



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

OALJ 15-01

DEPARTMENT OF VETERANS AFFAIRS
NF/SG VETERANS HEALTH SYSTEM
LAKE CITY, FLORIDA

RESPONDENT

AND

NATIONAL NURSES UNITED

CHARGING PARTY

Case No. AT-CA-13-0398

Patricia J. Kush
For the General Counsel

Elizabeth Shotwell
For the Respondent

Odell Anderson
For the Charging Party

Before: CHARLES R. CENTER
Chief Administrative Law Judge

DECISION ON MOTION FOR SUMMARY JUDGMENT

On July 25, 2014, the Regional Director of the Atlanta Region of the Federal Labor Relations Authority (Authority), issued a Complaint and Notice of Hearing, alleging that the Department of Veterans Affairs, NF/SG Veterans Health System, Lake City, Florida (Respondent), violated § 7116(a)(1), (5) and (8) of the Federal Service Labor-Management Relations Statute (Statute). The Complaint alleged that the Respondent failed to furnish data in violation of 5 U.S.C. § 7114(b)(4), and conducted a formal meeting without giving the Union an opportunity to be represented in violation of 5 U.S.C. § 7114(a)(2)(A).

The Complaint indicated that a hearing on the allegations would be held on October 8, 2014, and advised the Respondent that an Answer to the Complaint was due no later than August 19, 2014. The Complaint was served by first class mail on Respondent's

designated agent, Elizabeth Shotwell, Department of Veterans Affairs, NF/SG Veterans Health System, 1601 SW Archer Road, Gainesville, Florida 32608, and the Respondent failed to file an Answer to the Complaint.

On September 25, 2014, Counsel for the FLRA 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 the allegations of the Complaint. Accordingly, the GC asserted that there were no factual or legal issues in dispute and summary judgment pursuant to 5 C.F.R. § 2423.27(a) was proper. The Respondent failed to file a response to the Motion for Summary Judgment. On September 30, 2014, the GC filed a Motion to Indefinitely Postpone the Hearing based on Respondent's failure to answer the complaint and moved that the undersigned Judge postpone the hearing pending review of its motion for summary judgment. As I have determined that this case is ripe for summary judgment, a hearing is no longer necessary and the hearing scheduled for October 8, 2014, in Lake City, Florida, is hereby Cancelled. Therefore, the GC's motion to indefinitely postpone the hearing is moot.

DISCUSSION OF MOTION FOR SUMMARY JUDGMENT

The relevant portion of the Authority's Rules and Regulations provides:

(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.*, sections 2429.21 through 2429.23.

In the text 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, the persons to whom it must be sent, and references to the applicable regulations. The plain language of the notice leaves no doubt that Respondent was required to file an Answer to the complaint.

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 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 the failure to do so. In *U.S. Dep't of Transp., Fed. Aviation Admin., Houston, Tex.*, 63 FLRA 34, 36 (2008), the Authority held that the agency's misfiling of a complaint, resulting in its filing an answer two weeks after the deadline, did not demonstrate "extraordinary circumstances" that might constitute "good cause" for the late filing. *See also U.S. Dep't of VA 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, nor did Respondent participate in a prehearing conference conducted pursuant to my Order dated September 15, 2014. That Order was sent to the Respondent via facsimile and with receipt confirmed. Given the Respondent's failure to respond to the complaint, the motion for summary judgment, and my Order, and the absence of good cause for such failures, application of the admission provision of 5 C.F.R. § 2423.20(b) is appropriate. Thus, Respondent has admitted each of the allegations set forth in the Complaint. Accordingly, there are no disputed factual issues in this case, and summary judgment in favor of the General Counsel is justified. Based on the existing record, I make the following findings of fact, conclusions of law, and recommendations:

FINDINGS OF FACT

1. The charge in this proceeding was filed by the Nation Nurses United (NNU), on May 15, 2013.
2. A copy of the charge was served on the Respondent.
3. The Respondent is an agency within the meaning of § 7103(a)(3) of the Statute.
4. The NNU is a labor organization within the meaning of § 7103(a)(4) of the Statute and is the certified exclusive representative of a unit of employees appropriate for collective bargaining at the Respondent.
5. At all material times, the persons listed below occupied the positions with the Lake City division of NF/SG Veterans Health System (VHS), opposite their names:

Leanne Whitlow	Associate Director of Nursing Services
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Laura Schweitzer	Chief Nurse
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Fern Malloy	Nurse Manager, CLC-1
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Ruth Dow	Labor Relations Specialist
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6. At all times material, the persons named in paragraph 5 were supervisors or management officials under 5 U.S.C. § 7103(a)(10) and (11).

