

**73 FLRA No. 57**

AMERICAN FEDERATION  
OF GOVERNMENT EMPLOYEES  
LOCAL 1858  
(Union)

and

UNITED STATES  
DEPARTMENT OF THE ARMY  
REDSTONE ARSENAL, ALABAMA  
(Agency)

0-AR-5793

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ORDER DISMISSING EXCEPTIONS

October 6, 2022

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Before the Authority: Ernest DuBester, Chairman, and  
Colleen Duffy Kiko and Susan Tsui Grundmann,  
Members

**I. Statement of the Case**

The Authority's Office of Case Intake and Publication (CIP) issued an order directing the Union to provide documentary evidence related to the Union's exceptions to Arbitrator Roger I. Abrams's award. After the deadline to respond to the order expired, the Union filed an extension-of-time request. CIP then issued an order directing the Union to show cause why the Authority should not dismiss its exceptions based on the Union's failure to timely respond to the first order. Because the Union has not established extraordinary circumstances justifying waiving the expired time limit, we dismiss the Union's exceptions.

**II. Background**

The Union filed a grievance that proceeded to arbitration. After the Arbitrator denied the Union's grievance, the Union filed exceptions to the award on

January 10, 2022.<sup>1</sup> On February 9, the Agency filed an opposition.

On May 10, CIP issued an order (May order) directing the Union to provide, among other things, an earlier-filed unfair-labor-practice (ULP) charge that appeared to relate to the Union's grievance.<sup>2</sup> The May order stated that "[t]he Union's failure to comply . . . by May 24[] may result in dismissal of the Union's exceptions."<sup>3</sup> Additionally, the May order noted that "[r]equests for extensions of time must be . . . received by the Authority not later than five days before the established time limit for filing" and "must state the position of the other party."<sup>4</sup>

CIP sent the May order to the Union via certified mail. The tracking information shows that the May order was delivered to the Agency's internal mail room on May 23.<sup>5</sup>

The Union filed a request for an extension of time to respond to the May order. In that request, which was postmarked June 18, the Union stated that it "did not receive [the May order] until June 1," when a Union official picked up the mail from the Agency's mail room.<sup>6</sup> The Union acknowledged that the Agency's mail room received the Authority order on May 23, but asserted that the mail room "no longer delivers mail or notifies when there is mail at their facility."<sup>7</sup>

On July 21, CIP issued an order (July order) directing the Union to show cause why the Authority should not dismiss the exceptions based on the Union's failure to comply with the May order. The July order stated that "the Union filed an untimely request for an extension of time" to respond to the May order, and the Union failed to state the Agency's position regarding the extension-of-time request.<sup>8</sup>

In a timely response to the July order, the Union acknowledged that the Agency's mail room received the order on May 23, but argued circumstances warranted waiving the expired time limit because the Union "did not receive the [May order] until June 1."<sup>9</sup> The Union stated that it does not pick up mail on a daily basis because employees are currently teleworking due to the COVID-19 pandemic. Additionally, the Union stated that it filed the

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<sup>1</sup> All subsequent dates refer to 2022.

<sup>2</sup> May Order at 2 (directing the Union to provide the ULP charge and grievance to "clarify [the] record" and "aid in [the] disposition of th[is] matter," and permitting the Union to address whether the grievance was barred under § 7116(d) of the Federal Service Labor-Management Relations Statute (quoting 5 C.F.R. § 2425.9)).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 3 (citing 5 C.F.R. § 2429.23(a)).

<sup>5</sup>

*See* [https://tools.usps.com/go/TrackConfirmAction?qt\\_c\\_tLabels1=70220410000344481101](https://tools.usps.com/go/TrackConfirmAction?qt_c_tLabels1=70220410000344481101) (showing that the May order was delivered to the Agency's internal mail room on May 23, 2022) (last visited Sept. 29, 2022).

<sup>6</sup> Union's Req. for Extension of Time (Extension Req.) at 3.

<sup>7</sup> *Id.*

<sup>8</sup> July Order at 1-2.

<sup>9</sup> Union's Resp. to July Order (Resp. to July Order) at 1.

extension request the same day that it received the May order – June 1.

