



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

OALJ 16-04

DEPARTMENT OF VETERANS AFFAIRS
ATLANTA VETERANS AFFAIRS MEDICAL CENTER
DECATUR, GEORGIA

RESPONDENT

AND

Case No. AT-CA-15-0464

NATIONAL FEDERATION OF FEDERAL
EMPLOYEES, LOCAL 2102

CHARGING PARTY

Brent S. Hudspeth
For the General Counsel

Kevin L. Jones
For the Respondent

Calvin Scott
For the Charging Party

Before: CHARLES R. CENTER
Chief Administrative Law Judge

DECISION ON MOTION FOR SUMMARY JUDGMENT

On August 21, 2015, the Regional Director of the Atlanta Region of the Federal Labor Relations Authority (FLRA/Authority), issued a Complaint and Notice of Hearing, alleging that the Department of Veterans Affairs, Atlanta Veterans Affairs Hospital*, Decatur, Georgia (Respondent), violated § 7116(a)(1), (5) and (8) of the Federal Service Labor-Management Relations Statute (Statute). The Complaint alleged that the Respondent failed to respond to a Union request for information and failed to provide the requested information.

* The Respondent's proper, most recognized name is the Atlanta Veterans Affairs *Medical Center*, instead of "Hospital" as listed on the complaint, but corrected in subsequent pleadings filed by the General Counsel.

The Complaint indicated that a hearing on the allegations would be held on November 3, 2015, and advised the Respondent that an Answer to the Complaint was due no later than September 15, 2015. The Complaint was served by first class mail on Respondent's agent, Kevin L. Jones, Chief, Human Resources Management, Department of Veterans Affairs, Atlanta Veterans Affairs Medical Center, 1670 Clairmont Road, Decatur, GA 30033, and the Respondent failed to file an Answer to the Complaint.

On September 25, 2015, Counsel for the General Counsel (GC) filed a Motion for Summary Judgment based upon the Respondent's failure to file an Answer to the Complaint, contending that by application of 5 C.F.R. § 2423.20(b), the Respondent admitted all of the allegations set forth in the Complaint. Accordingly, the GC contends that there are no factual or legal issues in dispute and summary judgment pursuant to 5 C.F.R. § 2423.27(a) is proper. The Respondent failed to file a response to the motion for summary judgment. As I have determined that summary judgment in this matter is proper, the hearing scheduled for November 3, 2015, in Atlanta, Georgia, is hereby cancelled.

DISCUSSION OF MOTION FOR SUMMARY JUDGMENT

The relevant portion of the Authority's Rules and Regulations provides:

(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 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 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 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 VA 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 the failure to do so. In *U.S. Dep't of Transp., FAA, Hous., Tex.*, 63 FLRA 34, 36 (2008), the Authority held that the 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 VA 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 Complaint. Given the Respondent's failure to respond to the complaint or the motion for summary judgment, and the absence of good cause for such failures, application of the admission provision of 5 C.F.R. § 2423.20(b) is appropriate. Thus, Respondent has admitted each of the allegations set forth in the Complaint. Accordingly, there are no disputed factual issues and summary judgment in favor of the General Counsel is granted.

Based on the existing record, I make the following findings of fact, conclusions of law, and recommendations:

FINDINGS OF FACT

1. The Department of Veterans Affairs, Veterans Affairs Medical Center, Decatur, Georgia is an agency under § 7103(a)(3) of the Statute.
2. The National Federation of Federal Employees (NFFE) is a labor organization under § 7103(a)(4) of the Statute and is the exclusive representative of a unit of employees appropriate for collective bargaining at the Respondent.
3. NFFE, Local 2102 (Union) is an agent of NFFE for the purpose of representing employees within the unit described in paragraph 2.
4. The Union filed the charge in Case No. AT-CA-15-0464 with the Atlanta Regional Director on April 30, 2015, and amended the charge on August 21, 2015.
5. Copies of the charge and amended charge were served on the Respondent.
6. At all material times, Kevin Jones held the position of Human Resources Chief for the Respondent, was a supervisor or management official of the Respondent within the meaning of § 7103(a)(10) and (11) of the Statute and an agent of the Respondent, acting upon its behalf.
7. On February 3, 2015, the Union submitted an information request to the Respondent, through Jones, asking for information regarding job announcement JV-14-JJB-1212381BU.

8. The information was normally maintained by the Respondent in the regular course of business.
9. The information was reasonably available.
10. The information, as it pertains to bargaining unit employees, was necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining.
11. The information did not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining.
12. The information was not prohibited from disclosure by law.
13. The Respondent failed to respond to the information request.
14. The Respondent failed to provide the Union with the information requested.
15. By the conduct described in paragraph 13, the Respondent committed an unfair labor practice in violation of § 7116(a)(1), (5) and (8) of the Statute.
16. By the conduct described in paragraph 14, the Respondent committed an unfair labor practice in violation of § 7116(a)(1), (5) and (8) of the Statute.

CONCLUSIONS OF LAW

By the conduct described in the facts set forth above as drawn from the Complaint containing allegations to which the Respondent failed to file an Answer or otherwise demonstrate good cause for such failure, the Respondent admits that it did not respond to the Union's request for information nor did it provide the requested information. Therefore, the Respondent violated § 7116(a)(1),(5) and (8) of the Statute.

As a remedy, the Respondent is ordered to provide the requested information and to cease and desist from failing to respond to a Union's request for information, and to post a notice of the violation using bulletin boards and electronic mail.

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 Veterans Affairs, Atlanta Veterans Affairs Medical Center, Decatur, Georgia, shall:

1. Cease and desist from:

(a) Failing to provide information requested by the National Federation of Federal Employees, Local 2102 (Union), pursuant to § 7114(b) of the Statute.

(b) Failing to respond to requests for information made by the Union pursuant to § 7114(b) of the Statute.

(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:

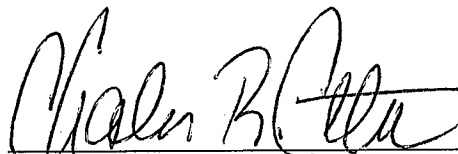
(a) Provide the Union with the information it requested on February 3, 2105, pursuant to § 7114(b) of the Statute.

(b) 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, they shall be signed by the Director of the Veterans Affairs Medical Center, Decatur, Georgia, 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.

(c) In addition to physical posting of paper notices, Notices shall be distributed electronically, on the same day as physical posting of Notices, such as by email, posting on an intranet or internet site, or other electronic means, if such are customarily used to communicate with employees.

(d) Pursuant to § 2423.41(e) of the Authority's Rules and Regulations, notify the Regional Director, Atlanta Region, Federal Labor Relations Authority, in writing, within thirty (30) days from the date of this Order, as to what steps have been taken to comply.

Issued, Washington, D.C., October 26, 2015



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 Veterans Affairs, Atlanta Veterans Affairs Medical Center, Decatur, Georgia, 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 to provide information requested by the National Federation of Federal Employees, Local 2102 (Union), pursuant to § 7114(b) of the Statute.

WE WILL NOT fail to respond to requests for information made by the Union pursuant to § 7114(b) of 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 provide the Union with the information it requested on February 3, 2105, pursuant to § 7114(b) of the Statute.

(Agency/Respondent)

Dated: _____

By: _____
(Signature) (Title)

This Notice must remain posted for sixty (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 Region, Federal Labor Relations Authority, whose address is: 225 Peachtree Street, Suite 1950, Atlanta, GA 30303, and whose telephone number is: (404) 331-5300.