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

OALJ 25-3

U.S. DEPARTMENT OF VETERANS AFFAIRS
JOHN J. PERSHING VA MEDICAL CENTER
POPLAR BLUFF, MISSOURI
Respondent

And

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
LOCAL 2338, AFL-CIO
Charging Party

CH-CA-23-0107

Alicia Weber
For the General Counsel

Matthew Kortjohn
For the Respondent

Kevin Ellis
For the Charging Party

Before: RICHARD A. PEARSON
Administrative Law Judge

DECISION ON MOTIONS FOR SUMMARY JUDGMENT

In this case, a union's effort to investigate whether the agency was improperly denying employee leave requests and forcing them to work overtime was nipped in the bud by the joint stubbornness and rigidity of both parties. Rather than sitting down with management and trying to find a mutually acceptable solution to the union's needs, the union refused to modify its request and insisted on obtaining information in a format that was incompatible with the agency's recordkeeping system. Meanwhile, agency officials sat on their hands and ignored the union's modified data request for nearly three months.

The FLRA's General Counsel seems to have recognized that the union was at least partly to blame for this administrative standoff, as its complaint accuses the agency only of unreasonable delay, not of rejecting the underlying information request. This simplifies the case

for me, as I am not called upon to evaluate whether the union had a particularized need for the information or whether the information was reasonably available; I simply need to determine whether it was reasonable for the agency to take eleven weeks to respond to a request that it insists was "identical" to an earlier request. On its face, eleven weeks appears to be unreasonably long for such a task, and indeed there are no extenuating circumstances that might justify a lengthy review on the agency's part. Thus I conclude that the agency violated Section 7114(b)(4) of the Statute.

This outcome will not be particularly satisfying to either the union or the agency. As a "remedy" for the agency's unfair labor practice, the agency will be required to post a notice promising not to unreasonably delay its future responses to data requests, but the union will not have obtained the overtime and other related information that it requested, even though the agency had offered at the outset of this saga to meet the union halfway in extracting that information. The agency will not be happy to learn that it is indeed required to respond, within a reasonable time, to data requests, even if those requests appear repetitive. A more satisfactory outcome for both sides, in the future, might be to work more assertively for consensus and not to ignore or forget about information requests. My twenty-five years of hearing such disputes, however, does not leave me optimistic that any positive lessons will be learned.

STATEMENT OF THE CASE

This is an unfair labor practice (ULP) proceeding under the Federal Service Labor-Management Relations Statute (the Statute), Chapter 71 of Title 5 of the U.S. Code, 5 U.S.C. §§ 7101-7135, and the Rules and Regulations of the Federal Labor Relations Authority (the FLRA or the Authority), 5 C.F.R. part 2423.

On December 12, 2022, the American Federation of Government Employees, Local 2338, AFL-CIO (the Union or Charging Party) filed a ULP charge in this case against the U.S. Department of Veterans Affairs, John J. Pershing VA Medical Center, Poplar Bluff, Missouri (the Agency or Respondent). After investigating the charge, the Regional Director of the Chicago Region of the FLRA issued a Complaint and Notice of Hearing, on behalf of the FLRA's General Counsel (GC), against the Respondent on June 15, 2023, alleging that the Respondent violated §§ 7114(b)(4) and 7116(a)(1), (5), and (8) of the Statute by unreasonably delaying its response to a request for information from the Union. On July 10, 2023, Respondent filed its Answer to the Complaint, admitting some of the factual allegations but denying that it had violated the Statute.

On September 11, 2023, the GC filed a Motion for Summary Judgment (MSJ), asserting that the facts of the case were essentially undisputed, and that those facts demonstrated that Respondent had violated the Statute. On September 18, 2023, the Respondent filed a Cross-Motion for Summary Judgment (Cross MSJ), asserting that the record facts demonstrated that it had not violated the Statute and requesting that judgment be entered in its favor. The GC filed a brief opposing the Cross MSJ (GC Response) on September 20, 2023. At a subsequent conference call with the parties, counsel agreed that the case could be resolved without a hearing, and they further agreed to enter into a stipulation of fact that would eliminate any remaining factual disputes. The parties submitted a Joint Stipulation on September 27, 2023, and on that same date I issued an Order Indefinitely Postponing Hearing. At that time the record was closed.

