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

OALJ 13-23

DEPARTMENT OF THE AIR FORCE
NELLIS AIR FORCE BASE, NEVADA

RESPONDENT

AND

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1199, AFL-CIO

CHARGING PARTY

Case No. SF-CA-13-0200

Robert Bodnar
For the General Counsel

Michael Wells
For the Respondent

Vernon Steed
For the Charging Party

Before: CHARLES R. CENTER
Chief Administrative Law Judge

DECISION ON MOTION FOR SUMMARY JUDGMENT

The General Counsel issued a complaint and notice of hearing is this case on June 18, 2013. After the Respondent failed to file and properly serve a timely answer to the complaint, the General Counsel filed and properly served a motion for summary judgment (MSJ) on July 30, 2013. In addition to failing to file an answer, the Respondent has not filed a response to the summary judgment motion.

Because the Respondent has not filed an answer or presented extraordinary circumstances for such a failure that would justify waiving the time limit, I find that the Respondent has not demonstrated good cause, and thus, the General Counsel is entitled to summary judgment pursuant to 5 C.F.R. §§ 2423.20(b) and 2423.27.

PROCEDURAL STANDARDS

Parties appearing before the Federal Labor Relations Authority (Authority), are charged with knowledge of all pertinent statutory and regulatory filing requirements. *U.S. Envtl. Prot. Agency, Envtl. Research Lab., Narragansett, R.I.*, 49 FLRA 33, 37 (1994). Pursuant to the Authority's rules and regulations, a respondent is required to file and serve an answer to the complaint within 20 days of the date the complaint was served, but, in any event, prior to the start of the hearing. Should a respondent fail to file an answer within the mandated time, the failure constitutes an admission of the allegations in the complaint absent a showing of good cause. 5 C.F.R. § 2423.20(b)

STANDARDS FOR SUMMARY JUDGMENT

In considering motions for summary judgment submitted pursuant to § 2423.27 of the Authority's regulations, the standards to be applied are those used by United States District Courts under the Federal Rules of Civil Procedure. *Dep't of Veterans Affairs, VAMC, Nashville, Tenn.*, 50 FLRA 220, 222 (1995). Upon review of the General Counsel's motion, I have determined that summary judgment is appropriate in this case.

On June 18, 2013, the Regional Director of the San Francisco Region of the Authority issued a complaint and notice of hearing alleging that the Department of the Air Force (Respondent), violated § 7114(a)(2)(A) of the Federal Service Labor-Management Relations Statute (Statute), by conducting a formal discussion with bargaining unit employees without providing the Union with notice and an opportunity to represent bargaining unit employees, and thus, committed an unfair labor practice in violation of § 7116(a)(1) and (8) of the Statute.

The complaint, which was served on the Respondent by certified mail, specified that an answer was to be filed by July 15, 2013. The complaint also explained that absent a demonstration of good cause, the failure to file a timely answer would constitute an admission of the allegations in the complaint. The due date established by the complaint reflected the twenty days a respondent is afforded to file an answer along with five days added for service by mail as allowed by regulation. Since the twenty-fifth day fell on a weekend as a result of a federal holiday, the following workday of July 15, 2013, was the appropriate due date under the Authority's regulations. Thus, a total of twenty-eight days was provided by the date set forth in the complaint. See 5 C.F.R. §§ 2423.20(b), 2429.21, and 2429.22.

On July 30, 2013, the General Counsel filed a motion for summary judgment, asserting that by virtue of failing to answer the complaint and notice of hearing by the required date, the Respondent admitted all of the allegations set forth therein, and thus, violated the Statute as alleged. The Respondent did not file a response to the motion.

As the Respondent failed to answer the allegations of the complaint on or before July 15, 2013, and has not requested a waiver nor shown good cause for its failure to file an answer within the time allotted by the Authority's regulations, the Respondent admits the

allegations of the complaint pursuant to 5 C.F.R. § 2423.20(b). Accordingly, there is no genuine issue of material fact in dispute, and it is appropriate to resolve this case by summary judgment. Thus, I make the following findings of fact, conclusions of law, and recommendations.

FINDINGS OF FACT

1. The unfair labor practice complaint and notice of hearing was issued in accordance with 5 U.S.C. §§ 7101-7135 and 5 C.F.R. Chapter XIV.

