



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

OALJ 14-09

U.S. DEPARTMENT OF EDUCATION

RESPONDENT

AND

Case No. CH-CA-14-0188

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, COUNCIL 252, AFL-CIO

CHARGING PARTY

Alicia E. Weber
For the General Counsel

Thomas J. Purple, Jr.
For the Respondent

Karen Morris
For the Charging Party

Before: CHARLES R. CENTER
Chief Administrative Law Judge

DECISION ON MOTION FOR SUMMARY JUDGMENT

On May 2, 2014, the Acting Regional Director of the Chicago Region of the Federal Labor Relations Authority (Authority/FLRA), issued a Complaint and Notice of Hearing, alleging that the U.S. Department of Education (Respondent), violated § 7116(a)(1) and (8) of the Federal Service Labor-Management Relations Statute (Statute). The Complaint alleged that the Respondent stopped deducting union dues from an employee prior to her anniversary date, failed to notify the Union of a dues revocation submitted by the employee, and had not reimbursed the Union for the missing dues in violation of § 7115 of the Statute.

The Complaint indicated that a hearing on the allegations would be held on July 23, 2014, and advised the Respondent that an Answer to the Complaint was due no later than May 27, 2014. The Complaint was served by first class mail on Thomas J. Purple, Jr., Acting Director, Workforce Relations, Human Capital and Client Services,

U.S. Department of Education, Mail Stop 4737, 400 Maryland Avenue, SW., Office #2E336 Washington, DC 20202, and the Respondent failed to file an Answer to the Complaint.

On June 4, 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 the Respondent had admitted all the allegations of the Complaint pursuant to 5 C.F.R. § 2423.20(b). 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.

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 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. In *U.S. Dep't of Transp., Fed. Aviation Admin., Hous., Tex.*, 63 FLRA 34, 36 (2008), the Authority held that the agency's misfiling of the 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 Veterans Affairs Med. Ctr., Kansas 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. Given the Respondent's failure to respond to either the complaint or the motion for summary judgment, and the absence of good cause for such failure, application of the admission provision of § 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. a. The charge in this proceeding was filed by the Union on January 9, 2014.
- b. The amended charge in this proceeding was filed by the Union on February 4, 2014.
- 2. A copy of the charge and amended charge were served on the Respondent.
- 3. The Respondent is an agency within the meaning of section 7103(a)(3) of the Statute.
- 4. a. The American Federation of Government Employees, AFL-CIO is a labor organization within the meaning of section 7103(a)(4) of the Statute and is the certified exclusive representative of a unit of employees at the Respondent.
- b. The Union is an agent of the American Federation of Government Employees, AFL-CIO for the purpose of representing unit employees at the Respondent.
- 5. a. At all material times, the following individuals held the positions opposite their names and have been supervisors or management officials within the meaning of sections 7103(a)(10) and (11) of the Statute and agents of the Respondent acting in its behalf:

Thomas Purple	Director, Workforce Relations (Acting)
Melissa Hatfield	Director, Workforce Relations (Former)
- b. At all material times, the following individual held the position opposite his name and has been an agent of the Respondent acting on its behalf:

Anthony E. Bell, Jr.	Human Resources Specialist (Contractor)
----------------------	---
- 6. Effective the pay period that began on February 3, 2008 and ending on February 16, 2008, the Respondent first deducted union dues from bargaining unit employee Jean Kelly's paycheck.

7. Effective the pay period beginning on June 30, 2013 and ending on July 13, 2013, the Respondent stopped deducting dues from Kelly's paycheck.
8. The parties' collective bargaining agreement requires dues revocations to be submitted during the thirty (30) calendar day period beginning before the anniversary date of the employee's first deduction. The revocation will be effective as of the first full pay period after the anniversary of the first deduction. If an employee does not submit a dues revocation form (SF-1188) in that period, the Respondent is required to continue the employee's dues withholding allotment and to return the form to the employee with an explanation concerning the appropriate time for resubmission. The Respondent's designated Labor Relations Officer must notify the Union of revocations submitted by its members no later than five (5) workdays after receipt of the revocation.
9. The Respondent did not notify the Union of a dues revocation submitted by Kelly.
10. In November 2013, the Union, through Chief Steward Karen Morris, notified the Respondent, through Purple and Bell, that the Respondent improperly revoked Kelly's dues allotment prior to her anniversary date. Respondent has not, to date, reimbursed the Union for the missing dues.

CONCLUSIONS OF LAW

In admitting the facts set forth in the Complaint by virtue of its failure to file an Answer or otherwise demonstrate good cause for such failure, the Respondent failed to honor its obligations under § 7115 of the Statute to make the appropriate allotment of dues to the Union and to only process dues revocations at one-year intervals. Therefore, the Respondent violated § 7116(a)(1) and (8) of the Statute.

As a remedy, the Respondent is ordered to reimburse the Union for the dues it would have received but for the Respondent's error, the details of which can be resolved in compliance proceedings. *U.S. Dept' of Veterans Affairs, VA Med. Ctr., Martinsburg, W. Va.*, 67 FLRA 400, 403 (2014). This is a remedy the Authority traditionally orders for this type of violation. *VA Lakeside Med. Ctr., Chicago, Ill.*, 12 FLRA 244, 247-248 (1983); *U.S. Army, U.S. Army Materiel Dev. & Readiness Command, Warren Mich.*, 7 FLRA 194, 199-205 (1981). 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 Authority's Rules and Regulations and § 7118 of the Federal Service Labor-Management Relations Statute (Statute), the U.S. Department of Education, shall:

1. Cease and desist from:

(a) Failing to properly deduct the regular and periodic dues owed to the American Federation of Government Employees, Council 252, AFL-CIO (Union) by stopping Jean Kelly's dues deduction prematurely.

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

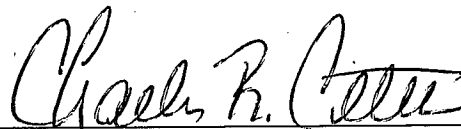
2. Take the following affirmative actions in order to effectuate the purposes and policies of the Statute:

(a) Reimburse the Union for the dues the Union would have received had it not unlawfully failed to deduct them.

(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 of Workforce Relations, 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 section 2423.41(e) of the Authority's Rules and Regulations, notify the Regional Director, Chicago Regional Office, 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., June 19, 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 U.S. Department of Education, 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 NOT fail to properly deduct and remit the regular and periodic dues owed to the American Federation of Government Employees, Council 252, AFL-CIO (Union), from the pay of bargaining unit employees.

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.

WE WILL reimburse the Union for the dues it would have received had we not unlawfully failed to deduct them.

(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, Chicago Regional Office, Federal Labor Relations Authority, whose address is: 224 S. Michigan Avenue, Suite 445, Chicago, IL 60604, and whose telephone number is: (312) 886-3465.