



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

OALJ 16-29

DEPARTMENT OF LABOR
MINE SAFETY AND HEALTH ADMINISTRATION
DENVER DISTRICT OFFICE
DENVER, COLORADO

RESPONDENT

AND

NATIONAL COUNCIL OF FIELD LABOR LOCALS
AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 3416, AFL-CIO

CHARGING PARTY

Case No. DE-CA-16-0086

Katie A. Smith
For the General Counsel

Laura K. Teresinski
For the Respondent

Jim Ellenberger
For the Charging Party

Before: CHARLES R. CENTER
Chief Administrative Law Judge

DECISION ON MOTION FOR SUMMARY JUDGMENT

On March 29, 2016, the Regional Director of the Denver Region of the Federal Labor Relations Authority (FLRA/Authority), issued a Complaint and Notice of Hearing alleging that the Department of Labor, Mine Safety and Health Administration, Denver District Office, Denver, Colorado (Respondent), violated §§ 7114(a)(2)(A) and 7116(a)(1) and (8) of the Federal Service Labor-Management Relations Statute (Statute), when a manager held a meeting with bargaining unit employees and engaged in a formal discussion about a grievance without providing the National Council of Field Labor Locals, American Federation of Government Employees, Local 3416 (Union), an opportunity to be represented at the meeting. The Complaint further alleged that Respondent interfered with, restrained, and coerced employees in the exercise of their rights guaranteed in § 7102 of the Statute, and

thus committed an independent violation of § 7116(a)(1) of the Statute by: (1) asking employees at the if the Union filed a grievance on their behalf, and if not, whether they knew who filed the grievance; (2) stating that the grievance would be illegal if the Union filed it; and (3) asking an employee, about one hour after the meeting, if he initiated the grievance.

The Complaint indicated that a hearing on the allegations would be held on June 16, 2016, and advised the Respondent that an Answer to the Complaint was due no later than April 25, 2016. The Complaint was served by first class mail on Respondent's agent, Laura K. Teresinski, HR Specialist, Office of Employee and Labor Management Relations, HRC, OASAM, DOL, 200 Constitution Avenue N.W., Room N-5464, Washington, D.C. 20210, and the Respondent failed to file an Answer to the Complaint.

On May 24, 2016, 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 appropriate, the hearing is hereby cancelled.

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:

(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. Emtl. Prot. Agency, Emtl. 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 its 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 Union filed the charge in this case on January 8, 2016, and a copy was served on the Respondent.
2. The Union filed the first amended charge in this proceeding on March 23, 2016, and a copy was served on the Respondent.
3. The Respondent is an agency within the meaning of § 7103(a)(3) of the Statute.
4. The National Council of Field Labor Locals (NCFLL), American Federation of Government Employees, AFL-CIO (AFGE), is a labor organization within the meaning of § 7103(a)(4) of the Statute and is the certified exclusive representative of a consolidated unit of Respondent's employees.
5. The Union is an agent of NCFLL, AFGE for the purpose of representing the unit of employees employed at the Respondent.

6. At all material times, the following individual held the position set opposite his name and has been a supervisor and/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 on its behalf:
- | | |
|--------------|----------------------------|
| James Preece | Assistant District Manager |
|--------------|----------------------------|
7. On December 11, 2015, Respondent, by Preece, held a meeting with unit employees.
8. During the meeting described in paragraph 7, Respondent discussed a grievance.
9. The meeting described in paragraph 7 was formal in nature.
10. Respondent did not provide the Union with an opportunity to be represented at the meeting described in paragraph 7.
11. By the conduct described in paragraphs 7 through 10, Respondent failed and refused to comply with § 7114(a)(2)(A) of the Statute.
12. By the conduct described in paragraphs 7 through 11, Respondent violated § 7116(a)(1) and (8) of the Statute.
13. During the meeting described in paragraph 7, Respondent, by Preece, asked employees if the Union filed a grievance on their behalf, and if not, Preece asked if they knew who filed the grievance, and stated that the grievance would be illegal if the Union filed it.
14. About one hour after the meeting described in paragraph 7, Respondent, by Preece, asked a bargaining unit employee if he initiated the grievance.
15. By the conduct described in paragraphs 13 and 14, Respondent interfered with, restrained and coerced employees in the exercise of the rights guaranteed by § 7102 of the Statute, in violation of § 7116(a)(1) of the Statute.

