

70 FLRA No. 154

DEPARTMENT OF VETERANS AFFAIRS
 VETERAN AFFAIRS REGIONAL OFFICE
 PHILADELPHIA, PENNSYLVANIA
 (Agency/Respondent)

and

AMERICAN FEDERATION
 OF GOVERNMENT EMPLOYEES
 LOCAL 940, AFL-CIO
 (Union/Charging Party)

BN-CA-17-0159

DECISION AND ORDER

August 23, 2018

Before the Authority: Colleen Duffy Kiko, Chairman,
 and Ernest DuBester and James T. Abbott, Members

I. Statement of the Case

In this case, we deny the Agency's (the Respondent) exceptions after it failed to respond to a complaint filed by the Federal Labor Relations Authority's (FLRA) General Counsel (GC).

The GC's complaint alleged that the Respondent violated § 7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute (the Statute),¹ by failing to bargain in good faith, when the Respondent refused to execute a memorandum of understanding (MOU) on which it had reached agreement with the Union. When the Respondent did not file an answer to the complaint, the GC moved for summary judgment. The Respondent did not file an opposition to the GC's motion.

In the attached decision, an FLRA Administrative Law Judge (Judge) granted the GC's motion for summary judgment. On February 20, 2018, the Respondent filed an exception to the Judge's decision,² and on March 19, 2018, the GC filed an opposition.³

¹ 5 U.S.C. § 7116(a)(1), (5).

² Exceptions at 1.

³ Pursuant to § 2429.23 of the Authority's Regulations, the GC requested an extension of time and waiver of the expired time frame to file an opposition to the Respondent's exceptions. The GC's reasons for the request are supported by documentation

We deny the Respondent's exception. The position of the Agency – that it never entered into an agreement – would be relevant to a complaint alleging failure to execute an MOU. However, this argument should have been raised in a timely answer. But it was not.⁴

The Authority's Regulations require a party to file an answer within twenty days of being served with the complaint, absent a showing of "good cause" for failing to do so.⁵ The Respondent failed to demonstrate good cause here. Further, under § 2423.20(b) of the Authority's Regulations, "failure to file an answer or respond to any allegation *shall constitute an admission.*"⁶ Therefore, the allegations of the GC's complaint in this case are admitted.⁷

Upon consideration of the Judge's decision and the entire record, we adopt the Judge's findings, conclusions, and recommended order.⁸

that shows that the GC did not receive the Respondent's exceptions until after the due date for filing a timely opposition, despite making every effort to obtain them. Because Authority precedent supports granting a waiver in such circumstances, we grant the GC's request and consider its opposition. *E.g., Long Beach Naval Shipyard, Long Beach, Cal.*, 44 FLRA 1021, 1023-24 (1992).

⁴ Enacting the Statute, Congress found that collective bargaining "contributes to the effective conduct of public business," and "facilitates and encourages the amicable settlements of disputes" between the parties. 5 U.S.C. § 7101(a)(1)(B), (C). Here, the Agency's failure to respond to the GC's formal complaint is certainly not "consistent with the requirement of an effective and efficient Government." *Id.* § 7101(b). Member Abbott notes that when parties cannot be bothered to answer complaints or otherwise comply with mandatory procedures, they also fail to "contribute to the effective conduct of public business" and to facilitate and encourage "the amicable settlement[] of disputes" as required by our Statute. *See Int'l Ass'n of Firefighters, Local F-283*, 70 FLRA 601, 604 (2018) (Concurring Opinion of Member Abbott) (party engages in "manipulation of Title V" when neither the representative nor grievant appears at arbitration hearing).

⁵ 5 C.F.R. § 2423.20(b).

⁶ *Id.* (emphasis added).

⁷ *Id.*

⁸ *See, e.g., U.S. DHS, ICE, L.A., Cal.*, 68 FLRA 302, 303-04 (2015) (finding Judge did not err in granting motion for summary judgement where respondent failed to file timely answer to complaint).

II. Order

Pursuant to § 2423.41(c) of the Authority's Regulations and § 7118 of the Statute, the Department of Veterans Affairs, Veterans Affairs Regional Office, Philadelphia, Pennsylvania, shall:

1. Cease and desist from:
 - a. Failing and refusing to execute and implement the agreement titled Philadelphia Regional Office Centralized Printing Center, reached with the American Federation of Government Employees, Local 940, AFL-CIO (the Union).
 - 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 action in order to effectuate the purposes and policies of the Statute:
 - a. Execute and implement the agreement titled Philadelphia Regional Office Centralized Printing Center, reached with the Union.
 - 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 of such forms, they shall be signed by the Director of the Veterans Affairs Regional Office, Philadelphia, Pennsylvania, 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, the Notice shall be distributed electronically, to all bargaining unit employees on the same day as the physical posting of the Notice, by such means as email, posting on an intranet or internet site, or other electronic means, if such is customarily used to communicate with bargaining unit employees.
- d. Pursuant to § 2423.41(e) of the Authority's Rules and Regulations, notify the Regional Director, Boston 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.

