



UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C. 20424

OALJ 23-10

DEPARTMENT OF THE ARMY
FORT HUACHUCA, ARIZONA

RESPONDENT

AND

Case No. DE-CA-22-0044

AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES
LOCAL 1662, AFL-CIO

CHARGING PARTY

Paige A. Swenson
For the General Counsel

Stephen B. Jansen
Karen Minton
For the Respondent

Aaron Gragg
For the Charging Party

Before: LEISHA A. SELF
Administrative Law Judge

DECISION ON MOTION FOR SUMMARY JUDGMENT

The General Counsel moved for summary judgment because the Respondent failed timely to answer the Complaint. The Respondent argued that it did not receive notice of the Complaint because the Complaint was served to a fax number to which the Respondent's representative no longer had access, the representative's other contact information had changed, and it was the responsibility of the General Counsel to determine whether those changes had been made. However, the Respondent's representative bears the responsibility to provide notification of such changes. Therefore, the Respondent has not provided good cause for the failure timely to answer

nor extraordinary circumstances that would allow for waiver of the time limit to answer. As such, the General Counsel's Motion for Summary Judgment is granted.

I. BACKGROUND

On June 2, 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 case, alleging that the Department of the Army, Fort Huachuca, Arizona (the Respondent or the Agency) violated § 7116(a)(1), (5), and (8) of the Federal Service Labor-Management Relations Statute (the Statute) by failing to provide information requested by the American Federation of Government Employees, Local 1662, AFL-CIO (the Charging Party or the Union) pursuant to § 7114(b)(4) of the Statute. The Complaint indicated that a hearing on the allegations would be held on August 9, 2023, and advised the Respondent that an Answer to the Complaint was due no later than June 22, 2023. The Respondent did not file an Answer to the Complaint.

On July 18, 2023, Counsel for the General Counsel (the GC) filed a Motion for Summary Judgment (MSJ), based on the fact that the Respondent had failed to file an Answer to the Complaint, and arguing that the Respondent therefore had admitted all of the allegations of the Complaint. The GC asserts that, since there are no factual or legal issues in dispute, the case is ripe for summary judgment in its favor. MSJ at 1.

On July 21, 2023, the Respondent filed a Response to the General Counsel's Motion for Summary Judgment (Response), arguing that the GC's notice of the Complaint was insufficient because the GC served the Complaint to a fax number to which the Respondent's representative no longer had access, left a voicemail message about the Complaint on a telephone line to which the representative no longer had access, and did not try to reach the representative by other means. The Respondent further argues that the information that is the subject of the Complaint regarded an employee who no longer works at the Agency. Finally, the Respondent requests leave to submit an Answer. Response at 1-2.

On July 25, 2023, the GC filed an Opposition to the Respondent's Response to General Counsel's Motion for Summary Judgment (GC Oppo.). In that Opposition, the GC argues that service of the Complaint was sufficient as the Respondent's representative did not inform the GC that his fax number or telephone number had changed. Therefore, the GC properly served the Complaint and the Respondent failed timely to answer it, thereby admitting the allegations of the Complaint. GC Oppo. at 4.

On July 19, 2023, I issued an Order Indefinitely Postponing the Prehearing Disclosures Due Date and Dates for the Prehearing Conference Call and Hearing (Order). Because the Respondent's representative, Mr. Jansen, argued in the Response (which was submitted after I issued the Order) that he no longer had access to the fax number to which the Complaint was served (and also therefore to the fax number to which I served the Order and other prior case documents), but did not provide an updated fax number in the Response, as a courtesy, I emailed a copy of the Order to him, as well as other orders that I issued in the case. I also asked him to provide updated contact information.

Mr. Jansen responded by email five days later, notifying me that the Respondent would shortly have a new representative, Ms. Karen Minton. He provided me with her email address, but

not her physical address, and notified me that there was no available fax number for her. In response to Mr. Jansen's email, I requested Ms. Minton's physical address to which certified mail could be sent, but did not receive a response from Mr. Jansen or Ms. Minton. This decision will be served to the last known address for Ms. Minton and the address for Mr. Jansen that appears beneath the signature line of Mr. Jansen's August 7, 2024 email, which is the same address associated with the Respondent's Response.

