Relations Statute.

WE WILL upon request of South Georgia ARMACT, Chapter 56, provide the required written answer to the grievances herein at the Adjutant General's level of the grievance procedure.

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(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 any of its provisions, they may communicate directly with the Regional Director of the Federal Labor Relations Authority, Atlanta Region, 1371 Peachtree Street, NE, Suite 122, Atlanta, GA 30309-3102, and whose telephone number is: (404) 347-2324.

1. Actually two grievance were filed on June 11, 1993, by the same employee, Freddie Hill.

2. The collective bargaining agreement states as follows:

The Adjutant General or his representative will give the grievant a written decision within 15 calendar days after receipt of information from the State Chairman's Office.

3. Section 7121(b) requires that the grievance procedure be fair, simple and provide for "expeditious processing" of grievances.