



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

OALJ 16-07

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

RESPONDENT

AND

Case No. AT-CA-15-0553

AMERICAN FEDERATION OF GOVERNMENT  
EMPLOYEES, LOCAL 2778

CHARGING PARTY

Patricia J. Kush  
For the General Counsel

Kevin L. Jones  
For the Respondent

Joanne Iyamu  
For the Charging Party

Before: CHARLES R. CENTER  
Chief Administrative Law Judge

**DECISION ON MOTION FOR SUMMARY JUDGMENT**

On September 22, 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.

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\* The Respondent's proper name is the Atlanta Veterans Affairs *Medical Center*, rather than "Hospital" as listed on the complaint and 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 October 19, 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 VAMC, 1670 Clairmont Road, Decatur, GA 30033, and the Respondent failed to file an Answer to the Complaint.

On October 26, 2015, Counsel for the General Counsel (GC) filed a Motion for Summary Judgment (MSJ) 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. On October 28, 2015, the GC filed a motion to amend the proposed Order set forth in its MSJ. The Respondent failed to file a response to either motion. As I determined that summary judgment in this matter was appropriate, the hearing scheduled for November 3, 2015, in Atlanta, Georgia, was 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 MSJ, 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 MSJ, 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 American Federation of Government Employees (AFGE) 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. AFGE Local 2778 (Union) is an agent of AFGE for the purpose of representing employees within the unit described in paragraph 2.
4. The Union filed the charge in Case No. AT-CA-15-0553 with the Atlanta Regional Director on May 21, 2015, and amended the charge on September 11, 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 Chief of Human Resources and has been 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 or about April 10, 2015, the Union, through Acting President Joanne Iyamu notified the Respondent, through Jones, that the Union was invoking arbitration for a grievance the Union had filed earlier that year.

8. On more than one occasion in May 2015, the Union, through Iyamu, contacted the Respondent, through Jones, about striking arbitrators.
9. During one of the conversations described in paragraph 8, the Respondent, through Jones, stated it was not going to strike arbitrators. The Respondent, through Jones, stated it was not going to pay an arbitrator to be there for two minutes and make one-thousand five-hundred dollars (\$1,500.00).
10. The Respondent did not strike arbitrators for the grievance.
11. By the conduct described in paragraphs 9 and 10, the Respondent failed to comply with § 7121 of the Statute.
12. By the conduct described in paragraphs 9, 10 and 11, the Respondent committed an unfair labor practice in violation of § 7116(a)(1) 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 refused and failed to strike arbitrators for the purpose of taking a grievance to binding arbitration for resolution. Therefore, the Respondent violated § 7116(a)(1) and (8) of the Statute.

As a remedy, the Respondent is ordered to hold a meeting with a representative of the Union to strike arbitrators for binding arbitration of a Union grievance and to proceed to arbitration if a settlement is not otherwise reached by the parties prior thereto. The Respondent is to cease and desist from failing to strike arbitrators when the Union invokes arbitration of a grievance and must post a notice of the violation using bulletin boards and electronic mail.

### ORDER

Pursuant to § 2423.41(c) of the Rules and Regulations of the Authority 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 strike arbitrators or refuse to arbitrate a grievance of the American Federation of Government Employees, Local 2778 (Union), pursuant to § 7121 of 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) Hold a meeting with a representative of the Union for the purpose of striking arbitrators for a binding arbitration invoked by the Union.

(b) Absent settlement, proceed to binding arbitration of the Union's grievance.

(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, 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.

(d) In addition to physical posting of paper notices, Notices shall be distributed electronically, on the same day the Notice is physical posted, to all bargaining unit employees represented by the Union, if such method is customarily used to communicate with employees.

(e) Pursuant to § 2423.41(e) of the Rules and Regulations of the Authority, 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., November 9, 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 strike arbitrators or refuse to arbitrate a grievance of the American Federation of Government Employees, Local 2778 (Union), pursuant to § 7121 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** meet with a representative of the Union to strike arbitrators for binding arbitration of the Union's grievance under § 7121 of the Statute.

**WE WILL** proceed to binding arbitration of the Union's grievance unless the grievance is otherwise settled between the parties.

\_\_\_\_\_  
(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.