



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

OALJ 23-09

FEDERAL BUREAU OF PRISONS
FEDERAL MEDICAL CENTER FORT WORTH
FORT WORTH, TEXAS

RESPONDENT

AND

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, COUNCIL OF PRISON LOCALS 33,
LOCAL 1298, AFL-CIO

CHARGING PARTY

Case No. DE-CA-20-0204

Katie Smith

For the General Counsel

Sung Lee

For the Respondent

Gregory E. Watts, Jr.

For the Charging Party

Before: RICHARD A. PEARSON
Administrative Law Judge

DECISION ON MOTION FOR SUMMARY JUDGMENT

In this case, the Respondent asks that its late-filed answer to the General Counsel's unfair labor practice complaint be accepted as timely, so that it can contest the underlying allegations against it. Initially, Respondent's counsel contended that it had not received the complaint for several weeks, but further investigation disproved that hypothesis; instead, the late filing appears to be attributable to simple administrative negligence. Unfortunately for the Respondent, this does not constitute good cause for extending the deadline or extraordinary circumstances warranting a waiver of the deadline.

On March 3, 2023, the Regional Director of the Denver Region of the Federal Labor Relations Authority (the Authority) issued a Complaint and Notice of Hearing in this matter, alleging that the Federal Bureau of Prisons, Federal Medical Center Fort Worth, Fort Worth, Texas (the Respondent) violated § 7116(a)(1), (5), and (8) of the Federal Service Labor-

Management Relations Statute (the Statute) by (among other things) failing and refusing to furnish information requested by the American Federation of Government Employees, Council of Prison Locals 33, Local 1298, AFL-CIO (the Union). The Complaint indicated that a hearing on the allegations would be held on May 24, 2023, and advised the Respondent that an Answer to the Complaint was due no later than March 23, 2023. The Complaint was sent by facsimile, with a courtesy copy sent by email, to the Respondent's designated representative, John W. Weeks. The Respondent did not file an Answer by the deadline of March 23.

On March 29, 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 therefore that the Respondent had admitted all the allegations of the Complaint. The GC asserted that since there were no factual or legal issues in dispute, the case was ripe for judgment in its favor.

On April 6, 2023, however, the Respondent filed an Opposition to the GC's Motion for Summary Judgment (Opposition), along with its Answer to the Complaint (Exhibit 1 to Opposition). Respondent asserted that it had not received the Complaint until March 23 (the day its Answer was due) and that it needed the time from then until April 6 to prepare its Answer. Attached to the Opposition as Exhibit 2 were two emails from Mr. Weeks, the first indicating that he was forwarding the Complaint to his Labor Relations Office on March 23, and the second indicating that "it appears I received it [i.e. the Complaint] on March 23, 2023." In light of the Respondent's late receipt of the Complaint, Respondent argues that it had good cause for its late Answer. Opposition at 1.

On May 3, 2023, the GC responded to the Opposition and disputed the Respondent's factual allegations (Counter-Opposition). The GC attached several exhibits, including a March 2, 2023 email from Mr. Weeks confirming his fax number (Attachment C), a March 3, 2023 confirmation that the Complaint was sent to Mr. Weeks's fax number (Attachment D), and a March 3, 2023 email from the GC to Mr. Weeks with the Complaint (Attachment E).

In light of the disputed facts regarding receipt of the Complaint, I postponed the hearing indefinitely and gave the Respondent time to furnish any additional evidence it had on the matter. Order of May 10, 2023. At the Respondent's request, I extended this deadline to June 2, 2023. Order of May 15, 2023. On June 7, 2023, Counsel for the Respondent submitted an email response, indicating that it had no additional evidence to submit regarding receipt of the Complaint. Respondent indicated that the information Mr. Weeks had originally provided regarding his receipt of the Complaint on March 23 was incorrect, and that Respondent could not refute that it had actually received the Complaint on March 3. Email of June 7, 2023.

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. 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. § 2429.23(a) explains that some time limits can be extended "for good cause shown," and § 2429.23(b) allows for the waiver of expired time limits "in extraordinary circumstances."

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's Answer was filed two weeks after it was due. While Respondent initially alleged that it didn't receive the Complaint until March 23, it is now apparent that it received the Complaint on March 3. Even if it had received the Complaint on the 23rd, however, it still had the opportunity to request an extension that day, but it chose instead to wait until April 6, when it filed its Answer. *See U.S. Dep't of Veterans Affairs Med. Ctr., Kan. City, Mo.*, 52 FLRA 282, 284 (1996). In these circumstances, the Respondent has not demonstrated "extraordinary circumstances" that would justify waiving the expired time limit. *See, e.g., U.S. Dep't of Transp., Fed. Aviation Admin., Hous., Tex.*, 63 FLRA 34, 36 (2008).

