



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

OALJ 16-37

DEPARTMENT OF AGRICULTURE
U.S. FOREST SERVICE
LASSEN NATIONAL FOREST
SUSANVILLE, CALIFORNIA

RESPONDENT

Case Nos. SF-CA-15-0624
SF-CA-15-0625

AND

NATIONAL FEDERATION OF FEDERAL
EMPLOYEES, NATIONAL FOREST SERVICE
COUNCIL, IAM&AW, AFL-CIO

CHARGING PARTY

Yolanda C. Shepard
For the General Counsel

Adam Alvarez
For the Respondent

Lonnie Louis
For the Charging Party

Before: CHARLES R. CENTER
Chief Administrative Law Judge

DECISION ON MOTION FOR SUMMARY JUDGMENT

On May 23, 2016, the Acting Regional Director of the San Francisco Region of the Federal Labor Relations Authority (FLRA/Authority) issued a Complaint and Notice of Hearing, alleging that the Department of Agriculture, U.S. Forest Service, Susanville, California (Agency/Respondent), violated § 7116(a)(1),(2),(5) and (8) of the Federal Service Labor-Management Relations Statute (Statute). The Complaint alleged that the Respondent disciplined a Union officer for engaging in protected activity and bypassed the National Federation of Federal Employees, National Forest Service Council, IAM&AW, AFL-CIO (Charging Party/Union) by dealing directly with a unit employee who was represented by the Union.

The Complaint advised the Respondent that an Answer was due no later than June 20, 2016. The Complaint was served by certified mail on the Respondent's agent, Adam Alvarez, Labor Relations Specialist, U.S. Forest Service, 1323 Club Drive, Vallejo, California, 94592. The Respondent failed to file an Answer by the required date. On May 24, 2016, the Acting Regional Director issued an Order consolidating Case Numbers SF-CA-15-0624 and SF-CA-15-0625.

On June 28, 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 included detailed instructions on the requirements for filing an Answer, including the number of copies that needed to be filed, the date the Answer needed to be filed, 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 Union filed the charges in Case Numbers SF-CA-15-0624 and SF-CA-15-0625 on June 3, 2015, and an amended charge in SF-CA-15-0624, on April 19, 2016.

2. Copies of the charges and the amended charge were served on the Respondent.
3. The Respondent is an agency within the meaning of § 7103(a)(3) of the Statute.
4. The National Federation of Federal Employees (NFFE) is a labor organization under 5 U.S.C. § 7103(a)(4) and is the exclusive representative of a nationwide unit of employees of the Department of Agriculture, U.S. Forest Service, Washington, D.C., appropriate for collective bargaining.
5. The NFFE, Local 2153, IAM&AW, AFL-CIO (Local 2153) is an agent of NFFE for the purpose of representing employees within the unit described in paragraph 3 at Susanville.
6. At all material times, 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 the Respondent acting on its behalf:

Tracy Anderson	District Ranger
Gregory Mayer	Timber Management Officer

7. At all material times, the following individuals held the positions opposite their names and have been agents of Respondent acting on its behalf:

Wolff Coulombe	Personnel Misconduct Investigator
Ryan Voelkl	Labor Relations Specialist

8. Kim Ganz is an employee under § 7103(a)(2) of the Statute. At all material times she was in the unit described in paragraph 4 and the president of NFFE, Local 2153.
9. On or about December 16, 2015, Kym Ganz engaged in protected activity under § 7102 of the Statute by representing an employee concerning a time and attendance matter.
10. On April 15, 2015, Respondent, by Mayer and Voelkl, issued a Letter of Reprimant to Kym Ganz based on her protected activity described in paragraph 9.
11. Respondent engaged in the conduct described in paragraph 10 because Ganz assisted the Union and engaged in the protected activities described in paragraph 9, and to discourage employees from engaging in these activities.

12. By the conduct described in paragraphs 10 and 11, Respondent has been discriminating in connection with hiring, tenure, promotion, or other conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of § 7116(a)(1) and (2) of the Statute.
13. On February 25, 2015 and March 16, 2015, NFFE Representative Lonnie Lewis represented Ganz in a personnel misconduct investigation on behalf of NFFE.
14. On April 15, 2015, Respondent, by Mayer and Voelkl, issued Kym Ganz a Letter of Reprimand resulting from the investigation described in paragraph 13 and refused to allow NFFE Representative Lonnie Lewis to be present when the Letter of Reprimand was delivered to Ganz.
15. By the conduct described in paragraph 14, Respondent bypassed the Union and dealt directly with a unit employee.
16. By the conduct described in paragraphs 14 and 15, Respondent has been refusing to negotiate in good faith with the Union in violation of § 7116(a)(1) and (5) of the Statute.
17. By the conduct described in paragraphs 14 and 15, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in § 7102 of the Statute in violation of § 7116(a)(1) 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 the violations alleged in the Complaint.

As a remedy, the Respondent is ordered to rescind the Letter of Reprimand issued to Kym Ganz. *U.S. Dep't of Transp., FAA, Houston, Tex.*, 63 FLRA 34, 37 (2008). 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 Acting 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 Agriculture, U.S. Forest Service, Lassen National Forest, Susanville, California, shall:

1. Cease and desist from:

(a) Failing and refusing to bargain in good faith with the National Federation of Federal Employees, National Forest Service Council, IAM&AW, AFL-CIO (Union), the exclusive bargaining representative of its employees, by bypassing designated Union representatives of bargaining unit employees and furnishing or delivering disciplinary decisions or other responses only to the disciplined employees.

(b) Interfering with, restraining, or coercing bargaining unit employees in the exercise of the rights assured by the Statute, by furnishing or delivering decisions or other responses involving disciplinary proceedings directly to employees while failing to furnish a copy of the decision to the Union.

(c) Issuing a Letter of Reprimand to Local 2153 President Kym Ganz, or any other bargaining unit employee, because the employee engaged in protected activity.

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

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

(a) Within 14 days from the date of this Order, remove from all files, any reference to the Letter of Reprimand issued on April 15, 2015, to Kym Ganz. Within three days thereafter, notify the employee in writing that the action has been completed and that the letter of reprimand will not be used against her in any manner.

(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 Forest Supervisor, Lassen National Forest, Susanville, 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.

(c) In addition to physical posting of the paper notices, notices shall be distributed electronically, on the same day, such as by email, posting on an intranet or an internet site, or other electronic means if such is customarily used to communicate with bargaining unit employees.

(d) Pursuant to § 2423.41(e) of the Rules and Regulations of the Authority, notify the Acting 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., August 5, 2016

A handwritten signature in black ink, appearing to read "Charles R. Center". The signature is written in a cursive style with a horizontal line extending from the end of the name.

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 Agriculture, U.S. Forest Service, Lassen National Forest, Susanville, 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 reprimand bargaining unit employees for engaging in protected activity.

WE WILL NOT bypass the designated Union representatives by delivering disciplinary decisions or other responses only to the represented bargaining unit employee.

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

WE WILL deliver disciplinary decisions or other responses to the designated Union representative of the bargaining unit employee.

WE WILL within 14 days from the date of the Authority's Order, remove from all files, any reference to the Letter of Reprimand issued on April 15, 2015, to Kym Ganz, and within three days thereafter, notify the employee in writing that this action has been completed and that the letter of reprimand will not be used against her in any manner.

(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 Acting Regional Director, San Francisco Region, Federal Labor Relations Authority, whose address is: 901 Market Street, Suite 470, San Francisco, CA, and whose telephone number is: (415) 356-5000.