68 FLRA No. 54

UNITED STATES
DEPARTMENT OF HOMELAND SECURITY
IMMIGRATION AND CUSTOMS ENFORCEMENT
LOS ANGELES, CALIFORNIA
(Agency/Respondent)

and

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 505
AFL-CIO
(Union/Charging Party)

SF-CA-13-0537
SF-CA-13-0557
SF-CA-13-0588

_____

DECISION AND ORDER

February 27, 2015

_____

Before the Authority: Carol Waller Pope, Chairman, and Ernest DuBester and Patrick Pizzella, Members

I. Statement of the Case

The Union filed a grievance alleging that an Agency supervisor favored certain employees in violation of the parties' collective-bargaining agreement and Agency policy. The grievance also contained a request for information pursuant to § 7114(b)(4) of the Federal Service Labor-Management Relations Statute (the Statute)[1] about the distribution of assignments on the supervisor's team. Despite granting the Union's grievance, in part, the Agency did not address the information request, leading the Union to file three unfair-labor-practice (ULP) charges. The Federal Labor Relations Authority's (FLRA's) General Counsel (GC) issued a consolidated complaint and subsequently moved for summary judgment based on the Agency's failure to timely file an answer.

In the attached decision, an FLRA Administrative Law Judge (Judge) granted the GC's motion for summary judgment. The Judge found that the Respondent filed an untimely answer, thereby admitting the consolidated complaint's allegations, and that the Respondent committed a ULP when it failed or refused to provide the information requested by the Union under § 7114(b)(4). The Judge ordered the Respondent to provide the requested information to the Union as well as post notices of the violations and distribute the notices via email. This case presents two substantive questions.

The first question is whether the Judge erred when she found that the Respondent filed an untimely answer to the complaint. Because the Respondent did not, as required by § 2423.20(b) of the Authority's Regulations, file an answer within twenty days of service of the complaint and did not show "good cause" for failing to do so,[2] the answer is no.

The second question is whether the ULP charges are barred, under § 7116(d) of the Statute, by an earlier-filed grievance. Because the ULP charges and the earlier-filed grievance are not based upon the same factual circumstances and do not advance substantially similar legal theories, the answer is no.

II. Background and Judge's Decision

The Union filed a grievance alleging that an Agency supervisor created a hostile and unsafe work environment by favoring certain employees. The grievance contained a request for information pursuant to § 7114(b)(4) of the Statute about the distribution of assignments on the supervisor's team. Following the Union's grievance, the Agency transferred two officers in the supervisor's unit, but did not address the information request. The Union then filed three ULP charges based on the Agency's alleged failure and refusal to respond to the information request. The GC issued a consolidated complaint, which alleged that the Respondent committed a ULP by failing and refusing to respond to the Union's information request. The complaint stated that the Respondent's answer was due by December 17, 2013. The Respondent failed to meet that deadline. Subsequently, the GC filed a motion for summary judgment, which asserted that no genuine issue of material fact was in dispute.

On January 8, 2014, the Respondent answered the complaint. In its answer, the Respondent denied certain statements in the complaint, claiming that the GC "ha[d] no authority to ask for the [Respondent's] legal interpretation of whether it committed [a ULP]."[3] Therefore, the Respondent argued, the statements could not serve as the basis for granting a motion for summary judgment. The Respondent also argued that the GC's motion for summary judgment should be denied because the Respondent's answer was timely filed. Without explaining its failure to meet the December 17, 2013

[1] 5 U.S.C. § 7114(b)(4).

[2] 5 C.F.R. § 2423.20(b).

[3] Answer at 2; Exceptions, Ex. 1 at 2.

deadline, the Respondent claimed that its answer was timely filed because, under § 2423.20(b) of the Authority's Regulations, an answer is timely filed if, "in any event," it is filed "prior to the beginning of the hearing."[4]

The GC filed an opposition to the Respondent's motion, asserting that the Respondent failed to show good cause for its failure to timely file an answer to the complaint. The GC argued that 5 C.F.R. § 2423.20(b) did not extend the time to respond. Moreover, the GC argued, even if the Respondent misunderstood the requirement to timely file, misunderstanding the Authority's filing requirements does not constitute good cause.

