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

OALJ 15-16

DEPARTMENT OF VETERANS AFFAIRS WILLIAM JENNINGS BRYAN DORN VETERANS AFFAIRS MEDICAL CENTER COLUMBIA, SOUTH CAROLINA RESPONDENT AND AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1915 CHARGING PARTY	Case No. AT-CA-13-0436

Patricia J. Kush
For the General Counsel

Daniel Rembert
For the Respondent

Raymond Mitchell
For the Charging Party

Before: RICHARD A. PEARSON
Administrative Law Judge

DECISION ON MOTION FOR SUMMARY JUDGMENT

On December 16, 2013, the Regional Director of the Atlanta Region of the Federal Labor Relations Authority (the FLRA or Authority), issued a Complaint and Notice of Hearing, alleging that the Department of Veterans Affairs (VA), William Jennings Bryan Dorn Veterans Affairs Medical Center, Columbia, South Carolina (the Respondent), violated section 7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute (the Statute) by changing the conditions of employment of bargaining unit employees without notifying or bargaining with the employees' exclusive representative. On February 14, 2014, the Respondent entered into an informal settlement agreement (the Agreement), which was approved by the Regional Director. On December 4, 2014, the Regional Director issued an

Order Revoking Approval of Informal Settlement Agreement and Reissuance of Complaint and Notice of Hearing (the New Complaint), alleging that the Respondent had failed and refused to comply with the Agreement. The New Complaint indicated that a hearing on the allegations would be held on January 28, 2015, and advised the Respondent that an Answer to the New Complaint was due no later than December 29, 2014. The New Complaint was mailed to the Respondent's designated representative, Daniel Rembert, Supervisory Human Resources Specialist, Department of Veterans Affairs Medical Center, 6439 Garners Ferry Road, Columbia, SC 29209. The Respondent did not file an Answer to the New Complaint.

On January 6, 2015, the FLRA General Counsel (GC) filed a Motion for Summary Judgment, based on the fact that the Respondent had failed to file an Answer to the New Complaint, and therefore the Respondent had admitted all the allegations of the New Complaint. Accordingly, the GC asserted that there were no factual or legal issues in dispute, and the case was ripe for summary judgment in its favor. The Respondent has not filed any response to the Motion for Summary Judgment.

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. . . .

The Rules and Regulations also explain how to calculate filing deadlines and how to request extensions of time for filing the required documents. *See, e.g.,* sections 2429.21 through 2429.23.

In the text of the New 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, the persons to whom it must be sent, and references to the applicable regulations. The plain language of the notice leaves no doubt that Respondent was required to file an Answer to the New Complaint.

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. Envtl. Prot. Agency, 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*

Veterans Affairs 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, nor has it demonstrated any "good cause" for its failure to do so. In *U.S. Dep't of Transp., Fed. Aviation Admin., Hous., Tex.*, 63 FLRA 34, 36 (2008), the Authority held that an agency's misfiling of a complaint, resulting in its filing an answer two weeks after the deadline, did not demonstrate "extraordinary circumstances" that might constitute "good cause" for the late filing. *See also U.S. Dep't of Veterans Affairs Med. Ctr., Kan. City, Mo.*, 52 FLRA 282, 284 (1996) and the cases cited therein. Moreover, after the General Counsel filed its motion for summary judgment, the Respondent did not file a response or otherwise offer any explanation for its failure to answer the New Complaint. In these circumstances, section 2423.20(b) clearly requires that the Respondent's failure to file an answer constitutes an admission of each of the allegations of the New Complaint. Accordingly, there are no disputed factual issues in this case, and summary judgment in favor of the General Counsel is justified. Based on the existing record, I make the following findings of fact, conclusions of law, and recommendations:

FINDINGS OF FACT

1. The Respondent is an agency within the meaning of section 7103(a)(3).

2. The American Federation of Government Employees (AFGE) is a labor organization as defined by 5 U.S.C. § 7103(a)(4) and is the exclusive representative of a nationwide consolidated unit of professional employees appropriate for collective bargaining at the VA, which includes employees of the Respondent. The American Federation of Government Employees, Local 1915 (the Union) is an agent of AFGE for the purpose of representing Respondent's employees within the unit described in this paragraph.

3. At all times material to this case, Ruth Mustard occupied the position of Associate Director of Patient Care/Nursing Services with the Respondent, and was a supervisor or management official under 5 U.S.C. § 7116(a)(10) and (11) and an agent of the Respondent acting on its behalf.

4. Prior to March 29, 2013, Respondent's Registered Nurses who received national certifications were eligible to receive step increases under Nursing Practice Policy No. 613.