CONCLUSIONS OF LAW

By the conduct described in the facts set forth in the Complaint containing allegations to which the Respondent has failed to file an Answer or otherwise demonstrate good cause for such failure, the Respondent admits that it held a meeting with bargaining unit employees and engaged in a formal discussion about a grievance without providing the Union an opportunity to be represented at the meeting. Therefore, the Respondent failed to comply with § 7114(a)(2)(A) of the Statute and committed a violation of § 7116(a)(1) and (8) of the Statute. In addition, the Respondent admits that: (1) during the meeting, the Respondent asked employees if the Union filed a grievance on their behalf, and if not, whether they knew

who filed the grievance; (2) the Respondent stated at the meeting that the grievance would be illegal if the Union filed it; and (3) about one hour after the meeting, the Respondent asked a bargaining unit employee if he initiated the grievance. Through this conduct, the Respondent interfered with, restrained, and coerced bargaining unit employees in the exercise of the rights guaranteed by § 7102 of the Statute, in violation of § 7116(a)(1) of the Statute.

REMEDY

As a remedy, the Respondent is ordered to cease and desist from failing or refusing to provide the Union an opportunity to be represented at formal discussions with bargaining unit employees concerning any grievance or any personnel policy or practices or other general condition of employment. The Respondent is also ordered to cease and desist from making statements or asking questions that interfere with, restrain, or coerce bargaining unit employees in the exercise of their rights assured by the Statute, including their right to participate in the filing of grievances and their right to seek the aid or assistance of the Union. In addition, the Respondent is ordered to cease and desist from, in any like or related manner, interfering with, restraining, or coercing bargaining unit employees in the exercise of their rights assured by the Statute. Finally, the Respondent is ordered to post a notice of the violation at its facilities in places where notices to employees are customarily posted, and to distribute a copy of the notice by email to bargaining unit employees represented by the Union, if email is customarily used to communicate with bargaining unit employees.

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 Labor, Mine Safety and Health Administration, Denver District Office, Denver, Colorado, shall:

1. Cease and desist from:

(a) Failing or refusing to provide the National Council of Field Labor Locals, American Federation of Government Employees, Local 3416, AFL-CIO (Union) an opportunity to be represented at formal discussions with bargaining unit employees concerning any grievance or personnel policy or practices or other general condition of employment.

(b) Making statements or asking questions that interfere with, restrain, or coerce bargaining unit employees in the exercise of the rights assured them by the Statute, including their right to participate in the filing of grievances and their right to seek the aid or assistance of the Union.

(c) 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.

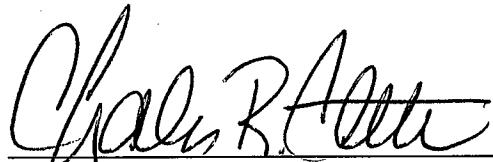
2. Take the following affirmative actions in order to effectuate the purposes and policies of the Statute:

(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 District Manager, Russell J. Riley, and shall be posted and maintained for sixty (60) consecutive days in 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, a copy of the Notice shall be distributed by email to bargaining unit employees represented by the Union, on the same day, the Notice is physically posted, if email is customarily used to communicate with employees.

(c) Pursuant to § 2423.14(e) of the Rules and Regulations of the Authority, notify the Regional Director, Denver 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., June 8, 2016



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 Labor, Mine Safety and Health Administration, Denver District Office, Denver, Colorado, violated the Federal Service Labor-Management Relations Statute (Statute), and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY EMPLOYEES THAT:

WE WILL NOT fail or refuse to provide the National Council of Field Labor Locals, American Federation of Government Employees, Local 3416, AFL-CIO (Union) an opportunity to be represented at formal discussions with bargaining unit employees concerning any grievance, any personnel policy or practices, or other general condition of employment.

WE WILL NOT make statements or ask questions that interfere with, restrain, or coerce bargaining unit employees in the exercise of their rights assured by the Statute, including their right to participate in the filing of grievances and their right to seek the aid or assistance of the Union.

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

(Respondent/Agency)

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, Denver Region, Federal Labor Relations Authority, whose address is: 1244 Speer Boulevard, Suite 446, Denver, CO 80204, and whose telephone number is: (303) 844-5224.