The Judge found that the Respondent failed to explain why its answer, including the assertion that the GC had no authority to ask it to admit to violations of law, was untimely filed. She rejected the Respondent's interpretation of § 2423.20(b), finding that this regulation "require[s] an answer within [twenty] days after service of the complaint."[5] The Judge explained that the language the Respondent relied upon applies only if "the hearing was scheduled less than [twenty] days from the issuance of the complaint, such as in an expedited proceeding."[6]

The Judge concluded that the Respondent did not present any good cause for its failure to timely file its answer, and she granted the GC's motion for summary judgment. On the basis of the Respondent's untimely filing, and consistent with § 2423.20(b) of the Authority's Regulations,[7] she found that the Respondent admitted each allegation of the complaint and therefore violated § 7116(a)(1), (5), and (8) of the Statute by refusing to provide the information requested pursuant to § 7114(b)(4). She ordered the Respondent to provide the Union with the requested information and to post physical and electronic notices of the violation.

The Respondent filed exceptions to the Judge's decision, and the GC filed an opposition to the Respondent's exceptions.

III. Analysis and Conclusions

A. The Judge did not err in concluding that the Respondent filed an untimely answer to the complaint.

The Respondent contends that the Judge's legal conclusion – that it failed to file a timely answer to the complaint – is based on "an incorrect reading of the [regulatory] deadline" of § 2423.20(b) of the Authority's Regulations.[8] Specifically, the Respondent argues that its filing was "statutorily timely" because, under § 2423.20(b), an answer is timely filed as long as it is filed "prior to the beginning of the hearing."[9]

Under § 2423.20(b), the respondent in a ULP proceeding must file an answer to the complaint "[w]ithin [twenty] days after the date of service of the complaint, but in any event, prior to the beginning of the hearing . . . . Absent a showing of good cause to the contrary, failure to file an answer or respond to any allegation shall constitute an admission."[10] Because the parties are charged with understanding the Authority's filing requirements, it is well established that a misunderstanding of the Authority's requirements does not constitute good cause for mistakes in filing.[11]

In 1997, § 2423.20(b) was revised to include the language on which the Respondent relies. The language was added to address the "unusual circumstances" when "a hearing might begin less than [twenty] days after service of the complaint."[12] For example, these "unusual circumstances" would include a hearing that is scheduled ten days after service of the complaint.

The Respondent concedes that it did not file an answer within twenty days of service of the complaint.[13] And the Judge determined that the language that the Respondent relied on addresses those instances when a hearing is scheduled for a date less than twenty days after a complaint's issuance.[14]

The Respondent does not establish that the Judge's interpretation of § 2423.20(b) is incorrect. Also,

[4] Judge's Decision at 3 (quoting 5 C.F.R § 2423.20(b)) (internal quotation marks omitted).
[5] *Id.*
[6] *Id.*
[7] 5 C.F.R. § 2423.20(b) ("Absent a showing of good cause to the contrary, failure to file an answer or respond to any allegation shall constitute an admission.").
[8] Exceptions at 4. The exceptions refer to the Judge's deadline interpretation as both a legal and a factual conclusion, *id.* at 2-3, but it is a legal conclusion.
[9] *Id.* at 2 (internal quotation marks omitted).
[10] 5 C.F.R. § 2423.20(b).
[11] *U.S. Dep't of Transp., FAA, Hous., Tex.*, 63 FLRA 34, 36 n.2 (2008) (*FAA*); *see also U.S. EPA, Envtl. Research Lab., Narragansett, R.I.*, 49 FLRA 33, 35 (1994).
[12] Unfair Labor Practice Proceedings: Miscellaneous and General Requirements, 62 Fed. Reg. 40911, 40912 (July 31, 1997) (codified at 5 C.F.R. § 2423.20).
[13] Exceptions at 3.
[14] 5 C.F.R. § 2423.20(b); *see* Judge's Decision at 3.

the Respondent fails not only to show "good cause," but offers no reason at all for its failure to file a timely answer. As the Respondent is charged with knowing the Authority's regulatory filing requirements, its misunderstanding of § 2423.20(b) does not constitute good cause.[15]

Consequently, because the Respondent did not file its answer within twenty days of service of the complaint as required by § 2423.20(b), and did not show good cause for failing to make a timely filing, we deny this exception.