Because I find that the Respondent did not timely answer the Complaint, did not have good cause for that failure, and has not providing extraordinary circumstances that would allow for a waiver of the time limit for filing an Answer, the Respondent is deemed to have admitted the allegations of the Complaint. Therefore, there are no material facts in dispute and the Motion for Summary Judgment is granted.

II. 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 of the Authority's Regulations, 5 C.F.R. § 2423.20, 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 allow for a waiver of any expired time limit, including for filing an answer, due to extraordinary circumstances. 5 C.F.R. § 2429.23(b). Therefore, unless the Respondent can establish that it has answered, has good cause for its failure timely to answer, or has extraordinary circumstances such that the time limit for answering should be waived, the Respondent will be deemed to have admitted the allegations of the Complaint.

In this case, it is undisputed that the Respondent has not timely filed an Answer. However, the question remains as to whether the Respondent had good cause for its failure timely to answer or has provided extraordinary circumstances because the Complaint was served to a facsimile number to which the Respondent's representative no longer has access and the Respondent's representative was not otherwise notified because the GC's voicemail message about it was left on a telephone number to which the representative also no longer has access and the GC did not try to reach the representative by other means. The Respondent argues in particular that it would be reasonable to expect the GC to ensure that the contact information was correct given that the time between the issuance of the Complaint and the last contact between the GC and the Respondent's representative was over a year. Response at 1-2.

The GC's evidence shows however that, during the investigation of the Unfair Labor Practice (ULP) Charge in this case in February 2022, the Respondent's representative provided the GC with contact information, including his facsimile number and telephone number. GC Oppo., Attachment (Att.) 1 and 2. The GC and the Respondent's representative communicated by telephone and email at that time. GC Oppo. at 3. Thereafter, in mid-February 2022, the GC specifically notified the Respondent's representative by email that a Complaint would be issued on the ULP Charge, but that the timing was unknown. The email implied that the timing for the Complaint would be later: "Because we are still working on our backlog of pending Complaints, I cannot tell you when this case might actually be put on a trial docket." GC Oppo., Att. 2.

Approximately a year and several months after that email, the GC left a message for the Respondent's representative, at the telephone number previously provided and used, to notify him that the Complaint would be issued. GC Oppo. at 3. Shortly thereafter, on June 2, 2023, the Complaint was issued and faxed to the number previously provided by the Respondent's representative. GC Oppo. Att. 3. The fax report showed that the facsimile was successfully sent and there were no error or cancellation indicators on the transmission sheet. GC Oppo., Att. 3. The Respondent has not provided evidence that the fax number does not belong to the Respondent. The Respondent asserts only that the Respondent's representative no longer has access to it. Response at 1-2.

To determine whether the Respondent had good cause or has shown extraordinary circumstances, it must be determined whether it is the Respondent's representative's obligation to provide updated contact information or the GC's. The Statute and Authority regulations do not directly address this question. Nevertheless, it is widely accepted that a representative for a party has an obligation to provide updated contact information. For example, federal court local rules typically specify that representatives have a continuing responsibility to provide notification of address or email changes. *See, e.g.*, Fed. R. Civ. P. L.R. 83-10. Federal appellate court rules typically require counsel to update the electronic case filing system to reflect changes in address, telephone number, fax number and email address. *See, e.g.*, U.S. Ct. of App. 6th Cir., Rule 12; U.S. Ct. of App. 9th Cir., Rule 46-3. Specialized courts employ similar rules. For example, Tax Court Rule 21 (b)(4) specifies that counsel must promptly provide notification of change of address. Finally, federal administrative tribunals also require representatives to promptly provide change of address notifications. *See, e.g., In the Matter of Stanley Buckwalter, et al.*, CFTC No. 80-28, Comm. Fut. L. Rep. P 25,609, 25,609 (1992).