Accordingly, § 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 Union filed the charge in this proceeding on March 5, 2020, and a copy was served on the Respondent.
2. The Union filed the first amended charge in this proceeding on July 14, 2020, 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, Council of Prison Locals 33, AFL-CIO (AFGE) is a labor organization within the meaning of § 7103(a)(4) of the Statute and is the certified exclusive representative of a unit of employees of the Respondent (the unit).
5. The Union is an agent of AFGE for the purposes of representing the unit employees employed at the Respondent.
6. At all material times, the following individual held the position opposite her name and has been a supervisor or management official of Respondent within the meaning of § 7103(a)(10) and (11) of the Statute and an agent of Respondent acting upon its behalf:

Monica Limbrick Human Resources Manager
7. On August 16, 2019, the Union requested by letter that Respondent furnish the Union with the following information:
 - a. A detailed list of all FMC Fort Worth case referrals to the Office of Internal Affairs (OIA) for a three-year period for bargaining unit and non-bargaining unit employees.
8. From August 16, 2019 to November 20, 2019, Respondent unreasonably delayed responding to the Union's request for information described in paragraph 7.
9. On November 21, 2019, the Union requested by letter that Respondent furnish the Union with the following information:
 - a. A sanitized list of disciplinary and adverse action for a three-year period for bargaining and non-bargaining unit employees, coded to reflect race, ethnic origin, and gender.

10. The information described in paragraph 9 is normally maintained by Respondent in the regular course of business.
11. The information requested in paragraph 9 is reasonably available.
12. The information requested in paragraph 9 is necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of bargaining.
13. The information described in paragraph 9 does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining.
14. The information described in paragraph 9 is not prohibited from disclosure by law.
15. Since November 21, 2019, Respondent has not responded to the Union's request for information described in paragraph 9.
16. Since November 21, 2019, Respondent has failed and refused to furnish the Union with the information it requested in paragraph 9.

CONCLUSIONS OF LAW

Section 7114(b)(4) of the Statute requires an agency, upon request and to the extent not prohibited by law, to provide a union with data that is (1) normally maintained by the agency; (2) reasonably available; (3) necessary for full and proper discussion, understanding, and negotiation of subjects with the scope of collective bargaining; and (4) not guidance, advice, counsel, or training to management. An agency that fails to comply with this requirement commits an unfair labor practice in violation of § 7116(a)(1), (5), and (8) of the Statute. *Health Care Financing Admin.*, 56 FLRA 503 (2000). By its failure to file a timely Answer to the General Counsel's Complaint, the Respondent has admitted that the information requested by the Union on August 16 and November 21, 2019, satisfied these requirements. It further admitted that it unreasonably delayed responding to the Union's August 16 request. Therefore, its refusal to furnish the information sought in both requests violated § 7116(a)(1), (5), and (8) of the Statute.

When an agency unlawfully refuses to furnish necessary information, the Authority normally orders the agency to provide that information and to post a notice to employees explaining the action. *U.S. Dep't of Justice, Fed. BOP, Fed. Corr. Inst. Ray Brook, Ray Brook, N.Y.*, 68 FLRA 492 (2015). Such a remedy is appropriate here.

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 Federal Bureau of Prisons, Federal Medical Center Fort Worth, Fort Worth, Texas shall:

1. Cease and desist from:

(a) Failing or refusing to provide the American Federation of Government Employees, Council of Prison Locals 33, Local 1298, AFL-CIO (the Union), with information requested 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 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 August 16 and November 21, 2019.
- (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 the Federal Medical Center Fort Worth 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, 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 from an Administrative Law Judge of the Federal Labor Relations Authority in Case No. DE-CA-20-0204."
- (d) Pursuant to § 2423.41(e) of the Rules and Regulations of the Authority, notify the Regional Director, Denver Regional Office, 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 13, 2023.

RICHARD A. PEARSON
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 Federal Bureau of Prisons, Federal Medical Center Fort Worth, Fort Worth, Texas, 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 fail and refuse to provide the American Federation of Government Employees, Council of Prison Locals 33, Local 1298, AFL-CIO (the Union), with the information it requested on August 16 and November 21, 2019.

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

WE WILL provide the Union with the following information, in response to the Union's requests of August 16 and November 21, 2019:

- (1) A list of all FMC Fort Worth standard of conduct case referrals to the Office of Internal Affairs (OIA) from January 2016 to August 16, 2019, for bargaining and non-bargaining unit employees.
- (2) A sanitized list of disciplinary and adverse actions, with the specific infraction listed, the proposed action, the final action imposed, grade level, number of days to complete investigation, number of days to complete adjudication, coded to reflect race, ethnic origin, and gender, from January 2016 to August 16, 2019, for bargaining and non-bargaining unit employees.

(Agency/Activity)

Dated: _____

By: _____
(Signature) (Warden)

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, Denver Regional Office, Federal Labor Relations Authority, whose address is 1244 Speer Boulevard, Suite 446, Denver, CO 80204, and whose telephone number is (303) 225-0340.