B. The earlier-filed grievance does not bar the ULP charges under § 7116(d) of the Statute.

The Respondent argues that the earlier-filed grievance bars the ULP charge under § 7116(d).[16] Although the Judge did not address this argument in her grant of summary judgment, because this argument challenges the Authority's jurisdiction under § 7116(d) of the Statute, we consider it here.[17]

In order for an earlier-filed grievance to bar a ULP charge under § 7116(d): (1) the issue that is the subject of the grievance must be the same as the issue that is the subject of the ULP; (2) such issue must have been raised earlier under the grievance procedure; and (3) the aggrieved party in both actions must be the same.[18]

To determine whether the grievance and the ULP charge involve the same issue, the Authority examines whether "the ULP charge arose from the same set of factual circumstances as the grievance and the [legal] theory advanced in support of the ULP charge and the grievance are substantially similar."[19] In other words, the Authority will find that a grievance and a ULP charge involve the same issue when "they arise from the same set of factual circumstances *and* advance substantially similar legal theories."[20] Only if both requirements are satisfied does an earlier-filed grievance bar a subsequent ULP charge.[21]

Here, the grievance is based on an allegation that a supervisor "create[d] a hostile and unsafe work environment by showing favoritism."[22] The ULP is based on the Respondent's failure and refusal to provide information to the Union about the distribution of case and lead assignments on that supervisor's team.[23] The factual circumstances at issue in the ULP charges only arose *after* the facts that gave rise to the grievance.

Furthermore, the legal theories involved are also different. The grievance alleged a violation of the parties' agreement, and the ULP charges allege a statutory violation.[24] Because the grievance and the ULP charges do not arise from the same set of factual circumstances, and the legal theories differ, we find that the earlier-filed grievance does not bar the ULP charges.[25]

Accordingly, we deny this exception.

IV. Order

Pursuant to § 2423.41(c) of the Authority's Regulations and § 7118(a)(7) of the Statute, the Respondent shall:

(1) Cease and desist from:

(a) Failing or refusing to respond to information requests submitted by the Union.

(b) Failing or refusing to furnish the Union with the information requested in its March 20, 2013, information request.

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

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[15] *FAA*, 63 FLRA at 36 n.2.
[16] Exceptions at 3-4.
[17] *FAA*, 63 FLRA at 36 ("The Authority has held that exceptions challenging the Authority's jurisdiction under § 7116(d) must be addressed even though not previously raised by the respondent." (citing *U.S. Dep't of VA, VA Med. Ctr., Coatesville, Pa.*, 57 FLRA 663, 666 (2002))).
[18] *U.S. Dep't of the Air Force, 62d Airlift Wing, McChord Air Force Base, Wash.*, 63 FLRA 677, 679 (2009) (*McChord*).
[19] *FAA*, 63 FLRA at 37 (quoting *Dep't of Transp., FAA, Fort Worth, Tex.*, 55 FLRA 951, 953 (1999)) (internal quotation marks omitted).
[20] *U.S. Dep't of the Navy, Marine Corps, Combat Dev. Command, Marine Corps Base, Quantico, Va.*, 67 FLRA 542, 545 (2014) (Member Pizzella dissenting) (reaffirming test to determine whether earlier-filed ULP charge bars grievance under § 7116(d) and finding that an alleged statutory violation relies on a different legal theory than an alleged contractual violation); *U.S. DOJ, Fed. BOP, Metro. Corr. Ctr., N.Y.C., N.Y.*, 67 FLRA 442, 445 (2014) (*DOJ*) (Member Pizzella dissenting) (same).
[21] *McChord*, 63 FLRA at 680.
[22] Exceptions, Ex. 5 (Grievance) at 1.
[23] Judge's Decision at 5-6; *see also* Grievance at 1-8.
[24] *See* Judge's Decision at 2.
[25] *DOJ*, 67 FLRA at 445-47.

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

(a) Furnish the information requested by the Union in its March 20, 2013 information request.

(b) Post at its facilities where bargaining unit employees represented by the Union are located, copies of the attached notice on forms to be provided by the FLRA. Upon receipt of such forms, they shall be signed by the Director of Field Operations, and shall be posted and maintained for sixty 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 an internet site, or other electronic means, if the Respondent customarily communicates with employees by such means.

(c) Pursuant to § 2423.41(e) of the Authority's Regulations, notify the Regional Director, San Francisco Regional Office, FLRA, in writing, within thirty days from the date of this order, as to what steps have been taken to comply.

NOTICE TO ALL EMPLOYEES
POSTED BY ORDER OF THE
FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority (FLRA) has found that the U.S. Department of Homeland Security, Immigration & Customs Enforcement, Los Angeles, California, violated the Federal Service Labor-Management Relations Statute (the Statute), and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY EMPLOYEES THAT:

WE WILL NOT fail or refuse to respond to requests for data submitted by the American Federation of Government Employees, Local 505, AFL-CIO (Union).

WE WILL NOT fail or refuse to furnish the Union with information it requests which is necessary for representation of employees.