DISCUSSION OF MOTIONS 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 the U.S. District Courts under Rule 56 of the Federal Rules of Civil Procedure. *Dep't of VA, VA Med. Ctr., Nashville, Tenn.*, 50 FLRA 220, 222 (1995). The parties in this case have submitted exhibits in support of their motions, and after reviewing these documents fully, I agree with counsel for both parties that there are no genuine issues of material fact in this case.[1] Therefore it is appropriate to decide the case on the motions for summary judgment, and I hereby cancel the hearing. Below I will summarize the material facts that are not in dispute, and I will then make conclusions of law and recommendations.

FINDINGS OF FACT

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 nationwide consolidated units of Department of Veterans Affairs employees. The Union is an agent of the AFGE for the purpose of representing bargaining unit employees of the Respondent. The Respondent is an agency within the meaning of § 7103(a)(3) of the Statute. During the events of this case, Angela Bostic, Supervisory Human Resources Specialist; and DeAngela Carr, Human Resources Specialist, were agents of the Respondent and acting on its behalf.

The General Counsel begins its summary of the facts of the case with the Union's September 16, 2022 request for information. Complaint at ¶ 6; MSJ at 1-2. The Respondent begins with an earlier information request, filed by the Union on May 12, 2022. Cross MSJ at 2. Both accounts are correct: the GC's complaint, and the alleged unfair labor practice, appropriately focus on the Agency's delayed response to the September request, but the Respondent rests its defense partially on the fact that the Union had made a similar (or in the Respondent's words, "identical") request in May. Cross MSJ at 1. Like Maria in "The Sound of Music," I'll start at the beginning.

In the early part of 2022,[2] the Union had been hearing complaints from employees that they were being required to work overtime and that their leave requests were being denied, which was having a disparate impact on bargaining unit employees. MSJ, GC Ex. 5 at 1.[3] In order to investigate these complaints, Union Steward Todd Shimkus submitted a request for information to Agency management in a letter dated May 12. GC Ex. 5. Specifically, he requested "a Microsoft Excel Spreadsheet for all employees who worked overtime from 1st of April 2022 through 31st of May 2022." *Id.* For each such employee, the letter requested

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[1] In its Cross MSJ, the Respondent stated that it disputed the facts asserted in the GC's MSJ – specifically the assertion that an Agency representative had conceded the information requested by the Union was readily accessible. Cross MSJ at 2. This did not, however, constitute a factual dispute, but rather a dispute as to how to characterize the facts in the record. Moreover, the parties' Joint Stipulation addresses this issue and further eliminates any factual dispute.

[2] Hereafter, all dates will refer to 2022 unless otherwise noted.

[3] All GC exhibits were filed as part of its motion for summary judgment, and all Respondent exhibits were filed as part of its Cross MSJ.

additional information such as the employee's service line and the amount of voluntary and mandatory overtime worked. The request indicated that the Agency did not need to provide employees' personally identifiable information and that the Union would keep the information confidential. *Id.* The Union further stated that it needed the information to determine whether the reports of disparate denials of leave and mandatory overtime were accurate or not. If they were accurate, the Union would use the information to file either a grievance or a ULP, or report it to the appropriate government agencies; if the reports were not substantiated, then the Union would use the information to dispel the allegations to employees. *Id.*

The Agency did not respond to this information request immediately. On May 31, an Agency official emailed a Union representative and indicated that the Agency was going to need more time to process the Union's various information requests, due to staff turnover in the ER/LR office. Resp. Ex. 1, Attachment B. Shimkus followed up with an email to the Agency on June 14, inquiring about the status of the Union's May 12 request, and he did so again on June 28. GC Ex. 5 at 4. A few minutes after Shimkus sent his June 28 email, Angela Bostic of the Agency responded. She stated in an email:

> This information does not exist in our system of records.
> Additionally, this info request is for "all employees[.]" This is broad and would include employees AFGE does not represent.
>
> We are willing to discuss this request, and try to negotiate how to get you what you want. We can pull the overtime reports in VATAS. If you revise and resubmit this request, please provide the specific names or work groups of the employees whose information you want, along with the connection between the information and your representational duties.

