

73 FLRA No. 50

BREMERTON METAL
TRADES COUNCIL
(Union)

and

UNITED STATES
DEPARTMENT OF THE NAVY
TRIDENT SUBMARINE REFIT FACILITY
BANGOR, WASHINGTON
(Agency)

0-AR-5767

ORDER DISMISSING EXCEPTIONS

September 21, 2022

Before the Authority: Ernest DuBester, Chairman, and
Colleen Duffy Kiko and Susan Tsui Grundmann,
Members

I. Statement of the Case

The Authority’s Office of Case Intake and Publication (CIP) issued an order directing the Union to cure procedural defects in its exceptions filing. The Union failed to timely respond to the Authority’s order, and has not established extraordinary circumstances justifying a waiver of its failure to respond within the time limit. Therefore, we dismiss the Union’s exceptions.

II. Background and Order to Show Cause

The Union filed exceptions to an award by Arbitrator Charles Crider. When it filed its exceptions, the Union did not serve the exceptions and attachments on the Agency’s designated representative, as required by the Authority’s Regulations.¹ Therefore, on October 6, 2021,

CIP issued a procedural-deficiency order (October PDO) directing the Union to file with the Authority, by October 20, 2021, a statement of service showing service of a complete copy of the exceptions with all supporting documents on the Agency’s designated representative of record. On October 14, 2021, the Union filed a response to the October PDO, providing an exceptions brief, exceptions attachments, and a statement of service, but omitting a copy of the exceptions eFiling form (exceptions form).² The Union’s response to the October PDO was labeled with the incorrect case number and CIP attributed it to another case.

Consequently, the Authority issued a show-cause order (November SCO) directing the Union to respond by November 22, 2021, and to show cause why the Authority should not dismiss its exceptions for failure to respond to the October PDO. The Union timely responded to the November SCO, asserting that its mislabeled response to the October PDO was timely. However, the Union’s response to the November SCO did not include a statement of service for the response. Nor did it demonstrate that the Union had corrected the deficiency by providing the exceptions form to the Agency.

On December 10, 2021, the Agency filed a motion with the Authority asserting that the Union’s service was still defective because the Union had failed to serve the Agency’s designated representative with a copy of the exceptions form. On December 22, 2021, CIP issued another procedural-deficiency order (December PDO) directing the Union to respond to the order by January 5, 2022, and correct the deficiency by: serving a complete copy of the exceptions, with all supporting documents, on the Agency’s designated representative; and filing a statement of service that complies with the Authority’s Regulations. The December PDO stated that “[t]he Union’s failure to respond to or comply with this order by January 5, 2022, may result in dismissal of its exceptions.”³

The Union filed a response, postmarked January 14, 2022 (January response), to the December PDO. The January response asked the Authority to waive the expired deadline due to the

¹ 5 C.F.R. § 2429.27(a) (any party filing a document must serve a copy upon the designated agency representative of record); *id.* 2429.27(c) (“If you serve a document under this section, then you must file, with the appropriate [Federal Labor Relations Authority] office, a statement indicating that the party has served that document . . . on the appropriate individual(s) specified in paragraph (a) of this section [and] you must ensure that your statement of service includes the names of the parties and persons that you served, their addresses, the date on which you served them, the nature of the document(s) that you served, and the manner in which you served the parties or persons that you served.”).

² The exceptions brief the Union provided with its response differed from the one in its initial filing, and the Union continued to file that exceptions brief in subsequent filings. *See* Union Resp. to November SCO, Attach. at 13-14.

³ Dec. PDO at 2 (emphasis omitted).

“complexity” of the process and an alleged delay in receiving the December PDO, but did not include the Agency’s position on the waiver request.⁴ According to the Union, the Agency’s post office received the December PDO on December 22, 2021, but it was not “delivered to [the] Trident Refit Facility . . . until [January 6, 2022].”⁵ The January response also stated that the Union had contacted CIP and “done its due diligence to address and provide the requested document(s).”⁶ On February 2, 2022, the Agency filed an opposition to the Union’s exceptions, maintaining that the Union had not complied with the Authority’s orders as the Union had not served the Agency with all documents.⁷

On March 10, 2022, CIP issued another show-cause order (March SCO) directing the Union to show cause why the Authority should not dismiss its exceptions for failure to timely respond to an Authority order. The March SCO directed the Union to show cause why the Authority should not dismiss its exceptions for failure to: “(1) fully comply with the October [PDO;] (2) timely respond to the December [PDO;] (3) fully comply with the December [PDO;] and (4) properly serve the Agency’s representative with the Union’s response to the December [PDO].”⁸ On March 24, 2022, the Union filed a timely response to the March SCO (March response), but did not explain why the Union did not comply with either the October or December PDO or why the exceptions should not be dismissed.⁹ Also, the Union did not provide a statement of service demonstrating that it had served its response to the March SCO on the Agency.¹⁰

III. Analysis and Conclusions: The Union fails to establish extraordinary circumstances to justify a waiver for the untimely response to the December PDO.

