



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

OALJ 24-14

FEDERAL BUREAU OF PRISONS, FEDERAL
CORRECTIONAL COMPLEX PETERSBURG
PETERSBURG, VIRGINIA

RESPONDENT

Case No. WA-CA-21-0339

AND
AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 2052, AFL-CIO

CHARGING PARTY

Sarah Kurfis
For the General Counsel

Michael F. O'Connell
For the Respondent

Kenmore Smith
For the Charging Party

Before: RICHARD A. PEARSON
Administrative Law Judge

DECISION

When the FLRA's General Counsel files a complaint alleging an unfair labor practice, a respondent has twenty days to file an answer. In this case, the Respondent filed its answer two days after this deadline; it now argues that no party was harmed by its late filing, and it insists that there are genuine issues of fact and law which require a hearing. While the Respondent pleads for flexibility, the FLRA Regulations and case law are not flexible. Unless a party has obtained an extension of time in advance of the deadline or demonstrated good cause for its late filing, an answer that is two days late is treated the same as no answer at all: it is treated as an admission of all allegations in the complaint.

FACTUAL AND PROCEDURAL BACKGROUND

This is an unfair labor practice (ULP) proceeding under the Federal Service Labor-Management Relations Statute (the Statute), Chapter 71 of Title 5 of the U.S. Code, 5 U.S.C.

§§ 7101-7135, and the Rules and Regulations of the Federal Labor Relations Authority (the Authority or FLRA), 5 C.F.R. parts 2423 and 2429.

On July 18, 2023, the Regional Director of the Washington Region of the Federal Labor Relations Authority (the Authority) issued a Complaint and Notice of Hearing in this case, alleging that the Federal Bureau of Prisons, Federal Correctional Complex Petersburg, Petersburg, Virginia (the Respondent) violated §§ 7114(4)(b) and 7116(a)(1), (5), and (8) of the Federal Service Labor- Management Relations Statute (the Statute) by unreasonably delaying its response to a request for information by the American Federation of Government Employees, Local 2052, AFL-CIO (the Union). The Complaint indicated that a hearing on the allegations would be held on February 27, 2024, and advised the Respondent that an Answer to the Complaint was due no later than August 14, 2023. The Respondent filed its Answer to the Complaint on August 16, 2023, without having sought an extension of time to file.¹ In its Answer, Respondent denied that it had unreasonably delayed responding to the information request or that it had in any way violated the cited sections of the Statute.

On January 17, 2024, Counsel for the General Counsel (GC) filed a Motion for Summary Judgment, based on the fact that the Respondent had failed to file a timely Answer to the Complaint, and arguing that the Respondent therefore was deemed to have admitted all the allegations of the Complaint. The GC asserts that there are, accordingly, no factual or legal issues in dispute, and that summary judgment against the Respondent is thus warranted. On January 22, 2024, Respondent filed its Agency Response to Summary Judgment Motion (Resp. MSJ), admitting that its Answer was untimely but insisting that summary judgment is not justified.

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 Veterans Affairs, Veterans Affairs Med. Ctr., Nashville, Tenn.*, 50 FLRA 220, 222 (1995). If the pleadings, and additional evidence submitted in support, demonstrate that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law, the motion for summary judgment should be granted. *Id.*

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

¹ Although the Answer is dated August 16, the postmark on the envelope is stamped August 17. Additionally, although the Certificate of Service to the Answer indicates that a copy was served on the Deputy General Counsel, the Answer was not served on the Washington Regional Office which issued the Complaint. MSJ at 3; GC Ex. 2 at 3, 4.

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.*, 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; he also advised Respondent that absent a showing of good cause, the failure to answer any allegation of the Complaint would constitute an admission.

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 concedes that its Answer was filed at least two days late. Resp. MSJ at 1. Therefore, the issue is whether Respondent has shown "good cause" for its late submission. *U.S. Dep't of Transp., FAA Great Lakes Region, Des Plaines, Ill.*, 64 FLRA 1184, 1185, 1190 (2010) (*FAA Great Lakes*). But the Respondent offers no explanation as to why it could not have filed the Answer timely, or why it was unable to request an extension of time in advance of the deadline. Instead, it asserts that the GC and the Charging Party were not prejudiced by the late filing, since they received Respondent's Answer far in advance of the scheduled hearing. *Id.* at 1-2. The case law makes clear, however, that prejudice need not be shown in order to enforce the requirement of the Regulations. *See, e.g., U.S. Dep't of VA, Denver Reg'l Office, Denver, Colo.*, 70 FLRA 851 (2018) (*VA Denver*); *U.S. Dep't of VA, VA Med. Ctr., Martinsburg, W.Va.*, 66 FLRA 776 (2012). In all these cited cases, the untimely answers were received far in advance of the scheduled hearing, but this did not warrant a denial of summary judgment. Nor does it matter that Respondent's Answer was "only" two days late. As the Authority stated tersely in its *VA Denver* opinion, "late is late, and if a party believes it has good cause, it should say so." 70 FLRA at 851.