This makes sense for two reasons. First, as the individual first and foremost aware of the change, the individual with the change is in the best position to notify others. The reason for that is well-illustrated in the instant case, given the numerous changes for Mr. Jansen, including his email address, no current access to his previous fax number, and his physical address (compare the address underneath Mr. Jansen's email signature line in February 2022, GC Oppo., Att. 1 and 2, to the Response address for Mr. Jansen, which is different) and the most recent change in the Respondent's representative, with Ms. Minton becoming the representative, without anything other than her email address being provided. Moreover, this latter change was apparently only provided because of the undersigned's specific inquiry as to representative contact information. It simply does not make sense for other parties and the court to track down such changes. The representative who is undergoing the change needs to provide notice of such. The second reason that it is the representative's responsibility to provide updated contact information is that an individual taking

on representative responsibilities accepts a certain level of responsibility, which reasonably should include the responsibility to keep others abreast of change of contact information so that the representative can receive information necessary to provide appropriate representation.

Moreover, the argument that the GC had a particular responsibility to ensure the contact information was correct because more than a year had passed does not change this. This is so also for two reasons. First, the GC had earlier provided information to the representative that the Complaint would be issued at a later point, and possibly at a delayed point, via the email in mid-February 2022. GC Oppo., Att. 1 and 2. Therefore, the Complaint's issuance on June 2, 2023 (and therefore the need for the Respondent's representative to provide updated contact information) should not have come as a surprise to the Respondent's representative. Second, the timing between the last communication (between the GC and the Respondent's representative) and the Complaint is not so extraordinary -- a year and several months -- such that the GC might reasonably have some concerns about updated contact information. Instead, it was reasonable for the GC to assume that the contact information remained current, given that the Respondent's representative did not provide notification to the contrary, that the time period between communications was not particularly significant, and that the fax report for the Complaint showed appropriate transmission.

Given that it is the Respondent's representative's responsibility to provide updated contact information and the Respondent's representative did not provide such notification, the Respondent did not have good cause for its failure timely to answer the Complaint. Nor has it established extraordinary circumstances to justify a waiver of the time limits. Therefore, the Respondent's request for such is denied.

Therefore, the Respondent is deemed to have admitted 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.¹ 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:

III. FINDINGS OF FACT

1. The Union filed the charge in this proceeding on October 22, 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 Union 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, which includes employees of the Respondent (the unit).
4. At all times material, the following individual held the position opposite his name and has been a supervisor or management official of the Respondent within the

¹ The Respondent's additional argument in its Response, that the person whose information is the subject of the Complaint no longer works at the Agency, is not relevant to the basis for the Motion for Summary Judgment, given that the Respondent is deemed to have admitted the allegations of the Complaint through operation of § 2423.20(b).

meaning of § 7103(a)(10) and (11) of the Statute, and an agent of the Respondent acting upon its behalf:

Stephen Jansen

Human Resources Specialist

5. On October 8, 2021, the Union requested by e-mail that the Respondent furnish the Union with redacted copies of all cash awards proposals that were submitted for Rebekka Edward in 2021, along with any determinations that were made relating to these proposed cash awards.
6. The information described in paragraph 5 is normally maintained by the Respondent in the regular course of business.
7. The information described in paragraph 5 is reasonably available.
8. The information described in paragraph 5 is necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of bargaining.
9. The information described in paragraph 5 does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining.
10. The information described in paragraph 5 is not prohibited from disclosure by law.
11. On October 19, 2021, the Respondent, by Jansen, denied the Union's request for information described in paragraph 5.
12. Since October 19, 2021, the Respondent has been failing and refusing to furnish the Union with the information it requested as described in paragraph 5.
13. By the conduct described in paragraphs 11 and 12, the Respondent has been failing and refusing to comply with § 7114(b)(4) of the Statute.
14. By the conduct described in paragraphs 11, 12, and 13, the 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 11, 12, and 13, the Respondent has been violating § 7116(a)(1) and (8) of the Statute.