7. At all times material, the persons named in paragraph 5 were acting on behalf of the Respondent.
8. At all times material, Odell Anderson was a representative of NNU-VA.
9. On April 10, 2013, and April 17, 2013, the Union, through Anderson, requested that the Respondent, through Schweitzer and Dow, provide a copy of the Long Term Care Institute Survey results for the Lake City Division of the NF/SG VHS. Dow stated that she would need to seek clarification on whether the Survey results could be released to the Union.
10. On April 22, 2013, the Union, through Anderson, again requested that the Respondent, through Schweitzer and Whitlow, provide a copy of the Survey results. Schweitzer and Whitlow stated they would need to seek clarification on whether the Survey results could be released to the Union.
11. In the course of making the requests described in paragraphs 9 and 10, the Union explained that it needed the requested data to help the Union determine if it should request bargaining over changes in policy and procedure made by management based on the Survey results.
12. The information described in paragraphs 9 and 10, was normally maintained by the Respondent in the regular course of business.
13. The information described in paragraphs 9 and 10 was reasonably available.
14. The information described in paragraphs 9 and 10 was necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining.
15. The information described in paragraphs 9 and 10 did not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining.
16. The information described in paragraphs 9 and 10 was not prohibited from disclosure by law.
17. The Respondent did not provide the Union with any of the information described in paragraphs 9 and 10.
18. By the conduct described in paragraph 17, the Respondent failed to comply with the Union's rights under 5 U.S.C. § 7114(b)(4).
19. By the conduct described in paragraphs 17 and 18, the Respondent committed an unfair labor practice in violation of 5 U.S.C. § 7116(a)(1), (5) and (8).

20. At all times material, Susan Campbell and Jaqueline Pachas were nurses in Respondent's Community Living Center One (CLC-1) and bargaining unit employees represented by NNU-VA.
21. On or about April 16, 2013, Campbell complained to Schweitzer and Malloy that an MDS nurse recently hired by management was doing some of the same work being done by Pachas and Campbell on CLC-1. That same day, Schweitzer sent an email to the day tour nurses on CLC-1 regarding a meeting to discuss the MDS nurse position duties and their relationship to the duties of the current nursing staff.
22. The meeting described in paragraph 21 was held on April 19, 2013 in a conference room on CLC-1. Pachas and Campbell attended along with multiple managers.
23. The meeting described in paragraphs 21 and 22 was formal in nature.
24. The meeting described in paragraphs 21, 22 and 23 was held without affording the Union an opportunity to attend.
25. By the conduct described in paragraphs 21 through 24, the Respondent failed to comply with 5 U.S.C. § 7114 (a)(2)(A).
26. By the conduct described in paragraphs 21 through 25, the Respondent committed an unfair labor practice in violation of 5 U.S.C. § 7116(a)(1) and (8).

CONCLUSIONS OF LAW

By the conduct described in the facts set forth above as drawn from the Complaint containing allegations to which the Respondent failed to file an Answer or otherwise demonstrate good cause for such failure, the Respondent admits that it did not comply with the obligations set forth in § 7114 of the Statute requiring it to provide information and give the Union an opportunity to be represented at any formal discussion. Therefore the Respondent violated § 7116(a)(1), (5) and (8) of the Statute.

As a remedy, the Respondent is ordered to provide the information requested by the Union and 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 (Statute), the Department of Veterans Affairs, NF/SG Veterans Health System, Lake City, Florida, shall:

1. Cease and desist from:

(a) Failing to provide the National Nurses United (Union) with information it requested under the Statute.

(b) Failing to notify and afford the Union an opportunity to be represented at meetings about a grievance that constitute formal discussions under the Statute.

(c) In any like or related manner, interfering with, restraining, or coercing bargaining unit employees in the exercise of their rights assured by the Statute.

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

(a) Provide the Union with a copy of the Long Term Care Institute survey results.

(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, NF/SG Veterans Health System, Lake City, Florida, and shall be posted and maintained for 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. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or internet site, or other electronic means, if the Respondent customarily communicates with employees by such means.

(c) Pursuant to § 2423.41(e) of the Authority's Rules and Regulations, notify the Regional Director, Atlanta Region, Federal Labor Relations Authority, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply.

Issued, Washington, D.C., October 3, 2014.



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, NF/SG Veterans Health System, Lake City, Florida, 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 provide the National Nurses United (Union) with a copy of the Long Term Care Institute survey results.

WE WILL NOT fail to provide the Union with information to which it is entitled under the Statute.

WE WILL NOT hold formal discussions concerning a grievance without notifying the Union and giving it an opportunity to be represented.

WE WILL NOT in any like or related manner, interfere with, restrain, or coerce bargaining unit employees in the exercise of their rights assured by the Statute.

(Agency/Respondent)

Dated: _____

By: _____
(Signature) (Title)

This Notice must remain posted for 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, Atlanta Regional Office, Federal Labor Relations Authority, whose address is: 225 Peachtree Street, Suite 1950, Atlanta, GA 30303, and whose telephone number is: (404) 331-5300.