In these circumstances, § 2423.20(b) clearly requires that the Respondent's failure to file a timely Answer be treated as an admission of each of the allegations of the Complaint. Respondent's reliance on a Circuit Court decision regarding the standard for imposing a default judgment is inapplicable to our Statute. Accordingly, I agree with the General Counsel that there is no genuine issue of material fact in this case and the GC's Motion for Summary Judgment is granted. The prehearing conference and hearing are hereby cancelled.

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 June 28, 2021, 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 employees of the Federal Bureau of Prisons, which include employees of the Respondent (the unit).
4. The Union is an agent of AFGE for the purpose of representing the unit employees employed at Respondent.
5. At all material times, the following individual held the position opposite her name and has been a supervisor or management official of the Respondent within the meaning of § 7103(a)(1) and (11) of the Statute and agents of Respondent acting on its behalf:

Janice Humbertson Labor Relations Specialist

6. On June 9, 2021, the Union requested Respondent to furnish the Union with information related to a building with asbestos and related information about monitoring and restoration efforts.
7. The information described in paragraph 6 is normally maintained by Respondent in the regular course of business.
8. The information described in paragraph 6 is reasonably available.
9. The information described in paragraph 6 is necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of bargaining.
10. The information described in paragraph 6 does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining.

11. The information described in paragraph 6 is not prohibited from disclosure by law.
12. From June 9, 2021, to September 13, 2021, Respondent unreasonably delayed furnishing the Union with the information it requested in paragraphs 7-11.
13. By the conduct described in paragraphs 12, Respondent has been failing and refusing to comply with § 7114(b)(4) of the Statute.
14. By the conduct described in paragraphs 12 and 13, Respondent has been failing and refusing to negotiate in good faith with the Union, in violation of § 7116(a)(1) and (5) of the Statute.
15. By the conduct described in paragraphs 12 and 13, Respondent has been violating § 7116(a)(1) and (8) of the Statute.

CONCLUSIONS OF LAW

Section 7114(b)(4) of the Statute requires an agency, upon request, to furnish information to a union, to the extent not prohibited by law, if that information is (1) normally maintained in the regular course of business; (2) reasonably available; (3) necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and (4) not guidance, advice, counsel, or training related to collective bargaining and provided to management officials or supervisors. *U.S. Dep't of the Air Force, Air Force Materiel Command, Kirtland Air Force Base, Albuquerque, N.M.*, 60 FLRA 791, 794 (2005). Additionally, this requirement includes the duty to respond to a union's information request, even if the requested information does not exist. *U.S. Naval Supply Ctr., San Diego, Cal.*, 26 FLRA 324, 326-27 (1987). The Authority has consistently held that a timely reply to a union's request is necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining. *U.S. Dep't of Justice, Office of Justice Programs*, 45 FLRA 1022, 1026-27 (1992).

It is clear from the findings of fact that the Respondent has – by its failure to file a timely Answer – admitted all the essential elements of the ULP alleged by the General Counsel. The Union's information request satisfied the statutory criteria, yet the Respondent delayed furnishing any of the requested information for at least three months, if not longer, and failed even to respond to the request. By virtue of such conduct, the Respondent violated section 7114(b)(4) of the Statute, as well as section 7116(a)(1), (5), and (8). In order to remedy this unfair labor practice, Respondent will be required to post a notice, both physically and electronically, signed by the Warden, stating that it will cease and desist its unlawful conduct and will not refuse to respond to information requested under section 7114(b)(4).

Accordingly, the General Counsel's Motion for Summary Judgment is Granted. Therefore I recommend that the Authority adopt the following Order:

ORDER

Pursuant to § 2423.41(c) of the Rules and Regulations of the Authority and § 7118(a)(7) of the Federal Service Labor-Management Relations Statute (the Statute), the U.S. Department of Justice, Federal Bureau of Prisons, Federal Correctional Complex Petersburg, Petersburg, Virginia (FCC Petersburg), shall:

1. Cease and desist from:

(a) Failing to respond to requests for information made 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 the rights assured by the Statute.

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

(a) Post at all facilities 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 Warden of FCC Petersburg and 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 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. The message of the email transmitted with the Notice shall state, "We are distributing the attached Notice to you pursuant to an order of an Administrative Law Judge of the Federal Labor Relations Authority in Case Number WA-CA-21-0339."

(c) Pursuant to § 2423.41(e) of the Rules and Regulations of the Authority, notify the Regional Director, Washington 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., May 28, 2024

Richard A. Pearson

Digitally signed by Richard A.
Pearson
Date: 2024.05.28 09:29:01 -04'00'

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 U.S. Department of Justice, Federal Bureau of Prisons, Federal Correctional Complex Petersburg, Petersburg, Virginia, has 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 RECOGNIZE our obligation to comply with Section 7114(b)(4) of the Statute to respond to information requests submitted by the American Federation of Government Employees, Local 2052 (the Union), within a reasonable amount of time of the request being submitted.

WE WILL NOT fail to respond to information requests submitted by the Union.

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

(Agency/Activity)

Date: _____ 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 any of its provisions, they may communicate directly with the Regional Director, Washington Region, Federal Labor Relations Authority, whose address is: 1400 K Street, N.W., 3rd Flr., Washington, DC 20424, and whose telephone number is: (771) 444-5780.