Id. at 3; it was also submitted with the Cross MSJ as Attachment A to Resp. Ex. 1.

Later that same afternoon on June 28, the Union's 1st Vice-President, Harold Lampley, emailed Bostic, apparently to rebut the first sentence in her email. Lampley wrote, "This is information that can be obtained from VATAS, in which [sic] the Agency has access to." He also clarified that the Union only wanted information regarding bargaining unit employees. GC Ex. 6 at 2-3. Bostic emailed a response to Shimkus on July 8: "The specific information you requested . . . does not exist within our system of records. We responded with other options [sic] see the highlighted portion of the original response." *Id.* at 1. The record contains no further direct communications between the Union and management regarding the May 12 information request; instead, the Union filed a ULP charge objecting to the Agency's refusal to provide the requested information. That ULP charge, CH-CA-22-0431, was apparently withdrawn later by the Union. *See* Resp. Exs. 1 and 2.

On September 16, Union Steward Jean Allen (with the assistance of Mr. Shimkus) submitted a new information request to the Agency, based largely on the earlier, May 12 request. GC Ex. 1. Ms. Allen modified the information request on September 19; this request was essentially the same as the September 16 request, while correcting a few errors.[4] GC Ex. 2;

[4] The September 16 letter requested information "from 1st of January 2021 to 31st to present time." The

see also Allen Affidavit at ¶ 5; Shimkus Affidavit at ¶ 4. It requested "a Microsoft Excel Spreadsheet for all employees who worked overtime from 1st of January 2021 to present time," with itemized information about the employees and their overtime. MSJ, GC Ex. 2 at 1. In these respects the September request paralleled the May request, but the September request also sought "a spreadsheet outlining the minimal staffing requirements for each of the service lines in which mandatory overtime was enforced, the length of time each position was vacant and the reason for the vacancy." *Id.*[5]

Shimkus followed up on Allen's information request by emailing the Agency on September 27 and again on November 29, but the Union heard nothing from the Agency until December 2. On that date, DeAngela Carr emailed the Union; after reciting the information requested by the Union, she stated:

> [I]n response to your September 19, 2022 information request . . . The Agency responds: This information does not exist in our system of records. Additionally this info request is for "all employees[.]" This is broad and would include employees AFGE does not represent. We are willing to discuss this request, and try to negotiate how to get you what you want. We can pull the overtime requests in VATAS, if you revise and resubmit this request, please provide the specific names or work groups of the employees whose information you want, along with the connection between the information and your representational duties.

GC Ex. 4. A few days after receiving this reply from the Agency, the Union filed its current ULP charge. Subsequently, pursuant to discussions among the parties regarding their respective motions for summary judgment, the parties entered into the following Joint Stipulation:

> Overtime records do exist in the VA Time and Attendance System, retrievable by employee name and work unit. Respondent could manually pull the overtime records for all employees by retrieving them by each employee's name. Respondent contends it would be burdensome to do so, and as a result the information is not reasonably available.

Joint Stipulation of September 27, 2023.

September 19 letter clarified this to request information "from 1st of January 2021 to present time." The September 16 letter asked for a management response by June 14 (a date that had already passed), while the September 19 letter requested a response by September 30. *Compare* GC Ex. 1 at 1 *with* GC Ex. 2 at 1. Hereafter, I will refer only to the language of the September 19 information request.

[5] Shimkus later explained that the Union sought a broader range of information – regarding both overtime and vacancies – for a longer period of time, "because the scope of the Union's investigation into mandatory overtime issues had expanded and changed." Shimkus Affidavit at ¶ 10.

POSITIONS OF THE PARTIES

General Counsel

While the exhibits in this case focus largely on whether the Agency was required to furnish the Union with the wide range of overtime information requested by the Union, the GC's Complaint and summary judgment motion are much more narrowly focused. The complaint, noticeably, does not accuse the Agency of unlawfully refusing to provide the information; rather, it simply alleges that the Agency "unreasonably delayed in responding to the Union's request." Consistent with this, the GC's summary judgment motion hones in on the eleven weeks that it took the Agency – from September 19 to December 2 – to respond to the Union. The GC argues that historically such lengthy delays have been considered unreasonable by the Authority, and also that the delay was unreasonable in light of the particular facts of this case. MSJ at 4, 6.