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 provide the Union with all the information it requested in its March 20, 2013 information request without further delay.

_____
U.S. Department of Homeland Security
Immigration & Customs Enforcement
Los Angeles, California

Dated: _____ By: _____
Director of Field Operations

This notice must remain posted for sixty consecutive days from the date of the 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, San Francisco Regional Office, FLRA, whose address is: 901 Market Street, Suite 220, San Francisco, CA 94103, and whose telephone number is: (415) 356-5000.

Office of Administrative Law Judges

U.S. DEPARTMENT OF HOMELAND SECURITY
IMMIGRATION AND CUSTOMS ENFORCEMENT
LOS ANGELES, CALIFORNIA
Respondent

AND

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 505, AFL-CIO
Charging Party

Case Nos. SF-CA-13-0537
SF-CA-13-0557
SF-CA-13-0588

Cara Krueger
For the General Counsel

Michael Havrilesko
For the Respondent

Lela Hill
For the Charging Party

Before: SUSAN E. JELEN
Administrative Law Judge

DECISION ON MOTION FOR SUMMARY JUDGMENT

The General Counsel (GC) filed a motion for summary judgment and the Respondent filed an opposition in this matter. As I find that there is no genuine issue as to any material fact, resolution of this case upon summary judgment is appropriate. Based upon the facts as alleged in the complaint and admitted by the Respondent, I find that the Respondent violated § 7116(a)(1), (5) and (8) of the Federal Service Labor-Management Relations Statute (Statute), by failing or refusing to provide data requested pursuant to § 7114(b)(4) of the Statute. As a result of the violation, the Respondent is ordered to cease and desist from failing or refusing to respond to information requests submitted by the Charging Party and from failing or refusing to furnish the Charging Party with the information requested in its March 20, 2013, information request. Respondent is further ordered to furnish the information requested by the Charging Party in its March 20, 2013, information request, and to post a notice, including electronically, of the violation.

STANDARDS FOR SUMMARY JUDGMENT

In considering motions for summary judgment submitted pursuant to § 2423.27 of the Federal Labor Relations Authority's (Authority/FLRA) regulations, the standards to be applied are those used by United States District Courts under Rule 56 of the Federal Rules of Civil Procedure, *Nat'l Labor Relations Bd., Wash., D.C.*, 65 FLRA 312, 315 (2010). Upon review of the General Counsel's motion and the Respondent's opposition, I find that there is no genuine issue of material fact in dispute and have determined that summary judgment is appropriate in this matter.

On November 22, 2013, the Regional Director of the San Francisco Region of the FLRA issued a Consolidated Complaint and Notice of Hearing alleging that the U.S. Department of Homeland Security, Immigration & Customs Enforcement, Los Angeles, California (Respondent) violated § 7116(a)(1), (5) and (8) of the Statute by failing and refusing to respond to an information request submitted by the American Federation of Government Employees, Local 505, AFL-CIO (Union) on March 20, 2013, pursuant to § 7114(b)(4) of the Statute. Further, the Respondent failed to provide the information requested in the March 20, 2013 information request.

The Respondent failed to file an answer on or before December 17, 2013, the date set forth in the complaint. On December 31, 2013, the General Counsel filed a motion for summary judgment, based on the Respondent's failure to file an answer to the complaint and asserting that there was no genuine issue of material fact in dispute.

On January 8, 2014, the Respondent filed the Agency's response to complaint and motion to deny General Counsel's motion for summary judgment and strike complaint statements 22-25. The Respondent gives no explanation for its failure to file an answer on or before December 17, 2013. The Respondent does argue that paragraphs 22-26 of the complaint were not factual allegations, but rather were attempts to have the Agency admit violations of law and such statements are beyond the scope of the authority granted to the General Counsel in its own regulations, citing to 5 C.F.R. § 2423.20(a).26 The Respondent argues that such statements cannot serve as the basis for granting a motion for summary judgment.

[26] Section 2423.20(a) states, in part: The complaint shall set forth: (1) Notice of the charge; (2) The basis for jurisdiction; (3) The facts alleged to constitute an unfair labor practice; (4) The particular sections of 5 U.S.C., chapter 71 and the rules and regulations involved; (5) Notice of the date, time, and place that a hearing will take place before an Administrative Law Judge; and (6) A brief statement explaining the nature of the hearing.

