



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

OALJ 23-1

SMALL BUSINESS ADMINISTRATION
BIRMINGHAM, ALABAMA

RESPONDENT

AND

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 228, AFL-CIO

CHARGING PARTY

Case Nos. AT-CA-21-0318
AT-CA-22-0028

Patricia J. Kush
For the General Counsel

Douglas Huth
For the Respondent

Christie Lewis
For the Charging Party

Before: RICHARD A. PEARSON
Administrative Law Judge

DECISION

On July 27, 2022, the Acting Regional Director of the Atlanta Region of the Federal Labor Relations Authority (the Authority) issued a Complaint and Notice of Hearing in this consolidated case, alleging that the Small Business Administration, Birmingham, Alabama (the Respondent) violated § 7116(a)(1), (5), and (8) of the Federal Service Labor-Management Relations Statute (the Statute) by failing to provide information requested by the Charging Party pursuant to § 7114(b)(4) of the Statute. The Complaint indicated that a hearing on the allegations would be held on December 7, 2022, and advised the Respondent that an Answer to the Complaint was due no later than August 22, 2022. The Respondent did not file an Answer to the Complaint.

On September 6, 2022, Counsel for the General Counsel (GC) filed a Motion for Summary Judgment, based on the fact that the Respondent had failed to file an Answer to the

Complaint, and arguing that the Respondent had therefore admitted all the allegations of the Complaint. The GC asserts that since there are no factual or legal issues in dispute, the case is 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 VA, 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 answers and other required documents. *See, e.g.*, 5 C.F.R. §§ 2429.21 through 2429.23. Furthermore, in the body 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, persons to whom it must be sent, and references to the applicable regulations; he also advised Respondent that absent a showing of good cause, the failure to answer any allegation of the Complaint would constitute an admission.

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 GC 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 GC's Motion for Summary Judgment is granted.

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

FINDINGS OF FACT

1. The 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 nationwide consolidated unit of Small Business Administration employees, which includes employees of the Respondent (the unit).
2. The American Federation of Government Employees, Local 228, AFL-CIO (the Union) is an agent of AFGE for the purpose of representing the unit employees employed at the Respondent.
3. The Respondent is an agency within the meaning of § 7103(a)(3) of the Statute.
4. The Union filed the charge in Case No. AT-CA-21-0318 on June 16, 2021, and an amended charge on August 25, 2021. Copies of the original and amended charges were served on the Respondent.
5. The Union filed the charge in Case No. AT-CA-22-0028 on October 12, 2021, and a copy of the charge was served on the Respondent.
6. At all times material, the following individual held the position opposite his name and has been a supervisor or management official of Respondent within the meaning of § 7103(a)(10) and (11) of the Statute and/or an agent of Respondent acting upon its behalf:

Douglas Huth Employee and Labor Relations Specialist
7. On March 23, 2021, the Union requested that Respondent furnish the Union with the following information: copies of any and all Scorecards for any and all departments for fiscal years 2019, 2020, and 2021; the dates the Scorecards were finalized, communicated to bargaining unit employees, and entered into the Personal Business Commitment Plan in the Talent Manager Center; and the method used to communicate the Scorecards to the bargaining unit employees.

8. On September 15, 2021, the Union requested that Respondent furnish the Union with the following additional information:
 - a. All communications between management officials and bargaining unit employees related to any meetings to discuss the Personal Business Commitment (PBC) plans, including the names of the management officials, the names of the bargaining unit employees, copies of any meeting invitations and acceptances, the date and time of the actual meetings, the meeting dates recorded in Talent Manager, the means used for the meetings, and the location of the meetings.
 - b. Copies of all notes made at meetings with employees regarding PBC plans.
 - c. Copies of the PBC plans, including the names, grades, and departments of the employees and the names of the management officials.
 - d. Any changes made to the PBC plan throughout Fiscal Year 2021, including the names, grades, and departments of the employees, the names of the management officials, the changes made, the dates the changes were made, and the reasons for the changes.
 - e. The numeric standards communicated to the bargaining unit employees and/or uploaded to Talent Manager, the date the standards were communicated to the employees, and the data used to determine the numeric standards.
 - f. The material, guidance, procedures, policies, and information management relied upon when establishing, communicating, and/or finalizing the PBC plans.
9. The information described in paragraphs 7 and 8 is normally maintained by the Respondent in the regular course of business.
10. The information described in paragraphs 7 and 8 is reasonably available.
11. The information described in paragraphs 7 and 8 is necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of bargaining.
12. The information described in paragraphs 7 and 8 does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining.
13. The information described in paragraphs 7 and 8 is not prohibited from disclosure by law.
14. On April 2, 2021, the Respondent, by Huth, denied the Union's request for information described in paragraph 7.

