



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

OALJ 23-11

DEPARTMENT OF JUSTICE  
FEDERAL BUREAU OF PRISONS  
FEDERAL CORRECTIONAL COMPLEX  
FORREST CITY, ARKANSAS

RESPONDENT

Case No. AT-CA-22-0085

AND

AMERICAN FEDERATION OF GOVERNMENT  
EMPLOYEES, LOCAL 922, AFL-CIO

CHARGING PARTY

Brian R. Locke  
For the General Counsel

Tim Maughan  
For the Respondent

Jay Westbrook  
For the Charging Party

Before: DAVID L. WELCH  
Chief Administrative Law Judge

**DECISION ON MOTION FOR SUMMARY JUDGMENT**

On June 21, 2023, the Acting Regional Director of the Atlanta Region of the Federal Labor Relations Authority (the Authority) issued a Complaint and Notice of Hearing in this matter. The Complaint alleged that the Department of Justice, Federal Bureau of Prisons, Federal Correctional Complex, Forrest City, Arkansas (the Respondent or Agency) violated § 7116(a)(1), (5) and (8) of the Statute by failing and refusing to respond to the information request of the American Federation of Government Employees, Local 922, AFL-CIO's (the Union), and failing and refusing to provide the requested information, in accordance with § 7114(b)(4) of the Statute.

The Complaint indicated that a hearing on the allegations would be held on May 1, 2024. The Complaint also advised the Respondent that an Answer to the Complaint was due no later than July 17, 2023, and that a failure to file an answer or respond to any allegation would constitute an admission of those allegations, absent a showing of good cause. The Complaint was sent by regular mail to the Respondent's designated representative, Jennifer Hinton, Labor Relations Specialist, Federal Bureau of Prisons, Labor Relations Office – South, 346 Marine Force Drive, Grand Prairie, Texas 75051, and a courtesy copy of the Complaint was sent to Hinton via email.

The Respondent did not file an Answer by the July 17, 2023 deadline. After July 17, 2023, the Respondent served the General Counsel (the GC) an Answer. While the Answer was dated June 13, 2023 (likely an error, since the Complaint wasn't filed until June 21, 2023), the Answer was postmarked, and thus was filed, on July 24, 2023, one week after the July 17, 2023 deadline had passed. Br. in Supp. of Mot. for Summ. J., GC Ex. 4 at 3-4; 5 C.F.R. § 2429.21(b)(1)(i).

On August 4, 2023, the GC filed a Motion for Summary Judgment, and a Brief in Support of 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 had therefore admitted all 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. The Respondent has not filed a response to the GC's 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, VA 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 Acting 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. The Acting Regional Director also advised the 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. EPA, Env'tl. 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 VA, 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 did not file its Answer until July 24, 2023, one week after the deadline for filing the Answer had passed. Br. in Supp. of Mot. for Summ. J., GC Ex. 4 at 3-4; 5 C.F.R. § 2429.21(b)(1)(i). 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 timely answer the Complaint. 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. Accordingly, there are no disputed factual issues in this case, and summary judgment against the Respondent is appropriate. Therefore, the GC's Motion for Summary Judgment is granted.

Based on the existing record, the undersigned makes the following findings of fact, conclusions of law, and recommendations:

### FINDINGS OF FACT

1. The American Federation of Government Employees, Local 922, AFL-CIO (the Union), filed the charge in this proceeding on November 15, 2021, and a copy was served on the Department of Justice, Federal Bureau of Prisons, Federal Correctional Complex, Forrest City, Arkansas (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 a nationwide consolidated unit of Bureau of Prisons employees, which includes employees of the Respondent (the unit).
4. The Union is an agent of AFGE for the purpose of representing the unit employees employed at the Respondent.

5. At all times material, the following individuals held the positions opposite their names and have been supervisors or management officials of the Respondent within the meaning of § 7103(a)(10)<sup>1</sup> and (11) of the Statute and/or agents of the Respondent acting upon its behalf:

John Yates

Complex Warden

6. On September 20, 2021, the Union requested, by email, that the Respondent furnish the Union with the following information:
- a. Copies of all documents showing that employees worked more than 16 hours in a 24-hour time period since Warden Yates issued the Consecutive Hours of Work Memo on December 11, 2020.
  - b. Copies of all overtime sign-up lists, overtime assignments, and all mandatory overtime rotation lists and assignments since Warden Yates issued the Consecutive Hours of Work Memo on December 11, 2020.
  - c. Copies of all other documentation relied upon by the Agency to assign overtime since Warden Yates issued the Consecutive Hours of Work Memo on December 11, 2020.
7. The information described in paragraph 6 is normally maintained by the Respondent in the regular course of business.
8. The information described in paragraph 6 is reasonably available.
9. The information described in paragraph 6, from the time period starting September 28, 2021 through the date the Respondent discloses the information, 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.