The Respondent further argues that 5 C.F.R. § 2423.20(b), in pertinent part, states that the answer is due in "any event, prior to the beginning of the hearing." As such, the Respondent asserts that its answer filed on January 8, 2014, is timely; that paragraphs 22 through 26 of the complaint should be stricken as they are beyond the scope of statements that can be included in the complaint; and that the GC's motion for summary judgment be denied.

On January 22, 2014, the GC filed an Opposition to the Respondent's motion. The GC asserts that the Respondent failed to show good cause for its failure to file an answer, noting that a failure to timely answer a complaint can only be excused by extraordinary circumstances. The GC asserts that a misunderstanding of the Authority's filing requirements does not constitute good cause. *See U.S. Envtl. Prot. Agency, Envtl. Research Lab., Narragansett, R.I.*, 49 FLRA 33, 37 (1994).

On January 30, 2014, I issued an Order Indefinitely Postponing Hearing, Prehearing Disclosure, and Prehearing Conference Call in the above cases.

The record evidence in this matter establishes that the Respondent failed to file an answer to the consolidated complaint and notice of hearing in this matter. The consolidated complaint clearly set forth December 17, 2013, as the date the answer was due. The Respondent did not file an answer until after the General Counsel filed its motion for summary judgment based on the failure to file an answer. Further, the Respondent gave no reason for its failure to file an answer in a timely manner. While the Respondent disagrees with the GC's authority with regard to paragraphs 22 through 26, it gave no reason why it could not have raised this issue in its answer in a timely manner. I further reject the Respondent's apparent reading of § 2423.20(b) to allow an answer any time before the actual hearing. As set forth below, the regulations clearly require an answer within 20 days after service of the complaint. Any lesser time would occur if the hearing was scheduled less than 20 days from issuance of the complaint, such as in an expedited proceeding.

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. . . .

Therefore, I find that the Respondent failed to file an answer to the consolidated complaint and has not presented any good cause for its failure to file an answer. I therefore reject the Respondent's January 8, 2014, Answer as untimely and deny the Respondent's motion to deny the GC's motion for summary judgment and its motion to strike. Under these circumstances, by its failure to timely file an answer to the consolidated complaint, the Respondent has admitted each and every allegation of the consolidated complaint.

Thus, I make the following findings of fact, conclusions of law, and recommendations.

FINDINGS OF FACT

1. This consolidated unfair labor practice complaint and notice of hearing was issued under 5 U.S.C. §§ 7101-7135 and 5 C.F.R. Chapter XIV.

2. These cases are consolidated under 5 C.F.R. § 2429.2 because it is necessary to effectuate the purposes of 5 U.S.C. § 7101-7135 and to avoid unnecessary costs and delay.

3. The Department of Homeland Security, Immigration & Customs Enforcement, Los Angeles, California (Respondent) is an agency within the meaning of 5 U.S.C. § 7103(a)(3).

4. The American Federation of Government Employees, AFL-CIO (AFGE) is a labor organization under 5 U.S.C. § 7103(a)(4) and is the exclusive representative of a nationwide unit of employees appropriate for collective bargaining at the Respondent.

5. The American Federation of Government Employees, Local 505 (Charging Party) is an agent of AFGE for the purpose of representing employees in the unit described above.

6. The charge in Case No. SF-CA-13-0537 was filed on July 16, 2013. The charge in Case No. SF-CA-13-0557 was filed on July 25, 2013. The charge in Case No. SF-CA-13-0588 was filed on August 12, 2013.

7. Copies of all charges were served on the Respondent.

8. At all material times the following individuals held the positions opposite their respective names.

Timothy Robbins	Field Office Director
David Marin	Acting Field Office Director
Phillip Miller	Assistant Director of Field Operations

9. At all material times the individuals named in paragraph 8 were supervisors and/or management officials under 5 U.S.C. § 7103(a)(10) and/or (11) at the Respondent.

10. At all material times the individuals named in paragraph 8 were acting on behalf of the Respondent.

11. On March 20, 2013, the Charging Party submitted a Step 1 grievance alleging that a supervisor was assigning work in a discriminatory manner. The Union requested information about assignments given to individuals on a team supervised by that supervisor.

12. The information described in paragraph 11 is normally maintained by Respondent in the regular course of business.

13. The information described in paragraph 11 is reasonably available.

14. The information described in paragraph 11 is necessary for a full and proper discussion, understanding, and negotiation, of subjects within the scope of collective bargaining.

15. The information described in paragraph 11 does not constitute guidance, advice, counsel, or training, provided for management officials or supervisors, related to collective bargaining.