The Authority will dismiss a party’s filing when the party fails to comply with an Authority order concerning that filing.¹¹ The Union asserts that its exceptions should not be dismissed because it did not receive the December PDO until after the response was due.¹² The Authority’s Regulations provide that the date of filing for a document shall be determined by the date of mailing.¹³ When a document has a postmark, the Authority’s Regulations state that the postmark determines the date of mailing.¹⁴ Here, the Union does not dispute that the postmark date of the January response is January 14, but it asks the Authority “to make an exemption and review this exception” due to the “complexity” of the process and the delay in receiving the December PDO.¹⁵ While the Authority has the discretion to waive an expired deadline for responding to an Authority order in extraordinary circumstances,¹⁶ the Authority has consistently found that delays caused by a party’s internal mailing system do not establish extraordinary circumstances.¹⁷ Thus, to the extent the Union is relying on such a delay, that reliance is misplaced.

The Union also argues that when it received “th[e] notice,” the Union contacted CIP on January 11, 2022, and “ha[d] done its due diligence to address and provide the requested document(s).”¹⁸ However, the Union waited five days after receiving the December PDO to contact CIP, and as noted, did not file a response until January 14.¹⁹ Moreover, the Union’s response did not indicate that it had fully complied with the Authority’s

⁴ Union Resp. to Dec. PDO (Jan. Resp.) at 1; see 5 C.F.R. § 2429.23(a) (“Requests for extensions of time shall be in writing and received by the appropriate official not later than five (5) days before the established time limit for filing, shall state the position of the other parties on the request for extension, and shall be served on the other parties.”).

⁵ Jan. Resp. at 1.

⁶ *Id.*

⁷ Opp’n at 6 (“the Union has not complied with the Authority’s [o]rder to properly serve the Agency with its complete eFiling package”).

⁸ Mar. SCO at 2-3.

⁹ See Union Resp. to Mar. SCO (Mar. Resp.) at 1.

¹⁰ The Union’s response states that the Union “will provide the Agency’s representative(s) an eFiling of the [s]tatement of [s]ervice via e-mail . . . no later than [midnight on March 24, 2022].” Mar. Resp. at 1.

¹¹ *U.S. DOJ, Fed. BOP, USP Admin. Maximum (ADX), Florence, Colo.*, 66 FLRA 20, 20 (2011) (dismissing exceptions for failure to respond to Authority’s order (citing *NAGE, Loc. R3-32*, 57 FLRA 624, 624 n.* (2001); *U.S. Dep’t of VA, Med. Ctr., Coatesville, Pa.*, 56 FLRA 829, 830 n.1 (2000))).

¹² Jan. Resp. at 1.

¹³ 5 C.F.R. § 2429.21(b)(1)(i); *U.S. DOD, Educ. Activity*, 73 FLRA 75, 76 (2022) (*Educ.*) (citing *NTEU, Chapter 226*, 72 FLRA 122, 122 (2021) (*Chapter 226*)).

¹⁴ 5 C.F.R. § 2429.21(b); see *Educ.*, 73 FLRA at 76 (filing date is indicated by postmark date).

¹⁵ See Jan. Resp. at 1.

¹⁶ 5 C.F.R. § 2429.23(b) (“the Authority . . . may waive any expired time limit in this subchapter in extraordinary circumstances”); see *Educ.*, 73 FLRA at 76.

¹⁷ *Educ.*, 73 FLRA at 76 (delay by agency mailroom in delivering agency response to Authority order does not present extraordinary circumstances); see also *U.S. Dep’t of VA, John J. Pershing VA Med. Ctr.*, 71 FLRA 426, 427 (2019) (*Pershing*) (then-Member DuBester concurring) (finding that an alleged lack of “knowledge of an Authority order does not constitute an extraordinary circumstance warranting waiver” and that “internal [a]gency error does not constitute extraordinary circumstances” (citing *U.S. Dep’t of VA, Veterans Benefits Admin.*, 71 FLRA 315, 316 (2019) (*Benefits*) (then-Member DuBester concurring); *AFGE, Loc. 3283*, 66 FLRA 691, 692 (2012); *AFGE, Council 236*, 52 FLRA 1531, 1532 (1997))).

¹⁸ Jan. Resp. at 1.

¹⁹ *Id.*

order to correct the procedural deficiency by providing a copy of the exceptions form to the Agency. Nor did it demonstrate that the Union had served the January response on the Agency.

Contrary to the Union's assertion, there is nothing unique to the requirements for filing exceptions in this case and the Union had multiple opportunities to comply with the requirements established in the Authority's Regulations, but failed to do so. Accordingly, the March response does not establish extraordinary circumstances justifying a waiver of the expired deadline and we dismiss the Union's exceptions.²⁰

IV. Decision

We dismiss the Union's exceptions.

²⁰ *E.g.*, *Educ.*, 73 FLRA at 76; *Chapter 226*, 72 FLRA at 123. Because we are dismissing the Union's exceptions on the basis of its failure to timely respond to the December PDO, we need not resolve whether the Union corrected the other deficiencies. *Pershing*, 71 FLRA at 426 n.1 (citing *Benefits*, 71 FLRA at 315 n.5). We also need not resolve whether the Union's exceptions submitted in response to the October PDO – which, as noted previously, differed from the exceptions originally filed – are timely.