



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

OALJ 15-51

DEPARTMENT OF JUSTICE  
BUREAU OF PRISONS  
FEDERAL DETENTION CENTER  
MIAMI, FLORIDA

RESPONDENT

AND

AMERICAN FEDERATION OF GOVERNMENT  
EMPLOYEES, LOCAL 501, AFL-CIO

CHARGING PARTY

Case Nos. AT-CA-15-0271  
AT-CA-15-0273  
AT-CA-15-0274  
AT-CA-15-0275  
AT-CA-15-0276

Carrie L. McCready  
For the General Counsel

Gail L. Elkins  
For the Respondent

Khalil Abdel  
For the Charging Party

Before: RICHARD A. PEARSON  
Administrative Law Judge

**DECISION ON MOTION FOR SUMMARY JUDGMENT**

On May 11, 2015, the Regional Director of the Atlanta Region of the Federal Labor Relations Authority (the FLRA or Authority), issued a Consolidated Complaint and Notice of Hearing, alleging that the Department of Justice, Bureau of Prisons, Federal Detention Center, Miami, Florida (the Respondent), violated § 7116(a)(1), (5), and (8) of the Federal Service Labor-Management Relations Statute (the Statute) by failing to respond to five information requests made by the American Federation of Government Employees, Local 501, AFL-CIO (the Union) and by refusing to provide the requested information in four of those requests. The Consolidated Complaint indicated that a hearing on the allegations

would be held on July 7, 2015, and advised the Respondent that an answer to the Consolidated Complaint was due no later than June 8, 2015. The Consolidated Complaint was mailed to the Respondent's designated representative, who at that time was Robert Polistena, Labor Relations Specialist, Federal Bureau of Prisons, Human Resources Management Division, Labor Relations Office, 320 First Street, NW, Room 236, Washington, D.C. 20534. The Respondent filed a new Designation of Agency Representative on May 21, 2015, naming Gail L. Elkins, Assistant General Counsel, Federal Bureau of Prisons, Office of General Counsel, Employment Law Branch, 320 First Street, N.W., Suite 252, Washington, D.C. 20534, as its representative, but it did not file an answer to the Consolidated Complaint. On June 22, 2015, the GC filed a Motion to Indefinitely Postpone the Hearing, and I granted the motion on June 23, 2015.

On June 19, 2015, the FLRA General Counsel (GC) filed a Motion for Summary Judgment (MSJ), based upon the Respondent's failure to file an Answer to the Consolidated Complaint, and arguing that by application of 5 C.F.R. § 2423.20(b), the Respondent admitted all of the allegations set forth in the Consolidated Complaint. Accordingly, the GC asserts that there are no factual or legal issues in dispute, and the case is ripe for summary judgment in its favor. As the Respondent has failed to file a response to the MSJ, I have determined that summary judgment in this case is appropriate. Therefore the hearing scheduled for September 15, 2015, in Atlanta, Georgia, is cancelled.

### **DISCUSSION OF MOTION FOR SUMMARY JUDGMENT**

Section 2423.20(b) of the Authority's Rules and 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 Rules and 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 Consolidated 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.

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); and *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 MSJ, the Respondent did not file a response or otherwise offer any explanation for its failure to answer the Consolidated 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 Consolidated 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 Respondent is an agency within the meaning of § 7103(a)(3).
2. The American Federation of Government Employees (AFGE) is a labor organization as defined by 5 U.S.C. § 7103(a)(4) and is the exclusive representative of a unit of employees appropriate for collective bargaining at the Respondent. The Union is an agent of AFGE for the purpose of representing Respondent's employees within that unit.
3. At all times material to this case, the following individuals held the positions opposite their names and have been supervisors or management officials of the Respondent within the meaning of 5 U.S.C. § 7103(a)(10) and (11), and they have been agents of the Respondent and acting on its behalf:

Osmido Izquierdo	Case Management Coordinator
Melissa Laufenberg	Health Services Administrator
Marco Cuero	Human Resources Manager
Corrinne Rijos	Business Office Administrator
4. On December 22, 2014, the Union sent an information request to Izquierdo seeking the mandatory overtime lists for the Correctional System Management Department.

