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

OALJ 16-01

DEPARTMENT OF VETERANS AFFAIRS
WILLIAM JENNINGS BRYAN DORN
VETERANS AFFAIRS MEDICAL CENTER
COLUMBIA, SOUTH CAROLINA

RESPONDENT

AND

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 1915

CHARGING PARTY

Case No. AT-CA-14-0069

Brent S. Hudspeth
For the General Counsel

Daniel Rembert
For the Respondent

Johnny Allen
For the Charging Party

Before: CHARLES R. CENTER
Chief Administrative Law Judge

DECISION ON MOTION FOR SUMMARY JUDGMENT

On August 26, 2015, the Regional Director of the Atlanta Region of the Federal Labor Relations Authority (FLRA/Authority), reissued a Complaint and Notice of Hearing, alleging that the Department of Veterans Affairs, William Jennings Bryan Dorn Veterans Affairs Medical Center, Columbia, South Carolina (Respondent), violated § 7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute (Statute). The Complaint alleged that the Respondent implemented a change in the conditions of employment for bargaining unit employees without providing the Union an opportunity to bargain over the change.

The Complaint indicated that a hearing on the allegations would be held on October 7, 2015, and advised the Respondent that an Answer to the Complaint was due no later than September 21, 2015. The Complaint was served by first class mail on

Respondent's agent, Daniel Rembert, Supervisory HR Specialist, Department of Veterans Affairs, Veterans Affairs Medical Center, 6439 Garners Ferry Road, Columbia, SC 29209, and the Respondent failed to file an Answer to the Complaint.

On September 29, 2015, Counsel for the 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 of the allegations set forth in the Complaint. Accordingly, the GC contends that there are no factual or legal issues in dispute and summary judgment pursuant to 5 C.F.R. § 2423.27(a) is proper. The Respondent failed to file a response to the motion for summary judgment. As I have determined that summary judgment in this matter is proper, the hearing scheduled for October 7, 2015, in Columbia, South Carolina is cancelled.

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., FAA, Hous., 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 MSJ, 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 the complaint or the motion for summary judgment, 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 and summary judgment in favor of the General Counsel is granted.

Based on the existing record, I make the following findings of fact, conclusions of law, and recommendations:

FINDINGS OF FACT

1. The Department of Veterans Affairs, William Jennings Bryan Dorn Veterans Affairs Medical Center, Columbia, South Carolina is an agency under § 7103(a)(3) of the Statute.

2. The American Federation of Government Employees (AFGE) is a labor organization under § 7103(a)(4) of the Statute and is the exclusive representative of a unit of employees appropriate for collective bargaining at the Respondent.

3. AFGE Local 1915 (Union) is an agent of AFGE for the purpose of representing employees within the unit described in paragraph 2.

4. The Union filed the charge in Case No. AT-CA-14-0069 with the Atlanta Regional Director on December 3, 2013.

5. A copy of the charge was served on the Respondent.

6. At all material times, Ruth Mustard occupied the position of Associate Director of Patient Care/Nursing Services and was a supervisor or management official of the Respondent within the meaning of § 7103(a)(10) and (11) of the Statute, and was an agent of the Respondent acting upon its behalf.

7. On September 23, 2013, the Respondent, by Mustard, notified the Union that it intended to implement a change in the policy concerning the set-up, use and cleaning of reusable medical equipment.

8. On September 24, 2013, the Union, by Executive Vice President Johnny Allen, requested to negotiate over the change described in paragraph 7.

9. On or about September 24, 2013, the Respondent, by Mustard, implemented the change described in paragraph 7.

10. Respondent implemented the change in unit employee's conditions of employment described in paragraphs 7 and 9 without negotiating with the Union over the impact and implementation of the change.

11. By the conduct described in paragraphs 9 and 10, the Respondent committed an unfair labor practice in violation of 5 U.S.C. § 7116(a)(1) and (5).

CONCLUSIONS OF LAW

By the conduct described in the facts set forth above as drawn from the reissued 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 give the Union an opportunity to bargain over the change prior to implementation. Therefore, the Respondent violated § 7116(a)(1) and (5) of the Statute.

As a remedy, the Respondent is ordered to cease and desist from implementing changes to conditions of employment for bargaining unit employees without providing the Union with notice and an opportunity to bargain over the change, to post a notice of the violation using bulletin boards and electronic mail, and to bargain retroactively over the change that was implemented. While the GC's brief requested a status quo ante remedy, such a remedy is not supported when the facts deemed admitted pursuant to 5 C.F.R. § 2423.20(b) do not address all of the factors that must be considered when determining if a status quo ante remedy is appropriate. *Fed. Corr. Inst.*, 8 FLRA 604, 606 (1982). Although the GC contends that the adverse impact of the change was "clear", the one thing that is clear is that the record contains no evidence regarding the nature and extent of the impact or whether a status quo ante remedy would disrupt or impair the efficiency and effectiveness of operations. As the Respondent made no admissions regarding these factors by virtue of its failure to file an Answer, the appropriateness of a status quo ante remedy cannot be ascertained, and therefore, that remedy is not ordered.

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, William Jennings Bryan Dorn Veterans Affairs Medical Center, Columbia, South Carolina, shall:

1. Cease and desist from:

(a) Failing to notify and bargain with the American Federation of Government Employees, Local 1915 (Union), the designated representative of an appropriate unit of its employees, before implementing a change in conditions of employment for which it is required to bargain under the Statute.

(b) 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) Negotiate, upon request, with the Union concerning the reusable medical equipment policy and give retroactive effect to any agreement reached.

(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, William Jennings Bryan Dorn Veterans Affairs Medical Center, Columbia, South Carolina, 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 physical posting of paper notices, Notices shall be distributed electronically, on the same date as physical posting, such as by email, posting on an intranet or internet site, or other electronic means, if such are customarily used to communicate with employees.

(d) 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., October 6, 2015

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, William Jennings Bryan Dorn Veterans Affairs Medical Center, Columbia, South Carolina, 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 implement changes in the procedures for setting up and cleaning reusable medical equipment (RME) as it affects employees represented by the American Federation of Government Employees, Local 1915 (Union), without first notifying the Union and providing it an opportunity to bargain to the extent required by the Statute.

WE WILL NOT fail to notify and bargain with the Union when we implement changes in conditions of employment for which we are required to bargain under the Statute.

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 bargain, upon request, with the Union concerning the policy for set up and cleaning of RME implemented in September 2013, and give retroactive effect to any agreement reached.

_____
(Agency/Respondent)

Dated: _____ 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, Atlanta Region, Federal Labor Relations Authority, whose address is: 225 Peachtree Street, Suite 1950, Atlanta, GA 30303, and whose telephone number is: (404) 331-5300.