



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

OALJ 16-33

DEPARTMENT OF VETERANS AFFAIRS  
VA LONG BEACH HEALTHCARE SYSTEM  
LONG BEACH, CALIFORNIA

RESPONDENT

AND

Case No. SF-CA-15-0846

AMERICAN FEDERATION OF GOVERNMENT  
EMPLOYEES, LOCAL 1203, AFL-CIO

CHARGING PARTY

Cara Krueger  
For the General Counsel

Herbert Moisa  
For the Respondent

Virginia Speth  
For the Charging Party

Before: CHARLES R. CENTER  
Chief Administrative Law Judge

**DECISION ON MOTION FOR SUMMARY JUDGMENT**

On April 25, 2016, the Acting Regional Director of the San Francisco Region of the Federal Labor Relations Authority (FLRA/Authority), issued an Amended Complaint and Notice of Hearing, alleging that the Department of Veterans Affairs, VA Long Beach Healthcare System, Long Beach, California (Agency/Respondent), violated § 7116(a)(1) and (8) of the Federal Service Labor-Management Relations Statute (Statute). The Complaint alleged that the Respondent failed and refused to participate in the selection of an arbitrator and refused to proceed to arbitration on a grievance filed by the American Federation of Government Employees, Local 1203, AFL-CIO (Charging Party/Union).

The Complaint stated that a hearing would be held on July 12, 2016, and advised the Respondent that an Answer was due no later than May 20, 2016. The Complaint was served by certified mail on the Respondent's agent, Herbert Moisa, Assistant Chief Human Resources Management Service, VA Long Beach Healthcare System, 5901 East 7th Street, Long Beach, California, 90822. The Respondent failed to file an Answer.

On May 31, 2016, 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 therein. 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, no hearing will be conducted.

### DISCUSSION OF MOTION FOR SUMMARY JUDGMENT

Section 2423.20(b) of the Authority's Rules and Regulations provides, in relevant 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. Absent a showing of good cause to the contrary, failure to file an answer or respond to any allegation shall constitute an admission.

Within the Complaint, the Acting Regional Director of the San Francisco Region included detailed instructions on the requirements for an Answer, including the number of copies that needed to be filed, the date by which the Answer needed to be filed by, and the means of submission. The fact that there was a section in the Complaint devoted to the Answer requirement leaves no doubt that filing an Answer was necessary.

Despite the detailed instructions, the Respondent met none of the requirements, nor did it request an extension of time to respond. Section 2429.23 of the FLRA Regulations permits extensions or waivers of time limits. However, the Respondent did not present good cause for an extension or extraordinary circumstance for a waiver of the failure to file an Answer, nor did the Respondent file a response to the motion for summary judgment.

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, VA Long Beach Healthcare System, Long Beach, California, is an agency under § 7103(a)(3) of the Statute.
2. The American Federation of Government Employees, AFL-CIO (AFGE) is a labor organization under § 7103(a)(4) of the Statute and is the certified exclusive representative of nationwide consolidated units of VA employees, which includes employees of the Respondent.
3. Local 1203 is an agent of AFGE for the purpose of representing unit employees employed by the Respondent.

4. Local 1203 filed the charge in Case No. SF-CA-16-0846 on September 18, 2015, and a copy was served on the Respondent.
5. At all material times, Herbert Moisa held the position of Assistant Chief, Human Resources Management Service, and was a supervisor and/or management official of the Respondent within the meaning of § 7103(a)(10) and (11) of the Statute and an agent of the Respondent acting upon its behalf.
6. The Charging Party and Respondent are parties to a collective bargaining agreement which contains grievance and arbitration procedures, including procedures for invoking arbitration, for requesting a panel of arbitrators from the Federal Mediation and Conciliation Service (FMCS), and for selecting an arbitrator from the FMCS list.
7. On or about May 7, 2015, the Charging Party invoked arbitration on a grievance it had filed on February 26, 2015, and thereafter obtained a panel of arbitrators from the FMCS.
8. Since May 13, 2015, and continuing, Respondent, by Moisa, has failed and refused to participate in the selection of an arbitrator and has refused to proceed to arbitration on the Charging Party's February 26, 2015, grievance.
9. By the conduct described in paragraph 8, the Respondent has failed and refused to comply with the binding arbitration requirements of § 7121 of the Statute.
10. By the conduct described in paragraphs 8 and 9, the Respondent violated § 7116(a)(1) and (8) of the Statute.

### CONCLUSIONS OF LAW

Pursuant to the admission provision of 5 C.F.R. § 2423.20(b), the Respondent's failure to file an Answer constitutes an admission to all of the allegations set forth in the Complaint. The Authority has held that a failure to file an Answer as required by the Regulations constitutes an admission of each of the allegations of the Complaint. *Dep't of VA Med. Ctr., Asheville, N.C.*, 51 FLRA 1572, 1594 (1996). Therefore, the Respondent admitted committing the violations alleged in the Complaint.

As a remedy, the Respondent is ordered to cease and desist from failing and refusing to select an arbitrator and proceed to arbitration as required by § 7121 of the Statute. The Respondent is also required to post a notice for sixty (60) consecutive days, to distribute notices to bargaining unit employees using electronic mail if that is a regular method of communication with bargaining unit employees, and to notify the San Francisco Regional Director of the implementation of the order.

Accordingly, the General Counsel's Motion for Summary Judgment is Granted.

### ORDER

Pursuant to § 2423.41(c) of the Rules and Regulations of the Authority and § 7118 of the Federal Service Labor-Management Relations Statute (Statute), the Department of Veterans Affairs, VA Long Beach Healthcare System, Long Beach, California, shall:

1. Cease and desist from:

(a) Failing and refusing to select an arbitrator and to proceed to arbitration unless the grievance is otherwise resolved by the parties.

(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.

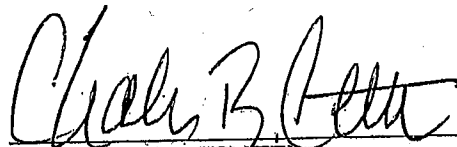
2. Take the following affirmative actions in order to effectuate the purposes and policies of the Statute:

(a) 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, VA Long Beach Healthcare System, Long Beach, California, 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 physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, or other electronic means if such is a regular form of communication with bargaining unit employees.

(c) Pursuant to § 2423.41(e) of the Rules and Regulations of the Authority, notify the Regional Director, San Francisco 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 15, 2016



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, VA Long Beach Healthcare System, Long Beach, California, 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 and refuse to select an arbitrator and to proceed to arbitration unless the grievance is otherwise resolved by the parties.

**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.

\_\_\_\_\_  
(Agency/Respondent)

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
(Name) (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, San Francisco Region, Federal Labor Relations Authority, whose address is: 901 Market Street, Suite 470, San Francisco, CA, 94103, and whose telephone number is: (415) 356-5000.