



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

OALJ 21-01

DEPARTMENT OF VETERANS AFFAIRS
BECKLEY VA MEDICAL CENTER
BECKLEY, WEST VIRGINIA

RESPONDENT

AND

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 2198, AFL-CIO

CHARGING PARTY

Case No. WA-CA-18-0077

Douglas J. Guerrin
For the General Counsel

Craig M. Curry
For the Respondent

Melissa Miklos
For the Charging Party

Before: RICHARD A. PEARSON
Administrative Law Judge

DECISION ON MOTION FOR SUMMARY JUDGMENT

On May 14, 2021, the Acting Regional Director of the Washington 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), Beckley VA Medical Center, Beckley, West Virginia (the Respondent) violated § 7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute (the Statute) by repudiating an agreement on ground rules for negotiating a local supplemental agreement. The Complaint indicated that a hearing on the allegations would be held on July 16, 2021, and advised the Respondent that an Answer to the Complaint was due no later than June 8, 2021. The Complaint was mailed

to the Respondent's designated representative, Craig Curry, VA Medical Center, 200 Veterans Ave., Beckley, WV 25801. The Respondent did not file an Answer to the Complaint.

On June 16, 2021, Counsel for the General Counsel (GC) filed a Motion for Summary Judgment, based on the fact that the Respondent failed to file an Answer to the Complaint, and arguing therefore that the Respondent had admitted all the allegations of the Complaint. Based on that motion, I issued an Order on July 8, 2021, cancelling the hearing.

Accordingly, the GC asserted that there were no factual or legal issues in dispute, and the case was 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 Union filed the charge in this proceeding on December 7, 2017, 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 individuals held the position 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 Respondent acting upon its behalf:

Debra Legg	Associate Director for Patient Care Services
Brian Edens	Employee and Labor Relations Specialist
Craig Curry	Employee and Labor Relations Specialist

6. The Respondent and the Union are parties to a Ground Rules Agreement (Agreement), which has been effective since March 8, 2013, covering employees in the bargaining unit described in paragraph 4, for negotiating a Local Supplemental Agreement.
7. The Agreement described in paragraph 6 states that there will be a minimum of one negotiation session per month, that each negotiation session will consist of three consecutive days, and that there must be a minimum of three bargaining team members on each team for bargaining.
8. Since June 2017, the Respondent has been failing and refusing to honor and abide by the terms of the Agreement described in paragraphs 6 and 7.
9. By the conduct described in paragraph 8, the Respondent has been repudiating the terms of the Agreement as described in paragraphs 7 and 8.
10. By the conduct described in paragraphs 8 and 9, Respondent has been refusing to negotiate in good faith with the Union in violation of § 7116(a)(1) and (5) of the Statute.

CONCLUSIONS OF LAW

In *Department of Defense, Warner Robins Air Logistics Center, Robins Air Force Base, Georgia*, 40 FLRA 1211 (1991) (*Warner Robins*), and in many subsequent decisions, the Authority has articulated the criteria for determining whether a party's breach of a collective bargaining agreement constitutes an unfair labor practice. Although a single violation of a CBA may not amount to a violation of the Statute, it will be considered unlawful under § 7116(a)(1) and (5) when the nature and scope of the breach amount to a repudiation of the parties' negotiated agreement. *Dep't of the Air Force, 375th Mission Support Squadron, Scott AFB, Ill.*, 51 FLRA 858 (1996).

In this case, the Respondent has chosen not to contest the factual and legal allegations of the complaint, and as noted previously, those allegations are therefore admitted as true. Accordingly, I find that the Respondent has violated the terms of the Agreement stating that there will be a minimum of one negotiation session per month; that each negotiation session will consist of three consecutive days; and that there must be a minimum of three bargaining team members on each team for bargaining. I further find that the violation constitutes a clear and patent breach of the Agreement, and that the violation goes to the heart of the Agreement. Based on these findings, the Respondent has repudiated the above-cited terms of the Agreement and has violated § 7116(a)(1) and (5) of the Statute.

As a remedy for the Respondent's violation, I order remedies consistent with those ordered in similar cases. See *U.S. DOJ, Fed. Bureau of Prisons*, 68 FLRA 786, 789-90 (2015); *Warner Robins*, 40 FLRA at 1222-23.

I therefore recommend that the Authority grant the GC'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, Beckley VA Medical Center, Beckley, West Virginia, shall:

1. Cease and desist from:

(a) Repudiating the Ground Rules Agreement (the Agreement) of March 8, 2013, by failing and refusing to honor and abide by the terms of the Agreement stating that there will be a minimum of one negotiation session per month; that each negotiation session will consist of three consecutive days; and that there must be a minimum of three bargaining team members on each team for bargaining.

(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) Comply with the terms of the Agreement stating that there will be a minimum of one negotiation session per month; that each negotiation session will consist of three consecutive days; and that there must be a minimum of three bargaining team members on each team for bargaining.

(b) Post at the Beckley VA Medical Center, Beckley, West Virginia, 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, Beckley VA Medical Center, Beckley, West Virginia, 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.

(d) 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., July 20, 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, Beckley VA Medical Center, Beckley, West Virginia, 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 repudiate the Ground Rules Agreement (the Agreement) of March 8, 2013, by failing and refusing to honor and abide by the terms of the Agreement stating that there will be a minimum of one negotiation session per month; that each negotiation session will consist of three consecutive days; and that there must be a minimum of three bargaining team members on each team for bargaining.

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 comply with the terms of the Agreement stating that there will be a minimum of one negotiation session per month; that each negotiation session will consist of three consecutive days; and that there must be a minimum of three bargaining team members on each team for bargaining.

(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, Washington Region, Federal Labor Relations Authority, whose address is: 1400 K Street, N.W., 2nd Fl., Washington, D.C. 20424, and whose telephone number is: (202) 357-6029, ext. 6027.