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<sup>1</sup> In the Complaint, the GC erroneously referenced § 7103(a)(1), which defines a “person,” rather than § 7103(a)(10), which defines a “supervisor,” but it is clear from context that the GC intended to reference § 7103(a)(10), and that its reference to § 7103(a)(1) was a typographical error.

12. Since September 20, 2021, the Respondent, through Yates, has been failing to respond to the Union's request for information described in paragraphs 6-11.
13. Since September 20, 2021, the Respondent, through Yates, has been failing and refusing to furnish the Union with the information it requested as described in paragraphs 6-11.
14. By the conduct described in paragraphs 12 and 13, the Respondent has been failing and refusing to comply with § 7114(b)(4) of the Statute.
15. By the conduct described in paragraphs 12, 13, and 14, the Respondent has been failing and refusing to negotiate in good faith with the Union and violating § 7116(a)(1) and (5) of the Statute.
16. By the conduct described in paragraphs 12, 13, and 14, the Respondent has been violating § 7116(a)(1) and (8) of the Statute.

#### CONCLUSIONS OF LAW

By the conduct set forth in Case No. AT-CA-22-0085, which contains allegations to which the Respondent has failed to file an Answer or otherwise demonstrate good cause for such failure, the Respondent admits that it violated § 7116(a)(1), (5) and (8) of the Statute by failing and refusing to respond to the Union's information request and failing and refusing to provide the requested information, in accordance with § 7114(b)(4) of the Statute.

As a remedy, the GC requests that the Respondent be ordered to provide the Union the information it requested on September 20, 2021, and to post a notice signed by the Warden of the Federal Correctional Complex, Forrest City, Arkansas. The requested remedies are traditionally ordered for such violations and are appropriate here. *See, e.g., U.S. DOJ, Fed. BOP, Fed. Corr. Inst. Ray Brook, Ray Brook, N.Y.*, 68 FLRA 492, 494-95 (2015) (ordering the respondent to provide requested information); *U.S. DOJ, Fed. Transfer Ctr., Okla. City, Okla.*, 67 FLRA 221, 223, 226 (2014) (notice posting and electronic-notice posting are traditional remedies); *SSA*, 64 FLRA 293, 297 (2009) (notices typically signed by highest official responsible for the violation).

In conclusion, the undersigned recommends 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 Justice, Federal Bureau of Prisons, Federal Correctional Complex, Forrest City, Arkansas (the Respondent), shall:

1. Cease and desist from:
  - (a) Failing and refusing to respond to information requests of the American Federation of Government Employees, Local 922, AFL-CIO (the Union);
  - (b) Failing and refusing to provide information requested by the Union;
  - (c) In any like or related manner, interfering with, restraining or coercing employees in the exercise of rights assured by the Statute.
2. Take the following affirmative action in order to effectuate the purposes and policies of the Statute:
  - (a) Disclose the information requested by the Union on September 20, 2021;
  - (b) Post the attached Notice, signed by the warden, on bulletin boards where the Respondent customarily posts notices to employees for 60 consecutive days and distribute the Notice by email to all bargaining unit employees of the Respondent. The forms for the Notice will be supplied by the Federal Labor Relations Authority;
  - (c) Pursuant to § 2423.41(e) of the Authority's Rules and Regulations, notify the Acting Regional Director, Atlanta Region, Federal Labor Relations Authority, in writing, within 30 days from the date of this Order as to what steps have been taken to comply.

Issued, Washington, D.C., September 27, 2023

**David L. Welch**

Digitally signed by David L.  
Welch  
Date: 2023.09.27 12:29:41  
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DAVID L. WELCH  
Chief 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 Justice, Federal Bureau of Prisons, Federal Correctional Complex, Forrest City, Arkansas (the Agency), 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 to respond to information requests made by the American Federation of Government Employees, Local 922, AFL-CIO (the Union);

**WE WILL NOT** fail to provide information requested by the Union;

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

**WE WILL** disclose the information requested by the Union on September 20, 2021.

\_\_\_\_\_  
(Agency)

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
(Signature) (Title)

This Notice must remain posted for 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 Acting Regional Director, Atlanta Regional Office, Federal Labor Relations Authority, whose address is: 229 Peachtree Street NE, Ste. 900, Atlanta, GA 30303, and whose telephone number is: 470-681-7630.