**III. Analysis and Conclusion: The Union fails to establish extraordinary circumstances to justify waiving an expired time limit.**

The Union argues in its response to the July order that the Authority should not dismiss the Union’s exceptions, because the Union (1) did not receive the May order until after the deadline for responding expired, (2) requested an extension, and (3) “sen[t] the requested information to the Authority.”<sup>10</sup>

Under § 2429.23(b) of the Authority’s Regulations, a party’s request to waive an expired time limit “shall state” the other parties’ positions, and requests to waive expired time limits may be granted only in “extraordinary circumstances.”<sup>11</sup> Further, § 2429.23(c) provides that “time limits . . . may not be . . . waived in any manner other than that described” in the Authority’s Regulations.<sup>12</sup> As such, the Authority has denied waiver requests that did not state the positions of other parties, as well as requests that did not establish extraordinary circumstances.<sup>13</sup>

First, the Union argues that, because employees were teleworking, it did not receive the May order until June 1, when a Union official picked up the mail from the

Agency’s internal mail room.<sup>14</sup> However, the Union concedes,<sup>15</sup> and the tracking information confirms,<sup>16</sup> that the Agency’s mail room received the May order before the May 24 response deadline.<sup>17</sup> Further, to the extent that the Agency’s internal mail-room procedures changed,<sup>18</sup> the Union fails to explain why it did not make alternative arrangements for monitoring the mail.<sup>19</sup> In any event, the Authority has held that untimely filings caused by delays or problems with an internal mail system do not present extraordinary circumstances.<sup>20</sup>

Next, the Union alleges that the July order incorrectly stated that the Union did not request an extension.<sup>21</sup> Contrary to the Union’s allegation, the July order stated that “the Union’s extension . . . request does not comply with the Authority’s [R]egulations.”<sup>22</sup> Under § 2429.23(a) of the Authority’s Regulations, extension-of-time requests must be received no later than five days before the established time frame for the filing and must state the other parties’ positions.<sup>23</sup> Although the May order was delivered to the Agency’s internal mail room on May 23, making it impossible for the Union to file an extension-of-time request five days before the May 24 deadline, the Union did not exercise due diligence in

<sup>10</sup> *Id.* at 2.

<sup>11</sup> 5 C.F.R. § 2429.23(b).

<sup>12</sup> *Id.* § 2429.23(c).

<sup>13</sup> *U.S. DOJ, Fed. BOP, Metro. Corr. Ctr., N.Y.C., N.Y.*, 67 FLRA 442, 444 (2014) (*Metro.*) (Member Pizzella dissenting on other grounds).

<sup>14</sup> *See* Resp. to July Order at 1.

<sup>15</sup> *See* Extension Req. at 3 (stating the Agency’s mail room “received the [May order] on May 23, 2022”); Resp. to July Order at 1 (stating the Agency’s mail room “receive[d] the May order] from [CIP on] May 23, 2022”).

<sup>16</sup> *See* [https://tools.usps.com/go/TrackConfirmAction?qt\\_c\\_tLabels1=70220410000344481101](https://tools.usps.com/go/TrackConfirmAction?qt_c_tLabels1=70220410000344481101) (showing that the May order was delivered to the Agency’s internal mail room on May 23, 2022) (last visited Sept. 29, 2022).

<sup>17</sup> *See U.S. Dep’t of VA, Veterans Benefits Admin.*, 71 FLRA 315, 316 (2019) (*Dep’t of VA*) (then-Member DuBester concurring) (extraordinary circumstances not established to justify waiver of deadline where counsel claimed no knowledge of an Authority order until after the order deadline but exhibits showed order received by mail room prior to the deadline); *AFGE, Loc. 1102*, 63 FLRA 343, 343-44 (2009) (*Loc. 1102*) (noting that untimely filings caused by delays or problems with internal mail systems, including when the union uses an agency’s internal mail system, do not present extraordinary circumstances warranting reconsideration of a dismissal); *see also U.S. Dep’t of VA, John J. Pershing VA Med. Ctr.*, 71 FLRA 426, 427 (2019) (*Pershing VAMC*) (then-Member DuBester concurring) (“The Authority has previously held that claiming to have no

knowledge of an Authority order does not constitute an extraordinary circumstance warranting waiver.”).

<sup>18</sup> Resp. to May Order at 3. (Union alleging that Agency “no longer delivers mail or notifies when there is mail”).

<sup>19</sup> *See AFGE, Loc. 2338*, 72 FLRA 176, 177 (2021) (*Loc. 2338*) (Member Abbott dissenting) (where attorney’s COVID-19 quarantine contributed to delay in receiving Authority decision, Authority found no extraordinary circumstances justifying waiver of motion-for-reconsideration filing deadline, noting the moving party “d[id] not explain why it did not make arrangements for monitoring the . . . mail”); *Metro.*, 67 FLRA at 444 (declining to find extraordinary circumstances for waiving expired time limit where the moving party failed to explain why mail was not monitored while the representative was out of office); *see also Pershing VAMC*, 71 FLRA at 427.