The GC first states its basic premise that under § 7114(b)(4) of the Statute, an agency has a duty not only to furnish information meeting the statutory criteria, but also to respond to information requests in a reasonable time. *Id.* at 4 (citing *Dep't of the Treasury, IRS, Office of the Chief Counsel*, 71 FLRA 281, 283 (2019) (*Treasury*); and *SSA, Balt., Md.*, 60 FLRA 674, 679 (2005) (*SSA Baltimore*)). According to the GC, these cases demonstrate that a delayed response independently violates the Statute, even if the requested information doesn't exist or if the union failed to establish a need for the information. *SSA Baltimore* at 679; *Dep't of HHS, SSA, N.Y. Reg., N.Y., N.Y.*, 52 FLRA 1133, 1149-50 (1997). Therefore, while the Agency here is not charged with unlawfully withholding the requested information, it violated the Statute by delaying its response for eleven weeks.

The GC points to several cases in which the Authority has found responses of less than eleven weeks to be unreasonable: *see, e.g., Treasury*, 71 FLRA at 282 (seven weeks); *Dep't of Justice, U.S. INS, U.S. Border Patrol, El Paso, Tex.*, 43 FLRA 697, 710 (1991) (*Border Patrol*) (six weeks). The GC argues that there are no extenuating circumstances or other facts that would justify the additional time it took the Agency to respond here; rather, these facts demonstrate just how quickly the Agency could have responded. MSJ at 6. As in the *Border Patrol* case, the Agency's ER/LR office was already familiar with the information requested on September 19. *See* 43 FLRA at 710, 731. When the Agency ultimately responded to the September 19 request, and denied it, the Agency's representative used language virtually identical to its June 28 denial of the Union's May request. If the Agency were going to deny the information request on the same grounds, and in the same language, as it had done in June, it certainly did not need several weeks to do so. MSJ at 6.

In its response to the Respondent's Cross MSJ, the General Counsel seeks to rebut the Respondent's argument that it had no duty to respond to an information request that was identical to a request it had already denied. The GC asserts that such an argument "finds no support in caselaw." GC Response at 1. The GC points to the words of the ALJ in *Health Care Financing Admin.*, 56 FLRA 503, 514 (2000) (*HCFA*), which were affirmed by the Authority: "Even if, as the [Agency] contends, the Union was aware of the [Agency's] position . . . from a previous ULP case[,] [a] union can not be required to infer an agency's position from an [earlier] event." GC Response at 2. In our case, the GC insists that while the Union's September request was similar to its May request, it was different in significant respects: not

only did the September request ask for information covering a nearly two-year period, rather than two months, but it asked for an entirely new category of information, the data regarding minimal staffing requirements and the durations of vacancies. Accordingly, the GC insists that the Respondent's entire argument is without merit. *Id.* at 3-4.

Respondent

The Respondent summed up its position at the outset of its Cross MSJ: "The Agency had already informed the Union in a previous request for information that the information sought did not exist. Therefore, when the Union resubmitted an identical request four months later, the Agency had no obligation to respond at all, let alone within a particular time frame." Cross MSJ at 1.

The Respondent notes that when the Union submitted its initial data request in May, the Agency had advised the Union that the information "did not exist" in its system of records, and it encouraged the Union to revise its request in a format that would enable the Agency to extract the information needed. The Union did not take Ms. Bostic up on her suggestion after the initial request, and instead it came back three months later and submitted another data request that "was identical in all respects to the request it had sent on May 12, 2022, with the exception of the date range of the information being requested." Cross MSJ at 3. Respondent argues that it would be "absurd" to require an agency to respond to such a request, insisting there is no case law to support the GC's claim, and arguing that the case cited by the GC – *SSA Baltimore* -- is not comparable to our situation. *Id.* at 4. In *SSA Baltimore*, the union had resubmitted a data request after subsequent events showed the existence of a document the parties were previously unaware of. 60 FLRA at 683 n.5. In our case, nothing had changed from May to September, and the Union's "identical request for the same information" did not trigger a duty for the Agency to respond. Cross MSJ at 4-5.

