



UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C. 20424

OALJ 23-03

U.S. DEPARTMENT OF VETERANS AFFAIRS
HUNTER HOLMES MCGUIRE VA MEDICAL
CENTER, RICHMOND, VIRGINIA

RESPONDENT

AND

AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES,
LOCAL 2145, AFL-CIO

CHARGING PARTY

Case Nos. WA-CA-20-0155
WA-CA-20-0156

Flor Garay Burden
For the General Counsel

Michael Klein
For the Respondent

Mintina Minto
For the Charging Party

Before: LEISHA A. SELF
Administrative Law Judge

DECISION

On October 18, 2022, the Regional Director of the Washington Region of the Federal Labor Relations Authority (the Authority) issued a Complaint and Notice of Hearing in this consolidated case, alleging that the U.S. Department of Veterans Affairs, Hunter Holmes McGuire VA Medical Center, Richmond, Virginia (the Respondent) violated § 7116(a)(1), (5), and (8) of the Federal Service Labor-Management Relations Statute (the Statute) by failing in two instances 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 January 18, 2023, and

advised the Respondent that an Answer to the Complaint was due no later than November 14, 2022. The Respondent did not file an Answer to the Complaint.

On December 15, 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 therefore had admitted all of 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 filed its Response to the Motion for Summary Judgment on December 19, 2022. In its Response, the Respondent asserted extenuating circumstances in the years 2020 and 2021 that created difficulty for it to address the matters that are the subject of the Complaint. The Response however does not assert any good cause basis for the Respondent's failure to timely file an Answer to the Complaint.

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 of the Authority's Regulations, 5 C.F.R. § 2423.20, 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 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 was to have been sent, and references to the applicable regulations; she also advised the 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. EPA, 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 its failure to do so. *See, e.g., U.S. Dep’t of Transp., FAA, Hous., Tex.*, 63 FLRA 34, 36 (2008); *U.S. Dep’t of VA Med. Ctr., Kan. City, Mo.*, 52 FLRA 282, 284 (1996), and the cases cited therein. After the GC filed its Motion for Summary Judgment, the Respondent filed its Response, but therein did not provide or assert any good cause basis 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 VA employees, which includes employees of the Respondent (the unit).
2. The American Federation of Government Employees, Local 2145, 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 charges in Case No. WA-CA-20-0155 and Case No. WA-CA-20-0156 on February 7, 2020. Copies of the charges were served on the Respondent.
5. At all times material, the following individuals held the position opposite their names and have been supervisors or management officials of the Respondent within the meaning of § 7103(a)(10) and (11) of the Statute, and/or an agents of the Respondent acting upon its behalf:

Adriana Hamilton

Human Resources Officer

Justin Henhawk

Human Resources Specialist

6. On December 31, 2019, the Union requested, by letter to Hamilton, that the Respondent furnish the Union with: (1) A complete copy of the Merit Promotion File for IT Specialist, vacancy announcement CBBX-10608204-19-MVM, in a sanitized format for all candidates except Anthony Nelson; (2) A copy of the memorandum promulgated by Human Resources naming the selectee in vacancy announcement CBBX-10608204-19-MVM.

7. The information described in paragraph 6 is normally maintained by the Respondent in the regular course of business.
8. The information described in paragraph 6 is reasonably available.
9. The information described in paragraph 6 is necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of bargaining.
10. The information described in paragraph 6 does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining.
11. The information described in paragraph 6 is not prohibited from disclosure by law.
12. On February 6, 2020, the Respondent, by Henhawk, denied the Union's request for information described in paragraphs 6-11.
13. Since February 6, 2020, the Respondent has been failing and refusing to furnish the Union with the information it requested as described in paragraph 6-11.
14. By the conduct described in paragraphs 12 and 13, the Respondent has been failing and refusing to comply with § 7114(b)(4) of the Statute.
15. By the conduct described in paragraphs 12, 13, and 14, 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.
16. By the conduct described in paragraphs 12, 13, and 14, the Respondent has been violating § 7116(a)(1) and (8) of the Statute.
17. On December 31, 2019, the Union requested, by letter to Hamilton, that the Respondent furnish the Union with: (1) A complete copy of the Merit Promotion File for Registered Nurse/OR Nurse Manager, vacancy announcement CBBX-10569438-19-ST, in a sanitized format for all candidates except Theresa Padinjarekuttu; (2) A copy of the memorandum promulgated by Human Resources naming the selectee in vacancy announcement CBBX-10569438-19-ST.
18. The information described in paragraph 17 is normally maintained by the Respondent in the regular course of business.
19. The information described in paragraph 17 is reasonably available.
20. The information described in paragraph 17 is necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of bargaining.

21. The information described in paragraph 17 does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining.
22. The information described in paragraph 17 is not prohibited from disclosure by law.
23. On February 6, 2020, the Respondent, by Henhawk, denied the Union's request for information described in paragraphs 17-22.
24. Since February 6, 2020, the Respondent has been failing and refusing to furnish the Union with the information it requested as described in paragraph 17-22.
25. By the conduct described in paragraphs 23 and 24, the Respondent has been failing and refusing to comply with § 7114(b)(4) of the Statute.
26. By the conduct described in paragraphs 23, 24, and 25, 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.
27. By the conduct described in paragraphs 23, 24, and 25, 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 in both instances 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 both information requests on February 6, 2020, and that it has continued to refuse to furnish the requested information in both information requests. It is evident, therefore, that, by the Respondent's refusal to furnish the information to the Union in both instances, 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 U.S. Department of Veterans Affairs, Hunter Holmes McGuire VA Medical Center, Richmond, Virginia, shall:

1. Cease and desist from:

(a) Failing or refusing to provide the American Federation of Government Employees, Local 2145, 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 in both requests on February 6, 2020.

(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 Hunter Holmes McGuire VA Medical Center, Richmond, Virginia, 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 Regional Director, Washington Regional Office, 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 4, 2023

LEISHA A. SELF
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 Veterans Affairs, Hunter Holmes McGuire VA Medical Center, Richmond, Virginia, 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 2145, AFL-CIO (the Union) with the information the Union requested on February 6, 2020.

WE WILL NOT fail or refuse to provide 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: _____

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, Washington Regional Office, Federal Labor Relations Authority, whose address is 1400 K Street, NW, Second Floor, Washington, DC 20424, and whose telephone number is (771) 444-5782.