5. On or about April 6, 2013, the Respondent, through Mustard, implemented a new version of Nursing Practice Policy No. 613, dated March 29, 2013. Under the new version of Nursing Practice Policy No. 613, Registered Nurses are no longer eligible for step increases for receiving national certifications.

6. The Respondent implemented the change in unit employees' conditions of employment described in paragraph 5 without providing the Union with notice and an opportunity to negotiate with the Union over the impact and implementation of the change.

7. By the conduct described in paragraphs 5 and 6, the Respondent committed an unfair labor practice in violation of 5 U.S.C. § 7116(a)(1) and (5).

CONCLUSIONS OF LAW

By failing to respond to the New Complaint, the Respondent has admitted that it failed and refused to comply with the Agreement. In fact, the Respondent notified the Regional Director in writing that it did not intend to comply with the Agreement that it had previously signed. Appendix B of New Complaint. Accordingly, I conclude that the Respondent refused to comply with the Agreement, and that the Regional Director was authorized to reissue the Complaint. *Fed. Aviation Admin., Aviation Standards Nat'l Field Office, Mike Monroney Aeronautical Ctr., Okla. City, Okla.*, 43 FLRA 1221, 1231 (1992).

Prior to implementing changes in conditions of employment, an agency is required to provide the exclusive representative with notice of the change and an opportunity to bargain over those aspects of the change that are within the duty to bargain. *Fed. Bureau of Prisons, Fed. Corr. Inst., Bastrop, Tex.*, 55 FLRA 848, 852 (1999). Since the Respondent failed to answer the New Complaint, and since it has thereby admitted the allegations of the New Complaint, it has admitted that it implemented a new version of Nursing Practice Policy No. 613, and that it did so without providing the Union with notice or an opportunity to negotiate over the impact and implementation of the change. It has also admitted that the new version of Nursing Practice Policy No. 613 makes Registered Nurses ineligible for step increases upon receiving national certifications; thus it is evident that the change had more than a de minimis impact on bargaining unit employees. The Respondent has admitted, and I conclude, that its conduct violated section 7116(a)(1) and (5) of the Statute.

As a remedy, the Respondent will be ordered to rescind the March 29, 2013, Nursing Practice Policy No. 613; reinstate the previous policy, dated July 2011; provide the Union with notice and an opportunity to bargain if it desires to change the policy; and post and distribute to employees a notice of its unfair labor practice.

Accordingly, I recommend that the Authority grant the General Counsel's Motion for Summary Judgment and adopt 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), the Department of Veterans Affairs, William Jennings Bryan Dorn Veterans Affairs Medical Center, Columbia, South Carolina, shall:

1. Cease and desist from:

(a) Failing to notify and bargain with the American Federation of Government Employees, Local 1915 (the Union), before implementing a change in conditions of employment for which it is required to bargain under the Statute.

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

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

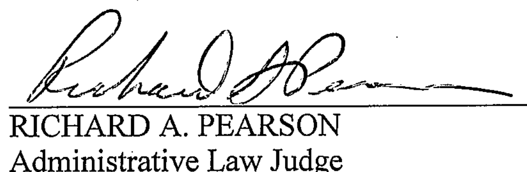
(a) Rescind the March 29, 2013, version of Nursing Practice Policy No. 613 and reinstate the previous version, dated July 2011.

(b) Notify and bargain with the Union, to the extent required by the Statute, if it decides to further change the July 2011 version of Nursing Practice Policy No. 613.

(c) Post at its facilities where bargaining unit 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, 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. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or internet site, or other electronic means, if the Respondent customarily communicates with employees by such means.

(d) Pursuant to section 2423.41(e) of the Authority's Rules and Regulations, notify the Regional Director, Atlanta 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, D.C., February 9, 2015



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 Department of Veterans Affairs, William Jennings Bryan Dorn Veterans Affairs Medical Center, Columbia, South Carolina, 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 notify and bargain with the American Federation of Government Employees, Local 1915 (the Union), before implementing a change in conditions of employment for which we are required to bargain under the Statute.

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.

WE WILL rescind the March 29, 2013, version of Nursing Practice Policy No. 613 and reinstate the previous version, dated July 2011.

WE WILL notify and bargain with the Union, to the extent required by the Statute, if we decide to further change the July 2011 version of Nursing Practice Policy No. 613.

____
(Agency/Respondent)

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.

If employees have any questions concerning this Notice or compliance with its provisions, they may communicate directly with the Regional Director, Atlanta Regional Office, Federal Labor Relations Authority, and whose address is: 225 Peachtree Street NE., Suite 1950, Atlanta, GA 30303, and whose telephone number is: (404) 331-5300.