**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, Veterans Affairs Regional Office, Philadelphia, Pennsylvania, violated the Federal Service Labor-Management Relations Statute (the 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 execute and implement the agreement titled Philadelphia Regional Office Centralized Printing Center, reached with the American Federation of Government Employees, Local 940, AFL-CIO (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 them by the Statute.

WE WILL execute and implement the agreement titled Philadelphia Regional Office Centralized Printing Center, reached with the Union.

_____ Agency/Respondent

Dated: _____ By: _____
(Signature) (Title)

This Notice must remain posted for sixty consecutive days from the date of the posting and must not be altered, defaced, or covered by any other material.

If employees have any questions concerning this Notice or compliance with any of its provisions, they may communicate directly with the Regional Director, Boston Region, Federal Labor Relations Authority, whose address is: 10 Causeway Street, Suite 472, Boston, MA 02222, and whose telephone number is: (617) 565-5100.

Office of Administrative Law Judges

DEPARTMENT OF VETERANS AFFAIRS
VETERANS AFFAIRS REGIONAL OFFICE
PHILADELPHIA, PENNSYLVANIA

RESPONDENT

AND

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 940, AFL-CIO

CHARGING PARTY

BN-CA-17-0159

Daniel J. Silva, Jr.
For the General Counsel

Raymond V. Daiutolo, Jr.
For the Respondent

Jim Rihel
For the Charging Party

Before: RICHARD A. PEARSON
Administrative Law Judge

DECISION ON MOTION FOR SUMMARY JUDGMENT

On October 31, 2017, the Regional Director of the Boston Region of the Federal Labor Relations Authority (the FLRA or Authority), issued a Complaint and Notice of Hearing in this matter, alleging that the Department of Veterans Affairs (VA), Veterans Affairs Regional Office, Philadelphia, Pennsylvania (the Respondent), violated § 7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute (the Statute) by implementing a change in employees' conditions of employment without completing negotiations with the American Federation of Government Employees, Local 940, AFL-CIO (the Union). The Complaint indicated that a hearing on the allegations would be held on February 7, 2018, and advised the Respondent that an Answer to the Complaint was due no later than November 27, 2017. The Complaint was mailed to the Respondent's designated representative, Raymond V. Daiutolo, Jr., Human Resource Specialist, Department of Veterans Affairs, VA Regional Office, 5000 Wissahickon Avenue, Philadelphia, PA 19144. The Respondent did not file an Answer to the Complaint.

On December 12, 2017, Counsel for the General Counsel (GC) filed a Motion for Summary Judgment,

based on the fact that the Respondent failed to file an Answer to the Complaint, and arguing therefore that the Respondent had admitted all the allegations of the Complaint. Accordingly, the GC asserted that there were no factual or legal issues in dispute, and the case was ripe for summary judgment in its favor. The Respondent has not filed a response to the Motion for Summary Judgment.

DISCUSSION OF MOTION FOR SUMMARY JUDGMENT

The Authority has held that motions for summary judgment, filed under § 2423.27 of its Regulations, 5 C.F.R. § 2423.27, serve the same purpose, and are governed by the same principles, as motions filed in United States District Courts under Rule 56 of the Federal Rules of Civil Procedure. *Dep't of Veterans Affairs, Veterans Affairs Med. Ctr., Nashville, Tenn.*, 50 FLRA 220, 222 (1995). Summary judgment is appropriate when there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

Section 2423.20(b) of the Authority's Regulations, 5 C.F.R. § 2423.20(b), provides, in pertinent 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. 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.*, 5 C.F.R. §§ 2429.21 through 2429.23. Furthermore, in the body of the Complaint in this case, 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.

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 Veterans Affairs 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. *See, e.g., U.S. Dep't of Transp., Fed. Aviation Admin., Hous., Tex.*, 63 FLRA 34, 36 (2008); *U.S. Dep't of Veterans Affairs 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. In these circumstances, § 2423.20(b) clearly requires that the Respondent's failure to file an Answer be treated as an admission of each of the allegations of the Complaint. Accordingly, there are no disputed factual issues in this case, and summary judgment against the Respondent is justified. Therefore, the General Counsel's Motion for Summary Judgment is granted, and the hearing scheduled for February 7, 2018, is cancelled.