ANALYSIS AND CONCLUSIONS

It is unnecessary to begin here with a summary of the case law regarding data requests under § 7114(b)(4) of the Statute, because most of the legal issues that arise in such cases are not in dispute in our case. While the Union and the Agency initially fought over some of these issues when the Union's ULP charge was being investigated, the narrow scope of the General Counsel's Complaint has made them moot. For instance, the Union initially insisted that it was entitled to the information in its September 19 request, but the General Counsel has not alleged this. Therefore, I do not have to determine whether the Union demonstrated a particularized need for the information, or whether the information was normally maintained or reasonably available in the form sought by the Union. And while the Agency initially insisted that the information was not reasonably available because it would have to take additional steps to extract that information from its time-and-attendance system, the GC is not alleging that the Agency was required to take those additional steps. The GC is simply alleging that it was unreasonable for the Agency to take from September 19 to December 2, 2022, to respond.

Section 7114(b)(4) requires an agency to furnish data requested by a union when the data meets specific criteria. 5 U.S.C. § 7114(b)(4). An agency's failure to provide information meeting these criteria violates § 7116(a)(1), (5), and (8) of the Statute. *See Internal Revenue Serv.*, 50 FLRA 661 (1995) (*IRS*), and cases cited therein. While the Authority sought, in the

IRS decision, to reformulate an overall analytical framework for resolving disputes over information requests, it has always held that the failure to furnish a union with necessary information is an unfair labor practice. *See, e.g., Bureau of Alcohol, Tobacco & Firearms, Nat'l Office & W. Reg., S.F., Cal.*, 8 FLRA 547, 555-57 (1982); *Veterans Admin. Reg'l Office, Denver, Colo.*, 10 FLRA 453 (1982). Conversely, an agency has no obligation to furnish documents that don't exist, and it cannot be guilty of a ULP for refusing to do so. *U.S. Naval Supply Ctr., San Diego, Cal.*, 26 FLRA 324, 326 (1987). But even when requested information doesn't exist, the agency is nonetheless required to notify the union of this fact. As the Authority explained in the latter case, "section 7114(b)(4) of the Statute requires an agency to reply to a request for information from an exclusive representative even if the response is that the information sought does not exist." *Id.* at 326-27. Thus, it noted, "a reply from the Respondent was necessary for the Union's full and proper understanding of the disciplinary action against the employee and for the Union to effectively represent the grievant in the related grievance." *Id.*

Presumably, the Respondent in our case understands and agrees with these principles, as it did respond to the Union's May and September data requests by stating, among other things, that the information sought by the Union "does not exist in our system of records." GC Ex. 5 at 3; GC Ex. 4. Authority precedent goes further, however: it has held that "an agency has the responsibility to respond to the request in a timely manner and a separate duty to provide the requested documents." *Treasury*, 71 FLRA at 283, citing precedent dating back to 1983: *Bureau of Prisons, Lewisburg Penitentiary, Lewisburg, Pa.*, 11 FLRA 639, 641-42 (1983). Determining when a response is timely will usually involve an examination of the particular facts and context of each case. *Treasury* at 283. Therefore, even if the information sought by a union does not exist, the agency must advise the union that it doesn't exist, and it must do so in a reasonable period of time.

In our case, the Respondent never actually argues that its December 2 response to the Union's September 19 request was timely; instead, it argues that it had "no obligation at all to respond" to the September request, because it had previously responded to the Union's "identical" request in June. Cross MSJ at 1. This is simply wrong, both factually and legally.

First of all, the Union's September request was by no means identical to the May request. Respondent concedes this in the statement of facts of its brief, saying that the September request "was identical in all respects . . ., with the exception of the date range of information requested." *Id.* at 3. Nevertheless, Respondent continues to refer to the September request as "identical" to the May request. I don't think it is necessary to quote a dictionary to conclude that a request for two months' worth of information is not identical to a request for two years' worth of information. Furthermore, the September request also asked for "a spreadsheet outlining the minimal staffing requirements for each of the service lines in which mandatory overtime was enforced, the length of time each position was vacant, and the reason for the vacancy." This information is significantly different, not just in quantity but in quality, from the Union's May request for a breakdown of employees' overtime. Therefore, the factual premise of the Respondent's sole defense is mistaken.

