



**FEDERAL LABOR RELATIONS AUTHORITY**  
Office of Administrative Law Judges  
WASHINGTON, D.C. 20424

OALJ 16-12

DEPARTMENT OF VETERANS AFFAIRS  
WILLIAM JENNINGS BRYAN DORN  
VETERANS AFFAIRS MEDICAL CENTER  
COLUMBIA, SOUTH CAROLINA

RESPONDENT

Case No. AT-CA-15-0461

AND

AMERICAN FEDERATION OF GOVERNMENT  
EMPLOYEES, LOCAL 1915

CHARGING PARTY

Ayo A. Glanton  
For the General Counsel

Tamara Nichols  
Asha Burrell  
For the Respondent

Johnny Allen  
For the Charging Party

Before: CHARLES R. CENTER  
Chief Administrative Law Judge

**DECISION ON MOTION FOR SUMMARY JUDGMENT**

On October 14, 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, William Jennings Bryan Dorn Veterans Affairs Medical Center, Columbia, South Carolina (Respondent), violated § 7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute (Statute). The Complaint alleged that the Respondent implemented a change to the CT policy without negotiating with the American Federation of Government Employees, Local 1915 (Union) over the impact and implementation of the planned change and did not respond to the Union's request to negotiate over the change to the CT policy.

The Complaint indicated that a hearing on the allegations would be held on December 8, 2015, and advised the Respondent that an Answer to the Complaint was due no later than November 9, 2015. The Complaint was served by first class mail on Respondent's agents, Tamara Nichols, Chief, Human Resources Management Service and Asha Burrell, Employee/Labor Relations Specialist, Department of Veterans Affairs, Veterans Affairs Medical Center, 6439 Garners Ferry Road, Columbia, SC 29209, and the Respondent failed to file an Answer to the Complaint.

On November 24, 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. The Respondent failed to file a response to the motion for summary judgment. As I have determined that summary judgment in this matter is appropriate, the hearing scheduled for December 8, 2015, in Columbia, South Carolina is 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, William Jennings Bryan Dorn Veterans Affairs Medical Center, Columbia, South Carolina, 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 1915 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-15-0461 with the Atlanta Regional Director on April 29, 2015.
5. A copy of the charge was served on the Respondent.
6. At all times material, Jennings Pressly occupied the position of Chief, Radiology and Nuclear Medicine and was a supervisor or management official of the Respondent within the meaning of § 7103(a)(10) and (11) of the Statute, and was an agent of the Respondent acting upon its behalf.
7. On or about April 10, 2015, the Respondent, by Pressly, notified the Union that it intended to implement, effective April 25, 2015, a change in the CT policy.

8. On April 13, 2015, the Union, by Executive Vice President Johnny Allen, requested to negotiate over the change described in paragraph 7.
9. The Respondent did not respond to the Union's request as described in paragraph 8.
10. Respondent implemented the change described in paragraph 7 without negotiating with the Union over the impact and implementation of the change.
11. By the conduct described in paragraphs 9 and 10, the Respondent committed an unfair labor practice in violation of 5 U.S.C. § 7116(a)(1) and (5).

### 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 to negotiate and did not negotiate over the impact and implementation of the change to the CT policy. Therefore, the Respondent violated § 7116(a)(1) and (5) of the Statute.

### REMEDY

As a remedy, the GC requested that the Respondent be ordered to cease and desist from failing to respond to the Union's request to negotiate and to post a notice signed by the Medical Center Director using bulletin boards and electronic email to all bargaining unit employees. I have determined that these are appropriate remedies in this matter and will order such.

However, the GC also requested that status quo ante relief be ordered and that request is denied based upon Authority precedent. *Fed. Corr. Inst.*, 8 FLRA 604 (1982) (*FCI*). Where an agency has changed a condition of employment without fulfilling its obligation to bargain over the impact and implementation of that decision, the Authority applies the criteria set forth in *FCI* to determine whether status quo ante remedy is appropriate. *FCI*, 8 FLRA at 606. The purpose of a status quo ante remedy is to place parties, including employees, in the positions they would have been in had there been no unlawful conduct. *Dep't of VA Med. Ctr., Asheville, N.C.*, 51 FLRA 1572, 1580 (1996). Other "traditional" remedies, including retroactive bargaining orders and cease and desist orders accompanied by the posting of a notice to employees, are also available. *See F.E. Warren AFB, Cheyenne, Wyo.*, 52 FLRA 161 (1996).

As the Authority explained in *FCI*, determining the appropriateness of status quo ante relief requires, "on a case-by-case basis, carefully balancing the nature and circumstances of the particular violation against the degree of disruption in government operations that would be caused by such a remedy." *FCI*, 8 FLRA at 606. In determining whether a status quo ante

remedy would be appropriate in a case involving a violation of the duty to bargain over impact and implementation, the Authority considers: (1) whether, and when, notice was given to the union by the agency concerning the action or change decided upon; (2) whether, and when, the union requested bargaining on the procedures to be observed by the agency in implementing such action or change and/or concerning appropriate arrangements for employees adversely affected by such action or change; (3) the willfulness of the agency's conduct in failing to discharge its bargaining obligations under the Statute; (4) the nature and extent of the impact experienced by adversely affected employees; and (5) whether, and to what degree, a status quo ante remedy would disrupt or impair the efficiency and effectiveness of the agency's operations. *Id.*

In accordance with the admission provision of 5 C.F.R. § 2423.20(b), the only facts to which the Respondent has admitted are those set forth in the Complaint. The Complaint establishes that the Respondent gave notice of a change and that the Union demanded to bargain. While it is something of an assumption, it can be deduced that the Respondent's failure to discharge its bargaining obligation was willful given its failure to offer any other explanation. However, there is nothing in the record about factors 4 and 5, the two most important factors established by *FCI*. Thus, based upon the current record, it cannot be determined if status quo ante relief is appropriate after balancing the nature and circumstances of this particular violation against the degree of disruption in government operations that would be caused by such a remedy. Therefore, the GC's request for status quo ante relief is not supported by the record. As the GC requested relief and did not limit its motion to a decision on the violation with the appropriate remedy remaining an issue for hearing, this is a final recommended decision.

### ORDER

Pursuant to § 2423.41(c) of the Authority's Rules and Regulations and § 7118 of the Federal Service Labor-Management Relations Statute (Statute), the Department of Veterans Affairs, William Jennings Bryan Dorn Veterans Affairs Medical Center, Columbia, South Carolina, shall:

1. Cease and desist from:

(a) Refusing to respond to the American Federation of Government Employees, Local 1915 (Union), request to negotiate over a change in the CT policy.

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

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

(a) 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, William Jennings Bryan Dorn Veterans Affairs Medical Center, Columbia, South Carolina,

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.

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

(c) 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., December 2, 2015

A handwritten signature in cursive script, appearing to read "Charles R. Center", written over a horizontal line.

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, William Jennings Bryan Dorn Veterans Affairs Medical Center, Columbia, South Carolina, 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 and refuse to respond to the American Federation of Government Employees, Local 1915 (Union), request to bargain over a change in the CT policy as required by the Statute.

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