15. Since April 2, 2021, the Respondent has failed and refused to furnish the Union with the information it requested as described in paragraph 7.
16. By the conduct described in paragraphs 14 and 15, the Respondent has been failing and refusing to comply with § 7114(b)(4) of the Statute.
17. By the conduct described in paragraphs 14, 15, and 16, the Respondent has been failing and refusing to negotiate in good faith with the Union and violating § 7116(a)(1) and (5) of the Statute.
18. By the conduct described in paragraphs 14, 15, and 16, the Respondent has been violating § 7116(a)(1) and (8) of the Statute.
19. On October 7, 2021, the Respondent, by Huth, denied the Union's request for information described in paragraph 8.
20. Since October 7, 2021, the Respondent has failed and refused to furnish the Union with the information it requested as described in paragraph 8.
21. By the conduct described in paragraphs 19 and 20, the Respondent has been failing and refusing to comply with § 7114(b)(4) of the Statute.
22. By the conduct described in paragraphs 19, 20, and 21, the Respondent has been failing and refusing to negotiate in good faith with the Union and violating § 7116(a)(1) and (5) of the Statute.
23. By the conduct described in paragraphs 19, 20, and 21, the Respondent has been violating § 7116(a)(1) and (8) of the Statute.

CONCLUSIONS OF LAW

A union requesting information under § 7114(b)(4) of the Statute must establish a particularized need for the information; that is, it must show that the information is necessary for the union to adequately represent its members. *IRS, Wash., D.C.*, 50 FLRA 661, 669-70 (1995). A union must additionally satisfy the other requirements set forth in § 7114(b)(4). By virtue of its failure to file an Answer to the Complaint in this case, the Respondent has admitted that the information requested by the Union was necessary for the Union to represent its members; that the information was normally maintained by the Respondent; that it was reasonably available; that it did not constitute guidance to management relating to collective bargaining; and that its disclosure was not prohibited by law. Similarly, the Respondent has admitted that it denied the first information request on April 2, 2021; that it denied the second information request on October 7, 2021, and that it has continued to refuse to furnish the requested information. It is evident, therefore, that by the Respondent's refusal to furnish the information to the Union, it has failed to comply with § 7114(b)(4), and that it violated § 7116(a)(1), (5), and (8) of the Statute.

When an agency has unlawfully refused to furnish information to a union, the Authority requires the agency to provide that information and to post a notice (both electronically and on its bulletin boards) to employees of its violation of the Statute, advising employees that it will not refuse to furnish information properly requested under § 7114(b)(4).

I therefore recommend that the Authority grant the General Counsel's Motion for Summary Judgment and issue 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 (the Statute), the Small Business Administration, Birmingham, Alabama, shall:

1. Cease and desist from:

(a) Failing or refusing to provide the American Federation of Government Employees, Local 228, AFL-CIO (the Union), with information requested under § 7114(b)(4) of the Statute.

(b) In any like or related manner, interfering with, restraining, or coercing bargaining unit employees in the exercise of their rights under 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 information it requested on March 23 and September 15, 2021.

(b) Post the attached Notice on forms to be provided by the Federal Labor Relations Authority. Upon receipt of such forms, they shall be signed by the Director of the Birmingham Disaster Loan Servicing Center 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, disseminate a copy of the Notice electronically, on the same day as the physical posting, through the Agency's email, intranet, or other electronic media customarily used to communicate with bargaining unit employees.

(d) Pursuant to § 2423.41(e) of the Rules and Regulations of the Authority, notify the Acting Regional Director, Atlanta 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.
November 22, 2022

RICHARD A. PEARSON
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 Small Business Administration, Birmingham, Alabama, violated the Federal Service Labor-Management Relations Statute (the Statute), and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY EMPLOYEES THAT:

WE WILL furnish the American Federation of Government Employees, Local 228, AFL-CIO (the Union) with the information the Union requested on March 23 and September 15, 2021.

WE WILL NOT fail or refuse to provide the American Federation of Government Employees, Local 228, AFL-CIO (the Union), with information requested under § 7114(b)(4) of 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 under the Statute.

(Agency/Activity)

Dated: _____ By: _____
(Signature) (Director)

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, Atlanta Region, Federal Labor Relations Authority, whose address is 229 Peachtree Street NE, Suite 900, Atlanta, GA 30303, and whose telephone number is (404) 331-5300.