However, even if the Union's September request had been identical to its May request, the Respondent was still obligated to respond to it, and to do so in a timely manner. The Respondent cites no authority for its argument that it had no duty to respond, and in *HCFA*, 56 FLRA at 514, a similar argument was rejected. There, the agency failed to respond to requests for information relating to the filling of two vacancies; it argued that it had previously denied the same type of information in an earlier case. The judge ruled that a union cannot be expected to infer an agency's position on an information request from earlier events, and that the agency's failure to respond violated the Statute. *Id.* In *Internal Revenue Serv., Austin District Office, Austin, Tex.*, 51 FLRA 1166, 1178 (1996), the Authority rejected an agency's argument that it should not be required to furnish information to a union when it had previously given that information to the union. The only way that the Union in our case could properly understand the Agency's position regarding the information it sought was for the Agency to respond to its request, even if the answer is "no" or that it doesn't exist. *See Naval Supply Center*, 26 FLRA at 326-27.

This brings us to the final step in deciding this case: was the Agency's response on December 2 provided to the Union "in a timely manner" or a "reasonable period of time"? As noted earlier, Respondent never even attempts to argue that its response was timely. On its face, seventy-four days, or almost eleven weeks, is an awfully long time to respond to the Union's request, but it is conceivable that extenuating circumstances might justify it. By comparison, after the Union submitted its May 12 information request, a representative from the Agency's ER/LR office wrote to the Union on May 31 that he was going to need more time to respond to that request, because he was dealing with many information requests and there had been significant staff turnover in his office. Resp. Ex. 1, Attachment B. A similar request by the Agency in September would have demonstrated some good will on the Agency's part and helped explain the need for additional time to respond; but of course no such request was made. And most glaringly, when the Agency did respond to the information request on December 2, its response was virtually identical to its June 28 response, incorporating even the punctuation mistakes from the earlier letter. The Agency had not, as far as the record shows, performed any search of its records between September and December. Even though the Agency had indicated when denying the May request that it could pull overtime records from VATAS to obtain the information, the December response gives no indication that the Agency had done anything on its own to obtain those records, or that obtaining that data would be unreasonably difficult.

In short, when Ms. Carr drafted her December 2 response to the Union, she simply copied verbatim the Agency's response from June 28. This did not require any appreciable time or effort, and it certainly did not require eleven weeks to produce. Authority case law, cited by the GC and the Respondent, includes cases where delays of six or seven weeks have been found unreasonable, and where a delay of three weeks was found acceptable. *Compare IRS*, 71 FLRA at 283, and *Border Patrol*, 43 FLRA at 710, *with U.S. Dep't of Justice, Fed. BOP, Fed. Corr. Inst. Fort Dix, N.J.*, 64 FLRA 106, 110 (2009). Trying to apply the factual circumstances of those cases to ours is a fruitless endeavor, because it is clear from the record that there are no extenuating circumstances that might explain or justify the seventy-four-day delay. The Agency's cut-and-paste response cannot justify its inaction.

Therefore, I conclude that the Respondent violated its duty under § 7114(b)(4) of the Statute by taking an unreasonable period of time to respond to the Union's September 19, 2022 data request. In doing so, the Respondent also violated § 7116(a)(1), (5), and (8) of the Statute.

That is all I am asked to decide in this case, but I feel the need to say more, as I alluded in the introduction to this decision. After hearing, and trying to resolve, unfair labor practice complaints for nearly twenty-five years, I have found that disputes over information requests under 7114(b)(4) are among the most unproductive and inefficient disputes that I see. The Authority has tried to create an analytical framework for handling information requests that "facilitate and encourage the amicable settlements of disputes," as well as the exchange of information. *IRS*, 50 FLRA at 670. The framework is intended to encourage, and to incentivize, both union and management officials to "consider, and as appropriate, accommodate their respective interests and attempt to reach agreement on the extent to which requested information must be disclosed." I believe this framework is sound, but in too many cases, one or the other, or both, of the parties lose sight of the forest for the trees. They get caught up in the technical details of evaluating "particularized need" and "representational responsibilities," and they encrust their communications with lengthy, boilerplate language that causes their readers' eyes to glaze over. These communications seem geared more toward litigation than resolution. And perhaps most frustratingly, the participants often neglect to simply pick up a telephone or walk over to their counterpart's office and have a straightforward conversation with the goal of reaching a compromise.