16. The information described in paragraph 11 is not prohibited from disclosure by law.

17. On April 3, 2013, Respondent, by Timothy Robbins, responded to the Charging Party's Step 1 grievance but did not respond to the information request.

18. On April 9, 2013, the Charging Party repeated the information request as part of a Step 2 grievance.

19. On April 11, 2013, Respondent, by David Marin, responded to the Charging Party's Step 2 grievance but did not respond to the information request.

20. On April 23, 2013, the Charging Party repeated the information request as part of a Step 3 grievance.

21. On June 11, 2013, Respondent, by Phillip Miller, responded to the Step 3 grievance, and for the first time stated that the information would not be provided.

22. Since June 11, 2013, and continuing to date, Respondent has failed and refused to provide the data requested in paragraphs 11 through 16, 18, and 20, as required by 5 U.S.C. § 7114(b)(4).

23. On April 3 and 11, 2013, Respondent failed to respond to the Charging Party's data requests in paragraphs 11 through 16, and 18, as required by 5 U.S.C. § 7114(b)(4).

24. By the conduct described in paragraphs 17, 19, and 21, Respondent refused to comply with 5 U.S.C. § 7114(b)(4) by failing or refusing to provide relevant and necessary data.

25. By the conduct described in paragraphs 17 and 19, Respondent refused to comply with 5 U.S.C. § 7114(b)(4) by failing to respond to data requests.

26. By the conduct described in paragraphs 17, 19, and 21, Respondent committed an unfair labor practice in violation of 5 U.S.C. § 7116(a)(1), (5) and (8).

DISCUSSION

By failing to file a timely answer to the complaint and not showing good cause for the failure, the Respondent admits that it refused to comply with 5 U.S.C. § 7114(b)(4) by failing or refusing to response to the March 20, 2013, data request and by failing or refusing to provide relevant and necessary data. Under these circumstances, the Respondent violated § 7114(b)(4) of the Statute and committed an unfair labor practice in violation of § 7116(a)(1), (5) and (8). *See U.S. Dep't of Justice, Fed. BOP, U.S. Penitentiary, Marion, Ill.*, 66 FLRA 669 (2012)*; Soc. Sec. Admin., Baltimore, Md.*, 60 FLRA 674 (2005).

As a remedy for the Respondent's violation, the General Counsel submitted a proposed order and requested that the Respondent be directed to distribute a copy of the Notice to all bargaining unit employees through Respondent's email system. On January 31, 2014, the Authority issued its decision in *U.S. Dep't of Justice, Fed. BOP, Fed. Transfer Ctr., Okla. City, Okla.*, 67 FLRA 221 (2014), and determined that electronic-notice posting is a traditional remedy that, in addition to physical posting, it will order in future decisions in which unfair labor practices are found. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, or other electronic means, if the Respondent customarily communicates with employees by such means. The evidence reflects that the Respondent customarily communicates with employees by electronic means.

CONCLUSION

For the reasons set forth in this decision, I recommend that the Authority grant the General Counsel's Motion for Summary Judgment and adopt 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 U.S. Department of Homeland Security, Immigration & Customs Enforcement, Los Angeles, California, shall:

1. Cease and desist from:

   (a) Failing or refusing to respond to information requests submitted by the American Federation of Government Employees, Local 505, AFL-CIO (Union).

   (b) Failing or refusing to furnish the Union with the information requested in its March 20, 2013, information request.

   (c) 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) Furnish the information requested by the Union in its March 20, 2013, information request.

   (b) Post at its facilities where bargaining unit employees represented by the Union 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 Director of Field Operations, 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. 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 an internet site, or other electronic means, if the Respondent customarily communicates with employees by such means.

   (c) Pursuant to § 2423.41(e) of the Authority's rules and regulations and within thirty 30 days from the date of this Order, notify in writing, the Regional Director, San Francisco Region, Federal Labor Relations Authority, of the steps taken to comply.

Issued, Washington, D.C., February 20, 2014

SUSAN E. JELEN
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 Homeland Security, Immigration & Customs Enforcement, Los Angeles, California, violated the Federal Service Labor-Management Relations Statute (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 data submitted by the American Federation of Government Employees, Local 505, AFL-CIO (Union).

WE WILL NOT fail or refuse to furnish the Union with information it requests which is necessary for representation of employees.

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 provide the Union with all the information it requested in its March 20, 2013 information request without further delay.

_____
U.S. Department of Homeland Security
Immigration & Customs Enforcement
Los Angeles, California

Dated: _____ By: _____
Director of Field Operations

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