



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

OALJ 16-26

U.S. DEPARTMENT OF AGRICULTURE
U.S. FOREST SERVICE
SIX RIVERS NATIONAL FOREST
EUREKA, CALIFORNIA

RESPONDENT

Case No. SF-CA-15-0520

AND

NATIONAL FEDERATION OF FEDERAL
EMPLOYEES, LOCAL 1937, IAMAW, AFL-CIO

CHARGING PARTY

Yolanda C. Shepherd
For the General Counsel

Adam Alvarez,
For the Respondent

John McCrae
For the Charging Party

Before: SUSAN E. JELEN
Administrative Law Judge

DECISION ON MOTION FOR SUMMARY JUDGMENT

On February 26, 2016, the Acting Regional Director of the San Francisco Region of the Federal Labor Relations Authority (FLRA/Authority), issued a Complaint and Notice of Hearing, alleging that the U.S. Department of Agriculture, U.S. Forest Service, Six Rivers National Forest, Eureka, California (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 provide the Union with information it requested for a grievance investigation and that it failed to respond to a second Union request for information regarding Federal Employees Group Life Insurance (FEGLI) benefits.

The Complaint indicated that a hearing on the allegations would be held on May 13, 2016, and advised the Respondent that an Answer to the Complaint was due no later than March 22, 2016. The Complaint was served by certified mail on Respondent's agent, Adam Alvarez, Labor Relations Specialist, U.S. Forest Service, 1323 Club Drive, Vallejo, CA 94592. The Respondent failed to file an Answer to the Complaint.

On April 15, 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 also failed to file a response to the motion for summary judgment. On April 28, 2016, the Chief Administrative Law Judge indefinitely postponed the hearing. As I am issuing my final ruling and decision in this matter, the hearing 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 Acting 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 U.S. Department of Agriculture, U.S. Forest Service, Six Rivers National Forest, Eureka, California (Respondent) 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 certified exclusive representative of a nationwide unit of employees of the U.S. Department of Agriculture, U.S. Forest Service, Washington, D.C., which includes employees of the Respondent.
3. NFFE Local 1937 (Union) is an agent of NFFE for the purpose of representing employees within the bargaining unit.
4. The Union filed the charge in Case No. SF-CA-15-0520 with the San Francisco Acting Regional Director on April 22, 2015.
5. A copy of the charge was properly served on the Respondent.
6. At all material times, the following individuals held the positions opposite their names and have been agents of Respondent acting upon its behalf:

Tom Menzel	Labor Relations Specialist
Elizabeth Walters	Human Resources Specialist

7. At all material times, Merv George held the position of Forest Supervisor, and has been a supervisor or management official of Respondent within the meaning of § 7103(a)(10) and (11) of the Statute, and an agent of Respondent acting on its behalf.
8. On October 31, 2014, the Union requested, in writing, that Respondent furnish the Union with the following information: the calculations that the Agency used to derive the amount that bargaining unit employee Adam Dresser owed to the government.
9. The information described in paragraph 8 is normally maintained by the Respondent in the regular course of business.
10. The information described in paragraph 8 is reasonably available.
11. The information described in paragraph 8 is necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining.
12. The information described in paragraph 8 does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, related to collective bargaining.
13. The information described in paragraph 8 is not prohibited from disclosure by law.
14. On November 24, 2014, Respondent, by Menzel, denied the Union's request for information described in paragraph 8.
15. On December 1, 2014, Respondent, by Walters, obtained the information described in paragraphs 8 through 14, but failed to provide the information to the Union.
16. Since October 31, 2014, the Respondent has failed and refused to furnish the Union with the information set forth in paragraph 8.
17. By the conduct described in paragraphs 14, 15 and 16, the Respondent failed to comply with § 7114(b)(4) of the Statute.
18. By the conduct described in paragraphs 14, 15, 16, and 17, the Respondent has failed and refused to negotiate in good faith with the Union in violation of § 7116(a)(1) and (5) of the Statute.
19. By the conduct described in paragraphs 14, 15, 16, and 17, the Respondent violated § 7116(a)(1) and (8) of the Statute.