The case at bar is an example of this. I have already ruled that the Agency was guilty of unreasonably delaying its response to the Union's September 19 request, but the Union officials should be looking in the mirror to find better and faster ways of getting information they need. Throughout the GC's investigation of the Union's several related ULP charges here, Agency officials rightly emphasized to the GC that they had expressed their willingness to discuss the Union's request and to figure out "how to get you what you want." Ms. Bostic offered on June 28 to pull overtime records from the VATAS system if the Union would specify whose information it wanted. Mr. Lampley then immediately replied to Bostic, but he simply repeated Bostic's statement that the information was accessible in VATAS, without engaging in her plea to discuss the matter in order to get the Union the information. He seems to have placed all the responsibility on the Agency for solving the problem and ignored her statement that more specificity was required. Both sides here seemed content to simply exchange emails and repeat their positions. But on June 28 the ball was squarely in the Union's court: it had the opportunity to engage directly with Ms. Bostic and help her identify the sought-after information, but they (Lampley and Shimkus) ignored that opportunity and proceeded instead to litigation -- litigation which ultimately proved fruitless and resulted in a repeated (and equally fruitless) exchange of emails five months later. That second exchange of emails again afforded the Union the chance to sit down with Agency officials and work out a mutually acceptable way of obtaining the Union's data, and again the Union let the ball fly right by. It almost seems as if the Union was more interested in scoring legal points than in obtaining information. (Information, it turns out, that they never received, and which this decision will not rectify.) In these circumstances, it is no wonder that the GC decided not to accuse the Agency of unlawfully refusing to provide the information. Unfortunately for the Agency, despite its constructive efforts in June, it let the Union's September request slip through the cracks in its Inbox for three more months, leading us to an outcome that pleases nobody and vindicates nobody. The Authority has outlined a process that allows unions and agencies to work cooperatively to resolve information requests consensually, but it requires both sides to buy into that process for it to work.

As I noted at the outset, all I can do to remedy the Agency's unfair labor practice is to require it to post a notice to employees, advising them that the Agency will respond to information requests within a reasonable period of time. The Union could have gotten much more -- over two years ago -- if it had sought compromise rather than litigation.

Therefore, the General Counsel's Motion for Summary Judgment is Granted, and the Respondent's Cross-Motion for Summary Judgment is denied.

Accordingly, I 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, John J. Pershing VA Medical Center, Poplar Bluff, Missouri (the Respondent) shall:

1. Cease and desist from:

   (a) Failing or refusing to respond in a timely manner to requests for information filed by the American Federation of Government Employees, Local 2338, AFL-CIO (the Union).

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

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

   (a) 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 Medical Center 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.

   (b) In addition to the physical posting of paper notices, disseminate a copy of the Notice electronically, on the same day as the physical posting, through the Respondent's email, intranet, or other electronic media customarily used to communicate with bargaining unit employees. The message of the email transmitted with the Notice shall state, "We are distributing the attached Notice to you pursuant to an order of an Administrative Law Judge of the Federal Labor Relations Authority in Case Number CH-CA-23-0107."

(c) Pursuant to § 2423.41(e) of the Rules and Regulations of the Authority, notify the Regional Director, Chicago 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., December 3, 2024

Richard A. Pearson Digitally signed by Richard A. Pearson
Date: 2024.12.03 13:58:19 -05'00'

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 U.S. Department of Veterans Affairs, John J. Pershing VA Medical Center, Poplar Bluff, Missouri, 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 NOT unreasonably delay in responding to requests for information from the American Federation of Government Employees, Local 2338, AFL-CIO (the Union).

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

WE WILL respond in a timely manner to requests for information filed by the Union.

_____

(Agency/Activity)

Date: _____ By: _____

(Signature) Medical Center 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 Regional Director, Chicago Region, Federal Labor Relations Authority, whose address is: 224 S. Michigan Ave., Suite 445, Chicago, IL 60604, and whose telephone number is: (872) 627-0020.