Based on the existing record, I make the following findings of fact, conclusions of law, and recommendations:

FINDINGS OF FACT

1. The Respondent is an agency within the meaning of 5 U.S.C. § 7103(a)(3).
2. The American Federation of Government Employees, AFL-CIO (AFGE) is a labor organization within the meaning of 5 U.S.C. § 7103(a)(4) and is the certified exclusive representative of a nationwide consolidated unit of VA employees, which includes employees of the Respondent. The Union is an agent of AFGE for the purpose of representing the unit employees employed at the Respondent.
3. At all times material to this case, the following individual held the position listed opposite her name, has been a supervisor or management official of the Respondent within the meaning of 5 U.S.C. § 7116(a)(10) and (11), and has been an agent of the Respondent acting on its behalf:

Bridgette Murray Assistant Service

Center Manager

4. In or around November 2016, the Respondent discussed with the Union its intention to create a Centralized Printing Program.
5. In or around November 2016, the Union requested to negotiate with the Respondent over the change described in paragraph 4.
6. Between December 2016 and January 2017, the Respondent and Union bargained over the change described in paragraph 4.
7. On January 9, 2017, the Respondent and the Union reached agreement on a Memorandum of Understanding (MOU) addressing the change described in paragraph 4.
8. On January 9, 13, and 27, 2017, the Union requested that the Respondent execute the MOU described in paragraph 7.
9. On January 13 and 31, 2017, the Respondent, by Murray, refused to execute the MOU described in paragraph 7.
10. On February 1, 2017, the Respondent implemented the change described in paragraph 4.
11. The Respondent implemented the change in unit employees' conditions of employment described in paragraphs 4 and 10 without completing negotiations with the Union over the impact and implementation of the change.
12. By the conduct described in paragraphs 9, 10, and 11, the Respondent has been refusing to negotiate in good faith with the Union to the extent required by the Statute, in violation of § 7116(a)(1) and (5) of the Statute.

CONCLUSIONS OF LAW

Under § 7114(b)(5) of the Statute, the duty of an agency and a union to negotiate in good faith includes the obligation, when an agreement has been reached, to

execute upon request a written document embodying the agreed terms and to take necessary steps to implement the agreement. *U.S. Dep't of Def., Def. Language Inst., Foreign Language Ctr., Monterey, Cal.*, 64 FLRA 735, 745 (2006); *U.S. Dep't of Transp., FAA, Standiford Air Traffic Control Tower, Louisville, Ky.*, 53 FLRA 312 (1997) (*FAA Standiford*). By its failure to answer the Complaint, the Respondent has admitted that it reached agreement with the Union on the terms of a Memorandum of Understanding, that the Union requested that the Respondent execute the MOU, and that Respondent twice refused to do so. It has, therefore, admitted that it violated § 7116(a)(1) and (5) of the Statute.

REMEDY

When a party has unlawfully refused to execute an agreement, the traditional remedy is to order it to execute and implement the agreement. *FAA Standiford*, 53 FLRA at 321. Such an order is appropriate here. The Director of the Veterans Affairs Regional Office, Philadelphia, will be ordered to post the attached Notice to All Employees, both on its bulletin boards and electronically.

Accordingly, I recommend that the Authority grant the General Counsel's Motion for Summary Judgment and adopt the following order:

ORDER

Pursuant to § 2423.41(c) of the Authority's Rules and Regulations and § 7118 of the Federal Service Labor-Management Relations Statute (the Statute), the Department of Veterans Affairs, Veterans Affairs Regional Office, Philadelphia, Pennsylvania, shall:

1. Cease and desist from:

(a) Failing and refusing to execute and implement the agreement titled Philadelphia Regional Office Centralized Printing Center, reached with the American Federation of Government Employees, Local 940, AFL-CIO (the Union).

(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 action in order to effectuate the purposes and policies of the Statute:

(a) Execute and implement the agreement titled Philadelphia Regional Office Centralized Printing

Center, reached with the Union.

(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 of such forms, they shall be signed by the Director of the Veterans Affairs Regional Office, Philadelphia, Pennsylvania, 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, the Notice shall be distributed electronically, to all bargaining unit employees on the same day as the physical posting of the Notice, by such means as email, posting on an intranet or internet site, or other electronic means, if such is customarily used to communicate with bargaining unit employees.

(d) Pursuant to § 2423.41(e) of the Authority's Rules and Regulations, notify the Regional Director, Boston 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., January 23, 2018

RICHARD A. PEARSON
Administrative Law Judge

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WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT fail or refuse to execute and implement the agreement titled Philadelphia Regional Office Centralized Printing Center, reached with the American Federation of Government Employees, Local 940, AFL-CIO (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 them by the Statute.

WE WILL execute and implement the agreement titled Philadelphia Regional Office Centralized Printing Center, reached with the Union.

(Agency/Respondent)

Dated: _____ By: _____
(Signature) (Title)

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