



FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C. 20424

OALJ 24-16

U.S. DEPARTMENT OF JUSTICE, FEDERAL BUREAU
OF PRISONS, FEDERAL CORRECTIONAL COMPLEX
HAZELTON, BRUCETON MILLS, WEST VIRGINIA

RESPONDENT

Case No. WA-CA-23-0168

AND

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 420, AFL-CIO

CHARGING PARTY

Pauline Nguyen
For the General Counsel

Kara Berlin
For the Respondent

Matthew Cox
For the Charging Party

Before: RICHARD A. PEARSON
Administrative Law Judge

DECISION ON MOTION FOR SUMMARY JUDGMENT

On August 1, 2023, the Regional Director of the Washington Region of the Federal Labor Relations Authority (the Authority) issued a Complaint and Notice of Hearing in this case, alleging that the Federal Bureau of Prisons, Federal Correctional Complex Hazelton, Bruceton Mills, West Virginia (the Respondent or the Agency) violated § 7116(a)(1), (5), and (8) of the Federal Service Labor-Management Relations Statute (the Statute) by failing 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 October 29, 2024, and advised the Respondent that an Answer to the Complaint was due no later than August 28, 2023. The Respondent did not file an Answer to the Complaint.

On November 28, 2023, 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 had therefore admitted all 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 has not filed a response to the Motion for Summary Judgment. On June 14, 20224, I issued an order postponing the hearing in this case indefinitely.

PROCEDURAL BACKGROUND

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 Authority or FLRA), 5 C.F.R. parts 2423 and 2429.

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(b) of the Authority's 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 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 must be sent, and references to the applicable regulations. The Regional Director also advised 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. 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); *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 GC 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. 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, Local 420, AFL-CIO (the Union or Charging Party) filed the charge in this proceeding on January 11, 2023, and a copy was served on the Respondent.
2. The Union filed the first amended charge in this proceeding on July 28, 2023, and a copy was served on the Respondent.
3. The Respondent is an agency within the meaning of § 7103(a)(3) of the Statute.
4. 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 Federal Bureau of Prisons employees, which include employees of the Respondent (the unit).
5. The Union is an agent of AFGE for the purpose of representing the unit employees employed at the Respondent.

6. At all times material to this case, the following individuals held the positions opposite their names and have been supervisors or management officials of Respondent within the meaning of § 7103(a)(10) and (11) of the Statute and agents of Respondent acting on its behalf.

Stanley Lovett	Complex Warden
Jennifer Hinton	Supervisory Labor Relations Specialist

7. On December 1, 2022, the Union requested in writing that the Respondent furnish the Union with the following information:
 - (A) A complete copy of Bureau of Prisons Drug Free Workplace Collector Certificates statements of training (First-time collector training and annual refresher training) for all trained specimen collectors at FCC Hazelton during FY 2021 and 2022.
 - (B) A copy of FCC Hazelton's specimen collector AHSA Phillip Boch's first-time collector certificate and a copy of any annual refresher training certificates.
 - (C) A copy of FCC Hazelton's specimen collector AHSA Tammy Thomason's first-time collector certificate and a copy of any annual refresher training certificates.
8. The information described in paragraph 7 is normally maintained by the Respondent in the regular course of business.
9. The information described in paragraph 7 is reasonably available.
10. The information described in paragraph 7 is necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of bargaining.
11. The information described in paragraph 7 does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining.
12. The information described in paragraph 7 is not prohibited from disclosure by law.
13. On December 22, 2022, the Respondent, by Adam Messinger, denied the Union's request, stating that the information requested was not reasonably available.

14. Since December 22, 2022, the Respondent has been failing and refusing to furnish the Union with the information it requested as described in paragraphs 7-12.
15. By the conduct described in paragraphs 13 and 14, the Respondent has been failing and refusing to comply with § 7114(b)(4) of the Statute.
16. By the conduct described in paragraphs 13, 14, and 15, the Respondent has been failing and refusing to negotiate in good faith with the Union in violation of § 7116(a)(1), (5) of the Statute.
17. By the conduct described in paragraphs 13, 14, and 15, 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 satisfied these requirements: specifically, the information was necessary for the Union to represent its members; it was normally maintained by the Respondent; it was reasonably available; it did not constitute guidance to management relating to collective bargaining; and its disclosure was not prohibited by law. Similarly, the Respondent has admitted that it denied the Union's December 1, 2022 information request and that it has continued to fail and refuse to furnish the requested information. It is evident, therefore, that by these actions the Respondent 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 Justice, Federal Bureau of Prisons, Federal Correctional Complex Hazelton, Bruceton Mills, West Virginia (the Agency), shall:

1. Cease and desist from:

(a) Failing or refusing to furnish information properly requested by the American Federation of Government Employees, Local 420, AFL-CIO (the Union) under Section 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 assured 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 on December 1, 2022.

(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 Warden of Federal Correctional Complex Hazelton, 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 the 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. 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 WA-CA-23-0168."

(d) Pursuant to § 2423.41(e) of the Rules and Regulations of the Authority, notify the Regional Director, Washington 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., July 2, 2024

**Richard A.
Pearson**

Digitally signed by
Richard A. Pearson
Date: 2024.07.02 11:36:56
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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 Justice, Federal Bureau of Prisons, Federal Correctional Complex Hazelton, Bruceton Mills, West Virginia (the Agency), 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 420, AFL- CIO (the Union) with the information the Union requested on December 1, 2022.

WE WILL NOT fail or refuse to furnish the Union with information properly requested under Section 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 assured under the Statute.

(Agency/Activity)

Date: _____ By: _____
(Signature) (Title)

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 Region, Federal Labor Relations Authority, whose address is: 1400 K Street, N.W., 3rd Flr., Washington, D.C. 20424, and whose telephone number is: (771) 444-5780.