20. On October 31, 2014, the Union requested, in writing, that Respondent furnish the Union with the following information: documents demonstrating that Respondent would be required to honor FEGLI benefits for an employee miscoded as ineligible where the employee experiences a mishap that would otherwise be covered.
21. Since October 31, 2014, Respondent has not responded to the Union's request for information described in paragraph 20.
22. By the conduct described in paragraph 21, Respondent failed and refused to comply with § 7114(b)(4) of the Statute.
23. By the conduct described in paragraphs 21 and 22, Respondent failed and refused to negotiate in good faith with the Union in violation of § 7116(a)(1) and (5) of the Statute.
24. By the conduct described in paragraphs 21 and 22, Respondent has violated § 7116(a)(1) and (8) of the Statute.

CONCLUSIONS OF LAW

By the conduct described in the facts set forth in 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 failed and refused to comply with § 7114(b)(4) of the Statute. It is undisputed that Respondent denied the Union's request for calculations that the Agency used to derive the amount that bargaining unit employee Adam Dresser owed to the government. Respondent admits that the Union's request met all of the requirements set forth in § 7114(b)(4). (Exhibit 1, ¶¶7-12). Yet, Respondent denied the Union's request on November 24, 2014, and failed to provide the requested information even though it is undisputed that Respondent had the information in its possession on December 1, 2014. (Exhibit 1, ¶¶13-14). Respondent has admitted that its failure to furnish the Union the requested information violated § 7116(a)(1), (5) and (8) of the Statute. *See U.S. DOJ, Fed. BOP, FCI, Ray Brook, Ray Brook, N.Y.*, 68 FLRA 492, 495 (2015); *IRS, Wash D.C. & IRS, Kan. City Serv. Ctr., Kan. City, Mo.*, 50 FLRA 661, 669 (1995). Moreover, Respondent acknowledges that it never responded to the Union's request for "documents or other physical evidence showing that the Agency would be required to honor benefits under FEGLI for an employee who was incorrectly coded as ineligible under certain circumstances." (Exhibit 1, ¶¶19-20). Respondent concedes that its failure to respond to the Union's request for this information violates § 7116(a)(1), (5) and (8) of the Statute. *See Dep't of HHS, SSA, N.Y. Region, N.Y., N.Y.*, 52 FLRA 1133, 1149-50 (1997).

As a remedy, the Respondent is ordered to cease and desist from failing to respond to information requests from the Union, refusing to provide information to the Union when a particularized need is established, and required to furnish the Union the calculations that the Agency used to derive the amount that a bargaining unit employee owed to the government.

The Respondent is ordered to post a notice, signed by the Forest Supervisor, Six Rivers National Forest, Eureka, California, using bulletin boards and electronic mail, and to provide the Union with the information requested on October 31, 2014, regarding the calculations described above.

Accordingly, I recommend that the Authority adopt the following order:

ORDER

Pursuant to § 2423.41(c) of the Rules and Regulations of the Authority and § 7118 of the Federal Service Labor-Management Relations Statute (Statute), the U.S. Department of Agriculture, U.S. Forest Service, Six Rivers National Forest, Eureka, California, shall:

1. Cease and desist from:

(a) Failing and refusing to furnish the National Federation of Federal Employees, Local 1937, IAMAW, AFL-CIO (Union), with the calculations that the Agency used to derive the amount that bargaining unit employee Adam Dresser owed to the government.

(b) Failing and refusing to reply to the Union's requests for information made pursuant to 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:

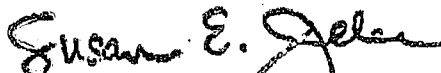
(a) Furnish the Union with the calculations that the Agency used to derive the amount that bargaining unit employee Adam Dresser owed to the government.

(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 Forest Supervisor, Six Rivers National Forest, Eureka, California, 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, 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 Rules and Regulations of the Authority, notify the Acting Regional Director, San Francisco 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., May 17, 2016



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 Agriculture, U.S. Forest Service, Six Rivers National Forest, Eureka, 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 furnish the National Federation of Federal Employees, Local 1937, IAMAW, AFL-CIO (Union) with calculations that were used to determine a bargaining unit employee's financial liability to the government, requested by the Union in a grievance investigation.

WE WILL NOT fail or refuse to reply to requests for information made by the Union pursuant to 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 information requested by the Union on October 31, 2014, concerning calculations used to determine the amount a bargaining unit employee owed the government.

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