<sup>20</sup> *See Loc. 1102*, 63 FLRA at 343-44; *U.S. Dep’t of the Army, U.S. Army Rsrv. Pers. Ctr., St. Louis, Mo.*, 49 FLRA 95, 95 n.1 (1994) (delay caused by agency’s mailing procedure does not constitute extraordinary circumstance warranting waiver of the union’s opposition deadline); *U.S. Dep’t of VA Hosp., Bedford, Mass.*, 42 FLRA 1364, 1366 (1991) (“Delays resulting from a party’s internal administrative mail procedures do not establish extraordinary circumstances warranting reconsideration of an Authority order.”).

<sup>21</sup> Resp. to July Order at 1-2.

<sup>22</sup> July Order at 2.

<sup>23</sup> *See* 5 C.F.R. § 2429.23(a) (“Requests for extensions of time shall be . . . received . . . not later than five (5) days before the established time limit for filing [and] shall state the position of the other parties . . .”).

retrieving, or responding to, the May order.<sup>24</sup> The Authority has repeatedly affirmed that the postmark date determines the filing date,<sup>25</sup> and the envelope in which the Union mailed its extension request was postmarked June 18. Thus, the May order was delivered on May 23,<sup>26</sup> the Union picked up the order from the mail room on June 1,<sup>27</sup> and yet the Union did not file its extension request until June 18. Moreover, it is undisputed that neither the Union's extension request nor the Union's response to the July order states the Agency's position regarding the request.<sup>28</sup> Consequently, the Union's argument does not present extraordinary circumstances justifying a waiver.<sup>29</sup>

Lastly, the Union claims that it "sen[t] the requested information to the Authority."<sup>30</sup> However, the Union did not provide any documentary evidence that the May order directed it to provide.<sup>31</sup> Therefore, the Union did not comply with the Authority order, and extraordinary circumstances do not exist to justify a waiver of the expired deadline.<sup>32</sup>

Based on the above, we dismiss the Union's exceptions.

#### IV. Order

We dismiss the exceptions.

<sup>24</sup> See *Bremerton Metal Trades Council*, 73 FLRA 259, 260 (2022) (*Bremerton*) (noting that the excepting party "waited five days after receiving [an order] to contact CIP" and filed a response to the order eight days after receiving it); *Dep't of VA*, 71 FLRA at 316 (noting the excepting party behaved in a "dilatatory manner" when responding to an order that was in its possession).

<sup>25</sup> *U.S. DOD, Educ. Activity*, 73 FLRA 75, 76 (2022) (citing 5 C.F.R. § 2429.21(b)); *U.S. Dep't of the Navy, Marine Corps Air Station, Cherry Point, N.C.*, 66 FLRA 922, 923 (2012) (noting that the "postmark date is what determines the date of filing with the Authority, and not the alleged . . . date of deposit" in the mail).

<sup>26</sup> See Resp. to July Order at 1.

<sup>27</sup> See *id.*; Resp. to May Order at 3.

<sup>28</sup> See 5 C.F.R. § 2429.23(a) ("Requests for extensions of time shall . . . state the position of the other parties . . ."); *id.* § 2429.23(b) ("Request[s] for a waiver of time limits shall state

the position of the other parties . . ."); see also *Loc. 2338*, 72 FLRA at 177 (dismissing motion for reconsideration as untimely filed, in part, because the waiver request failed to state the other party's position).

<sup>29</sup> See *Bremerton*, 73 FLRA at 260; *Loc. 2338*, 72 FLRA at 177; *Dep't of VA*, 71 FLRA at 316; see also *AFGE, Loc. 12*, 69 FLRA 162, 162 (2016) (denying motion requesting an extension of time to respond to an Authority order because the motion was not filed before the regulatory deadline).

<sup>30</sup> Resp. to the July Order at 2.

<sup>31</sup> See May Order at 2 (directing the Union to provide the ULP charge concerning the official-time dispute and the grievance to "clarify [the] record" and "aid in [the] disposition of th[is] matter").

<sup>32</sup> See *AFGE, Loc. 2419*, 70 FLRA 319, 320 (2017) (affirming dismissal of exceptions where party failed to timely respond to show-cause order).