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

OALJ 22-06

DEPARTMENT OF VETERANS AFFAIRS V.A. LONG BEACH HEALTHCARE SYSTEM LONG BEACH, CALIFORNIA RESPONDENT AND AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1061, AFL-CIO CHARGING PARTY	Case No. SF-CA-19-0188

John Richter
For the General Counsel

Edward A. Mason
For the Respondent

Ann Barkley
For the Charging Party

Before: RICHARD A. PEARSON
Administrative Law Judge

DECISION ON MOTION FOR SUMMARY JUDGMENT

On September 28, 2021, the Regional Director of the San Francisco Region of the Federal Labor Relations Authority (the Authority) issued a Complaint and Notice of Hearing in this matter, alleging that the Department of Veterans Affairs (VA), V.A. Long Beach Healthcare System, Long Beach, California (the Respondent) violated § 7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute (the Statute) by moving the location of the union's office without negotiating. The Complaint indicated that a hearing on the allegations would be held on February 24, 2022, and advised the Respondent that an Answer to the Complaint was due no later than October 25, 2021. The Complaint was sent by certified mail to the Respondent's designated representative, Edward A. Mason, V.A. Long Beach Healthcare System, 5901 E. 7th St., Long Beach, CA 90822. The Respondent did not file an Answer to the Complaint.

On November 2, 2021, 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 asserts that there are no factual or legal issues in dispute, and the case is ripe for summary judgment in its favor. The Respondent has not filed a response to the Motion for Summary Judgment.

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., §§ 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.

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 1061, AFL-CIO (the Union) filed the charge in this proceeding on May 9, 2019, and a copy was served on the Respondent.

2. The Respondent is an agency within the meaning of § 7103(a)(3) of the Statute.

3. 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 VA employees, which includes employees of the Respondent (the unit).

4. The Union is an agent of AFGE for the purposes of representing the unit employees employed at the Respondent.

5. At all times material, the following individual held the position opposite his 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:

   Walter Dannenberg   Healthcare System Director.

6. On or about March 13, 2019, the Respondent notified the Union that it intended to relocate the Union office to a new office space.

7. On or about April 25, 2019, the Respondent, by Dannenberg, ordered the Union to pack its office and be ready to move by April 26, 2019.

8. On or about April 25, 2019, the Union requested to negotiate the change described in paragraph 6.

9. On or about April 29, 2019, the Respondent, by Dannenberg, implemented the change described in paragraph 6.

10. The impact of the change described in paragraph 6 is substantial.

11. The Respondent implemented the change in unit employees' conditions of employment described in paragraph 6 without negotiating over the change.

12. By the conduct described in paragraphs 9 and 11, the Respondent has been refusing to negotiate in good faith with the Union and has been violating section 7116(a)(1) and (5) of the Statute.

13. Paragraph 2(e) of the Order needs to be moved to align with the rest of the section. need to be added.

CONCLUSIONS OF LAW

Before implementing a change in employees' conditions of employment, an agency is required to negotiate with the exclusive representative over those aspects of the change that are within the duty to bargain. *Fed. Bureau of Prisons, Fed. Corr. Inst., Bastrop, Tex.*, 55 FLRA 848, 852 (1999). By virtue of its failure to file an answer to the complaint in this case, the Respondent has admitted that it moved the Union's office to a new location and that it did so without negotiating with the Union, notwithstanding the Union's request to bargain. It further admitted that its action changed the conditions of employment of bargaining unit employees, and that the impact of this change on employees was substantial. Therefore, the Respondent had a duty to negotiate with the Union before moving the Union's office, and it violated section 7116(a)(1) and (5) by ignoring the Union's request to bargain.

When an agency has unilaterally changed conditions of employment, the Authority normally imposes a status quo ante remedy, to restore conditions of employment as they were prior to the unlawful action. *Fed. Bureau of Prisons, Wash., D.C.*, 55 FLRA 1250, 1258 (2000). It appears, however, that subsequent events have rendered such a remedy infeasible, and the Union cannot reoccupy its former office location. The parties have, instead, reached an agreement to move the Union to an alternative onsite location. In order to effectuate this agreement, I will order the Respondent to move the Union office to a mutually acceptable onsite location; that the Respondent negotiate with the Union over all negotiable aspects of the office move; and that the Respondent post and disseminate a physical and digital notice to employees, signed by the Respondent's director.

Accordingly, I 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 Department of Veterans Affairs, V.A. Long Beach Healthcare System, Long Beach, California, shall:

1. Cease and desist from:

(a) Failing and refusing to negotiate with the American Federation of Government Employees, Local 1061, AFL-CIO (the Union), over the relocation of the Union's office.

(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) Move the Union office to a mutually satisfactory location.

(b) Upon request, negotiate with the Union over all negotiable aspects of the move of the Union office.

(c) Post at the V.A. Long Beach Healthcare System, where bargaining unit employees are located, copies of 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 Director, V.A. Long Beach Healthcare System, 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.

(d) 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.

(e) 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., December 1, 2021.

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 Department of Veterans Affairs, V.A. Long Beach Healthcare System, Long Beach, California, 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 negotiate with the American Federation of Government Employees, Local 1061, AFL-CIO (the Union), over the relocation of the Union's office.

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 move the Union office to a mutually satisfactory location.

WE WILL, upon request, negotiate with the Union over all negotiable aspects of the move of the Union office.

____
(Agency/Activity)

Dated: __________________ By: ____
(Signature) (Director)

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: 1301 Clay Street, Suite 1180N, Oakland, CA 94612-5242, and whose telephone number is: (415) 356-5000.