IV. CONCLUSIONS OF LAW

A union requesting information under § 7114(b)(4) of the Statute must establish a particularized need for the information; that is, it must show that the information is necessary for the union to adequately represent its members. *IRS, Wash., D.C.*, 50 FLRA 661, 669-70 (1995). A union must additionally satisfy the other requirements set forth in § 7114(b)(4). By virtue of its failure to file an Answer to the Complaint in this case, the Respondent has admitted that the information requested by the Union was necessary for the Union to represent its members; that the

information was normally maintained by the Respondent; that it was reasonably available; that it did not constitute guidance to management relating to collective bargaining; and that its disclosure was not prohibited by law. Similarly, the Respondent has admitted that it denied the information request on October 19, 2021, and that it has continued to refuse to furnish the requested information in the information request. It is evident, therefore, that, by the Respondent's refusal to furnish the information to the Union, it has failed to comply with § 7114(b)(4), and that it violated § 7116(a)(1), (5), and (8) of the Statute.

V. REMEDY

The GC requests that, as a remedy, the Respondent must provide the information requested by the Union on October 8, 2021, and post a notice, signed by the Chief of Human Resources, both physically and by email. MSJ at 5. The Respondent did not specifically oppose these remedies. However, in its Response, the Respondent asserted that the individual whose information was the subject of the Complaint no longer works at the Agency, Response at 2, which could be construed as an argument that the remedy of requiring the Respondent to provide the information requested is not appropriate.

The requested remedies are traditional for violations in which an agency has unlawfully refused to furnish necessary information to a union. *See, e.g., U.S. Dep't of Justice, Fed. BOP, Fed. Corr. Inst. Ray Brook, Ray Brook, N.Y.*, 68 FLRA 492, 498-500 (2015); *U.S. Dep't of Justice, Fed. Transfer Ctr., Okla. City, Okla.*, 67 FLRA 221, 226 (2014). As such, the Respondent is ordered to post a notice, physically and by email. It is also appropriate for the Chief of Human Resources to sign the notice, as requested by the GC, as that individual is the highest level official responsible for the violation. Finally, while the individual about whom the information was requested no longer works at the Agency, the Respondent is deemed to have admitted that the information is necessary regardless of that fact. Moreover, the Respondent's own evidence establishes that the individual continued to work at the Agency for a period after the violation. Response, Enclosure 2. As such, it is appropriate to require the Agency to provide the information requested.

I therefore recommend that the Authority grant the GC's Motion for Summary Judgment and issue the following Order:

VI. 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 the Army, Fort Huachuca, Arizona, shall:

1. Cease and desist from:

- (a) Failing and refusing to provide information requested by the American Federation of Government Employees, Local 1662, AFL-CIO (the Union) under § 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 to effectuate the purposes and policies of the Statute:

- (a) Furnish the Union with the information it requested on October 8, 2021;
- (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 Chief of Human Resources, Department of the Army, Fort Huachuca, Arizona, 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 to all bargaining unit employees of the Department of the Army, Fort Huachuca, Arizona.
- (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.
August 10, 2023

**LEISHA
SELF** Digitally signed
by LEISHA SELF
Date: 2023.08.10
12:12:52 -04'00'

LEISHA A. SELF
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 the Army, Fort Huachuca, Arizona 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 furnish the American Federation of Government Employees, Local 1662, AFL-CIO (the Union) with the information the Union requested on October 8, 2021, regarding cash awards proposals that were submitted for an employee in 2021, along with any determinations that were made relating to those proposed cash awards;

WE WILL NOT fail or refuse to provide the Union with information requested under § 7114(b)(4) of the Statute.

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.

(Agency/Activity)

Dated: _____ 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 its provisions, they may communicate directly with the Regional Director, Denver Regional Office, Federal Labor Relations Authority, whose address is: 1244 Speer Blvd., Suite 446, Denver, Colorado 80204, and whose telephone number is: (303) 225-0340.