5. On December 22, 2014, the Union sent an information request to Laufenberg seeking the following: (1) daily overtime sign-up sheets; (2) Daily Institutional Rosters; (3) Overtime Sheets; (4) Time and Attendance Records and the Time and Attendance Work Sheets; and (5) the mandatory overtime lists for the Health Services Department.
6. On December 22, 2014, the Union sent an information request to Cuero seeking: (1) a list of investigations authorized by the Respondent; (2) the Warden's Disciplinary Log; and (3) a list of all merit promotions, training opportunities, collateral duty opportunities.
7. On December 22, 2014, the Union sent an information request to Rijos seeking the following: (1) daily overtime sign-up sheets; (2) Daily Institutional Rosters; (3) Overtime Sheets; (4) Time and Attendance Records and the Time and Attendance Work Sheets; and (5) the mandatory overtime lists for the Business Office Department.
8. On December 24, 2014, the Union sent an information request to Cuero seeking the following: (1) a list of employees placed on Absent Without Leave (AWOL) status; (2) all AWOL policies and procedures; (3) a list of employees who have been placed on AWOL status that have exhausted all their sick and annual leave; (4) a list of employees that have been required to submit memoranda requesting to change their leave status after the Respondent placed them on AWOL status and policies and procedures related to requesting memoranda; and (5) a list of employees who have been disciplined because they were placed on AWOL status.
9. The Respondent did not respond to the information requests described in paragraphs 4 through 8.
10. The information described in paragraphs 4, 5, 7, and 8 is normally maintained by the Respondent in the regular course of business.
11. The information described in paragraphs 4, 5, 7, and 8 is reasonably available.
12. The information described in paragraphs 4, 5, 7, and 8 is necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining.
13. The information described in paragraphs 4, 5, 7, and 8 does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining.
14. The information described in paragraphs 4, 5, 7, and 8 is not prohibited from disclosure by law.

## CONCLUSIONS OF LAW

Under § 7114(b)(4) of the Statute, an agency must, upon request, furnish to a union data that is: (1) normally maintained by the agency; (2) reasonably available; (3) necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and (4) not guidance, advice, counsel, or training. The union must establish a "particularized need for the information by articulating, with specificity, why it needs the requested information, including the uses to which the union will put the information, and the connection between those uses and the union's representational responsibilities under the Statute." *IRS, Wash., D.C.*, 50 FLRA 661, 669 (1995). An agency's refusal to provide information that meets these criteria is a violation of § 7116(a)(1), (5), and (8) of the Statute. *Id.*

In addition to the duty to provide information, an agency must respond to an information request in a timely manner, even if the information does not meet the statutory criteria listed above, and it is an independent violation of § 7116(a)(1), (5), and (8) for an agency to fail to respond. *Dep't of HHS, Soc. Sec. Admin., N.Y. Region, N.Y., N.Y.*, 52 FLRA 1133, 1149 (1997).

In this case, the Respondent has admitted that it failed to respond to any of the five information requests filed by the Union; it has also admitted that four of the five information requests met the statutory criteria of § 7114(b)(4). Therefore, it has admitted that its failure to respond, and its failure to provide the information, violated § 7116(a)(1), (5), and (8) of the Statute.

## REMEDY

As a remedy, the Respondent will be ordered to respond to all five information requests and to furnish the information requested in four of the requests, as detailed below. It will also be ordered to post the attached Notice to employees, both on 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 Justice, Bureau of Prisons, Federal Detention Center, Miami, Florida, shall:

1. Cease and desist from:

(a) Failing and refusing to respond to information requests submitted by the American Federation of Government Employees, Local 501, AFL-CIO (the Union).

(b) Failing and refusing to provide the information requested by the Union in three requests submitted on December 22, 2014, and one request submitted on December 24, 2014.

(c) 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 actions in order to effectuate the purposes and policies of the Statute:

(a) Respond to the four information requests submitted by the Union on December 22, 2014, and the one information request submitted by the Union on December 24, 2014.

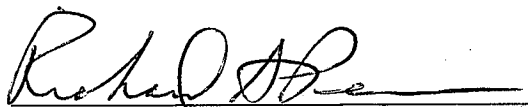
(b) Provide the Union with the information requested in three memoranda submitted by the Union to Osmido Izquierdo, Melissa Laufenberg, and Corrinne Rijos, and dated December 22, 2014, as well as the information requested in a memorandum submitted by the Union to Marco Cuero and dated December 24, 2014.

(c) 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, 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.

(d) In addition to physical posting of paper notices, the attached notice shall be distributed electronically, on the same date, 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.

(e) 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 thirty (30) days from the date of this Order, as to what steps have been taken to comply.

Issued, Washington, D.C., September 21, 2015



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 Department of Justice, Bureau of Prisons, Federal Detention Center, Miami, Florida, 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 respond to information requests submitted by the American Federation of Government Employees, Local 501, AFL-CIO (the Union).

**WE WILL NOT** fail or refuse to provide the information requested by the Union in three requests submitted on December 22, 2014, and one request submitted on December 24, 2014.

**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** respond to the four information requests submitted by the Union on December 22, 2014, and the one information request submitted by the Union on December 24, 2014.

**WE WILL** provide the Union with the information requested in three memoranda submitted by the Union to Osmido Izquierdo, Melissa Laufenberg, and Corrinne Rijos, and dated December 22, 2014, as well as the information requested in a memorandum submitted by the Union to Marco Cuero and dated December 24, 2014.

\_\_\_\_\_  
(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, and whose address is: 225 Peachtree Street NE., Suite 1950, Atlanta, GA 30303, and whose telephone number is: (404) 331-5300.