2. The Department of the Air Force, Nellis Air Force Base, Nevada (Nellis) is an agency under 5 U.S.C. § 7103(a)(3).

3. The American Federation of Government Employees, Local 1199, AFL-CIO (Local 1199), is a labor organization under 5 U.S.C. § 7103(a)(4) and is the exclusive representative of bargaining unit employees at Nellis that includes air traffic controllers in Airfield Operations.

4. Local 1199 filed the charge with the San Francisco Regional Director on February 19, 2013, and a copy of the charge was served on Nellis.

5. During the time period covered by the complaint, Master Sergeant Kurt Schmidtman was the Chief of Airfield Operations, Senior Master Sergeant Chesley Van Sickle was the Deputy Chief, and Darrel Kelly was the Labor Relations Officer.

6. Schmidtman, Van Sickle, and Kelly were supervisors or management officials under 5 U.S.C. § 7103(a)(10) and/or (11).

7. At all material times, Schmidtman, Van Sickle, and Kelly were agents of Nellis and acted on behalf of Nellis.

8. On or about April 17, 2012, Nellis, by Schmidtman and Van Sickle, held a meeting with air traffic controllers that are part of the Local 1199 bargaining unit described in fact number 3.

9. The April meeting was formal in nature. It lasted about one hour, took place in the Airfield Operations conference room, and started at about 1:30 p.m., a time that allowed all controllers working the day and swing shifts to attend.

10. At this meeting, Schmidtman and Van Sickle discussed a matter of great importance to the controllers, that it would no longer be able to convert them from GS-12s to GS-13s after they had been at Nellis for one year.

11. Schmidtman and Van Sickle distributed 26 slides during the meeting, one of which states the option to "Execute Reduction in Force (RIF) meaning all GS-13 controllers downgraded to GS-12."

12. Airfield Operations does not have any controllers who are Union officials or stewards, and Nellis failed to invite Local 1199 to the April meeting.

13. Local 1199 did not discover that the April meeting had taken place until on or about November 8, 2012, when Nellis, by Kelly, disclosed that it had occurred in response to a Local 1199 grievance on the same GS-12/13 controller issue. In his response to the grievance, Kelly described the April meeting as "an awareness briefing on the new standard core personnel document."

14. By the conduct described in facts 8-13, Nellis failed to comply with 5 U.S.C. § 7114(a)(2)(A).

15. By the conduct described in facts 8-14, Nellis violated 5 U.S.C. § 7116(a)(1) and (8) and committed an unfair labor practice.

16. Nellis communicates with its employees on matters related to working conditions using electronic means, so in addition to posting traditional Notices, Nellis can distribute electronic copies to all employees if ordered to do so in this case.

DISCUSSION

Section 2423.20(b) 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. . . .

When an answer is not timely filed, there are no genuine issues of material fact remaining because the respondent has admitted that all of the allegations within the complaint are true. Thus, the allegations that the respondent violated the Statute are admitted and cannot be contested even if the respondent had reasonable arguments to the contrary. That is the consequence of failing to file an answer that denies the allegations.

Under the Authority's regulations, failure to file a timely answer can only be excused by extraordinary circumstances. In this case, the Respondent failed to file an answer and failed to offer any justification for the failure. An answer is not a legal treatise, memorandum or brief, and while it can offer explanation when appropriate, none is required. A respondent does not have to make legal arguments or explain legal theories within an answer, one merely has to indicate if the allegation is admitted or denied. 5 C.F.R. § 2423.20(b). Thus, it is difficult to comprehend how a Respondent could find such a task so onerous that it simply could not be done within the timeframe prescribed when this particular complaint consisted of sixteen allegations set forth on three typewritten pages.

By failing to file a timely answer to the complaint and not showing good cause for the failure, the Respondent admits that it conducted a formal discussion without inviting Local 1199 to represent the bargaining unit for which it is the exclusive representative, and in doing so, violated § 7114 (a)(2)(A) of the Statute and committed an unfair labor practice in violation of § 7116(a)(1) and (8).

As a remedy for the Respondent's violation, the General Counsel submitted a proposed order that requires the Respondent to: cease and desist from conducting formal discussions with employees in the bargaining unit represented by Local 1199 without providing the Union prior notice and an opportunity be represented at the discussion; cease and desist in any like or related manner, interfering with, restraining, or coercing bargaining unit employees in the exercise of their rights assured by the Statute; notify the Union and afford it the opportunity to be represented at formal discussions; post a Notice of the violation in conspicuous places, including bulletin boards and other places where notices to employees are customarily posted; and distribute a signed Notice to all bargaining unit employees electronically.

