



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

OALJ 16-34

DEPARTMENT OF VETERANS AFFAIRS  
VA LONG BEACH HEALTHCARE SYSTEM  
LONG BEACH, CALIFORNIA

RESPONDENT

AND

Case No. SF-CA-16-0177

AMERICAN FEDERATION OF GOVERNMENT  
EMPLOYEES, LOCAL 1203, AFL-CIO

CHARGING PARTY

Vanessa Lim  
For the General Counsel

Herbert Moisa  
For the Respondent

Virginia Speth  
For the Charging Party

Before: CHARLES R. CENTER  
Chief Administrative Law Judge

**DECISION ON MOTION FOR SUMMARY JUDGMENT**

On May 6, 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 Department of Veterans Affairs, VA Long Beach Healthcare System, Long Beach, California (Agency/Respondent), violated § 7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute (Statute). The Complaint alleged that the Respondent bypassed the American Federation of Government Employees, Local 1203, AFL-CIO (Charging Party/Union), and dealt directly with a unit employee regarding a grievance. The Complaint also alleged that the Respondent interfered with, restrained, and coerced bargaining unit employees in the exercise of rights guaranteed by the Statute in violation of § 7116(a)(1) when it bypassed the Union.

The Complaint indicated that a hearing in this matter would be held on July 14, 2016, and advised the Respondent that an Answer to the Complaint was due no later than May 31, 2016. The Complaint was served by certified mail on Respondent's agent, Herbert Moisa,

Assistant Chief Human Resources Management Service, VA Long Beach Healthcare System, 5901 East 7th Street, Long Beach, California, 90822, and the Respondent failed to file an Answer to the Complaint.

On June 16, 2016, 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. 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, a hearing in this matter is not necessary.

### **DISCUSSION OF MOTION FOR SUMMARY JUDGMENT**

Section 2423.20(b) of the Authority's Rules and Regulations provides, in relevant part:

(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. Absent a showing of good cause to the contrary, failure to file an answer or respond to any allegation shall constitute an admission.

Within the Complaint, the Acting Regional Director of the San Francisco Region included detailed instructions on the requirements for an Answer, including the number of copies that needed to be filed, the date by which the Answer needed to be submitted by, and the means of submission. The fact that there was a section in the Complaint devoted to the Answer requirement leaves no doubt that filing an Answer was necessary.

Despite the detailed instructions, the Respondent met none of the requirements, nor did it request an extension of time to respond. Section 2429.23 of the FLRA Regulations permits extensions or waivers of time limits. However, the Respondent did not present good cause for an extension or extraordinary circumstance for a waiver of the failure to file an Answer, nor did the Respondent file a response to the motion for summary judgment.

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, VA Long Beach Healthcare System, Long Beach, California, is an agency under § 7103(a)(3) of the Statute.
2. The American Federation of Government Employees, AFL-CIO (AFGE) is a labor organization under § 7103(a)(4) of the Statute and is the certified exclusive representative of nationwide consolidated units of VA employees, which includes employees of the Respondent.

3. Local 1203 is an agent of AFGE for the purpose of representing unit employees employed by the Respondent.
4. The Union filed the charge in Case No. SF-CA-16-0177 on December 31, 2015, and a copy was served on the Respondent.
5. The Union filed the first amended charge on April 8, 2016, and a copy was served on the Respondent.
6. At all material times, Lina Monaco-Russ held the position of HUD VASH Supervisor and John Tryboski held the position of Associate Director of Nursing and they are supervisors or management officials within the meaning of § 7103(a)(10) and (11) of the Statute.
7. On November 23, December 9, and December 22, 2015, the Union filed Step 1, 2, and 3 grievances against Respondent for failing to accommodate a unit employee's request to telework or participate in a Compressed Work Schedule (CWS).
8. In or about the first and third weeks of December 2015, on specific dates known by the Respondent, Monaco-Russ twice assured the unit employee that Tryboski was addressing the telework and CWS issues.
9. By the conduct described in paragraph 8, Respondent bypassed the Union and dealt directly with a unit employee.
10. By the conduct described in paragraphs 8 and 9, Respondent refused to negotiate in good faith with the Union in violation of § 7116(a)(1) and (5) of the Statute.
11. By the conduct described in paragraphs 8 and 9, Respondent interfered with, restrained, and coerced bargaining unit employees in the exercise of rights guaranteed by § 7102 of the Statute in violation of § 7116(a)(1) of the Statute.

### CONCLUSIONS OF LAW

Pursuant to the admission provision of 5 C.F.R. § 2423.20(b), the Respondent's failure to file an Answer constitutes an admission to all of the allegations set forth in the Complaint. The Authority has held that a failure to file an Answer as required by the Regulations constitutes an admission of each of the allegations of the Complaint. *Dep't of VA Med. Ctr., Asheville, N.C.*, 51 FLRA 1572, 1594 (1996). Therefore, the Respondent admitted committing the violations of the Statute alleged in the Complaint.

As a remedy, the Respondent is ordered to cease and desist from bypassing the Union by dealing directly with a bargaining unit employee concerning a pending grievance and to cease and desist from interfering with, restraining, or coercing bargaining unit employees in the exercise of the rights assured them by the Statute. The Respondent is also required to

post a notice for sixty (60) consecutive days, to distribute notices to bargaining unit employees using electronic mail if that is a regular method of communication with bargaining unit employees, and to notify the San Francisco Regional Director of the implementation of the order.

Accordingly, the General Counsel's Motion for Summary Judgment is Granted.

### **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 Department of Veterans Affairs, VA Long Beach Healthcare System, Long Beach, California, shall:

1. Cease and desist from:

(a) Bypassing the American Federation of Government Employees, Local 1203, AFL-CIO, the exclusive representative of a bargaining unit of its employees, by dealing directly with a bargaining unit employee concerning a pending grievance.

(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.

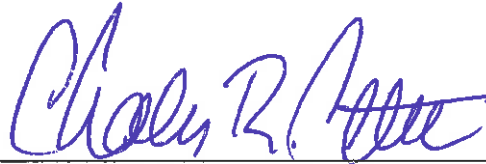
2. Take the following affirmative actions in order to effectuate the purposes and policies of the Statute:

(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, VA Long Beach Healthcare System, Long Beach, 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.

(b) In addition to physical posting of paper notices, notices shall be distributed electronically, on the same day as the physical posting, such as by email, posting on an intranet or an internet site, or other electronic means if such is a regular form of communication with bargaining unit employees.

(c) Pursuant to § 2423.41(e) of the Rules and Regulations of the Authority, notify the 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., July 26, 2016



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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, VA Long Beach Healthcare System, Long Beach, 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** bypass the American Federation of Government Employees, Local 1203, AFL-CIO, the exclusive representative of a bargaining unit employees, by dealing directly with a bargaining unit employee concerning a pending grievance.

**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: \_\_\_\_\_  
(Name) (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, San Francisco Region, Federal Labor Relations Authority, whose address is: 901 Market Street, Suite 470, San Francisco, CA, and whose telephone number is: (415) 356-5000.