Based upon the facts the Respondent has admitted by virtue of the failure to file and serve an answer, I find that all but one of the proposed remedies submitted by the General Counsel are appropriate. With respect to electronically distributing a Notice to all bargaining unit employees, I find that the allegation related to electronic communication is insufficient and does not satisfy the requirements established by Authority precedent.

The Authority has determined that the posting of a notice on an electronic bulletin board is a nontraditional remedy. *U.S. Dep't of Justice, FBOP, FCI, Florence, Colo.*, 59 FLRA 165 (2003). If there are no legal or public policy objections to a proposed nontraditional remedy, it must be reasonably necessary and effective to recreating the conditions and relationships with which the unfair labor practice interfered, as well as to effectuate the policies of the Statute, including the deterrence of future violations. *F.E. Warren AFB, Cheyenne, Wyo.*, 52 FLRA 149, 161 (1996) (*Warren AFB*). In this case, the complaint contains an allegation which establishes that Nellis has the capability and does in fact communicate with its employees electronically, and thus, could communicate a Notice in that manner if ordered to do so.

However, that allegation provides no basis for issuing such an order. More specifically, this allegation does not indicate why the standard practice of posting a notice in conspicuous places like a bulletin board is not sufficient. The allegation neither establishes that an electronic distribution is reasonably necessary and effective to recreating the conditions and relationships with which the unfair labor practice interfered, nor does it establish that electronic communication of the notice is necessary to effectuate the policies of the Statute. In short, it does nothing more than establish the fact that the Respondent communicates with employees using electronic means and does not establish that the requirements set forth in *Warren AFB* are present in this case. Thus, ordering an electronic distribution of the notice is not appropriate under Authority precedent. *NAATS, Macon AFSS, Macon, Ga.*, 59 FLRA 261, 262 (2003).

CONCLUSION

For the reasons set forth in this decision, I find that General Counsel's Motion for Summary Judgment should be granted and issue the following Order:

ORDER

Pursuant to § 2423.41(c) of the Authority's rules and regulations and § 7118(a)(7) of the Federal Service Labor-Management Relations Statute (Statute), the Department of the Air Force, Nellis Air Force Base, Nevada, shall:

1. Cease and desist from:

(a) Conducting formal discussions with bargaining unit employees represented by the America Federation of Government Employees, Local 1199, AFL-CIO without providing the Union prior notice and an opportunity to be represented at the discussion.

(b) In any like or related manner, interfering with, restraining, or coercing bargaining unit employees in the exercise of rights assured them by the Statute.

2. Take the following affirmative action in order to effectuate the purposes and policies of the Statute:

(a) Post at its facilities where bargaining unit employees are located, copies of 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 Wing Commander, Nellis Air Force Base, Nevada, 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.

(b) Pursuant to § 2423.41(e) of the Authority's rules and regulations and within 30 days from the date of this Order, provide the Regional Director, San Francisco Regional Office, Federal Labor Relations Authority, written notice of the steps taken to comply.

Issued, Washington, D.C., August 16, 2013

CHARLES R. CENTER
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 Department of the Air Force, Nellis Air Force Base, Nevada, violated the Federal Service Labor-Management Relations Statute (Statute), and has ordered us to post and abide by this Notice.

In April 2012, we conducted an awareness briefing for all air traffic controllers. The subject of the discussion was civilian PDs and Grade Level issues.

WE DID NOT invite the American Federation of Government Employees, Local 1199, AFL-CIO (Union), the exclusive representative of bargaining unit employees to this discussion.

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT conduct formal discussions with bargaining unit employees, including briefings to discuss plans for GS-12 and GS-13 standard positions, without providing the Union with an opportunity to be represented, as such meetings concern personnel policies, practices, or other general conditions of employment. We recognize that under the Statute, the Union has the right to attend such meetings.

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

WE WILL provide the Union with advance notice and an opportunity to be represented at any formal discussion between one or more representatives of the Agency and one or more employees in the bargaining unit or their representatives, concerning any personnel policies or practices, or other general conditions of employment.

U.S. Department of the Air Force
Nellis Air Force Base, Nevada

Dated: _____ By: _____
(Signature) (Wing Commander)

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, San Francisco Regional Office, Federal Labor Relations Authority, whose address is: 901 Market Street, Suite 470, San Francisco, CA 94103, and whose telephone number is: (415) 356-5000.