

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C. 20424-0001

MEMORANDUM

DATE: June 12, 2003

TO: The Federal Labor Relations Authority

FROM: SUSAN E. JELEN
Administrative Law Judge

SUBJECT: DEPARTMENT OF HOMELAND SECURITY
BUREAU OF CITIZENSHIP AND
IMMIGRATION SERVICES
DALLAS, TEXAS

Respondent

and

Case No. DA-CA-03-0233

AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES
AFL-CIO, LOCAL 3377

Charging Party

Pursuant to section 2423.27(c) of the Final Rules and Regulations, 5 C.F.R. § 2423.27(c), I am hereby transferring the above case to the Authority. Enclosed are copies of my Decision, the service sheet, and the transmittal form sent to the parties. Also enclosed is a Motion for Summary Judgment and other supporting documents filed by the parties.

Enclosures

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C. 20424-0001

DEPARTMENT OF HOMELAND SECURITY BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES DALLAS, TEXAS Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES AFL-CIO, LOCAL 3377 Charging Party	Case No. SF-CA-02-0068

NOTICE OF TRANSMITTAL OF DECISION

The above-entitled case having been heard before the undersigned Administrative Law Judge pursuant to the Statute and the Rules and Regulations of the Authority, the undersigned herein serves her Decision, a copy of which is attached hereto, on all parties to the proceeding on this date and this case is hereby transferred to the Federal Labor Relations Authority pursuant to 5 C.F.R. § 2423.34(b).

PLEASE BE ADVISED that the filing of exceptions to the attached Decision is governed by 5 C.F.R. §§ 2423.40-2423.41, 2429.12, 2429.21-2429.22, 2429.24-2429.25, and 2429.27.

Any such exceptions must be filed on or before **JULY 14, 2003**, and addressed to:

Office of Case Control
Federal Labor Relations Authority
1400 K Street, NW, Suite 201
Washington, DC 20424-0001

SUSAN E. JELEN
Administrative Law Judge

Dated: June 12, 2003
Washington, DC

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C. 20424-0001

DEPARTMENT OF HOMELAND SECURITY BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES DALLAS, TEXAS Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES AFL-CIO, LOCAL 3377 Charging Party	Case No. DA-CA-03-0233

John M. Bates, Esq.
For the General Counsel

Van Balzer
For the Respondent

Kevin Tinker, First Vice President
For the Charging Party

Before: SUSAN E. JELEN
Administrative Law Judge

DECISION ON MOTION FOR SUMMARY JUDGMENT

Statement of the Case

On March 31, 2003, the Regional Director of the Dallas Region of the Federal Labor Relations Authority issued a Complaint and Notice of Hearing in Case No. DA-CA-03-0233, which was duly served by certified mail upon the Department of Homeland Security, Bureau of Citizenship and Immigration Services, Dallas, Texas (Respondent). The Complaint alleged that Respondent violated section 7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute (the Statute) by e-mailing bargaining unit employees soliciting volunteers to work on a second shift while that issue was still a matter being addressed in negotiations with the American Federation of Government Employees, AFL-CIO,

Local 3377 (Union). The Complaint also specified that, in accordance with the Authority's Rules and Regulations, the Respondent must file an answer to the Complaint no later than April 28, 2003, and that a failure to file an answer shall constitute an admission of the allegations of the Complaint.

On May 7, 2003, Counsel for the General Counsel filed a Motion for Summary Judgment, based on the Respondent's failure to file a timely answer. A facsimile copy of this motion was received in the Office of Administrative Law Judges on May 7, 2003.

On May 8, 2003, Van Balzer, Labor Relations Specialist filed an answer to the complaint on behalf of the Respondent. Respondent stated in its answer: "On 7 May, 2003, the respondent received the General Counsel's Motion For Summary Judgment of the subject in this matter. The Respondent does not dispute the facts as asserted by the Counsel. The failure to respond as asserted by the Counsel was due to an oversight on my part. Nonetheless, the Respondent continues to deny that it committed an Unfair Labor Practice in this matter. Accordingly, the undersigned respectfully requests dismissal of the subject motion for summary judgment."

On May 9, 2003, Counsel for the General Counsel filed a Brief in Support of Counsel for the General Counsel's Motions for Summary Judgment. A facsimile copy of this brief was received in the Office of Administrative Law Judges on May 9, 2003.¹ The General Counsel argued that Respondent's failure to file a timely answer to the complaint due to an oversight is not a sufficient justification and does not establish good cause for its failure to meet the requirements of the Authority's Rules and Regulations. See *U.S. Army Aeromedical Center, Fort Rucker, Alabama*, 49 FLRA 361 (1994) (*Fort Rucker*); *United States Customs Service, Region IV, Miami, Florida*, 37 FLRA 603 (1990) (*Customs Miami*) and *Department of Veterans Affairs Medical Center, Asheville, North Carolina*, 51 FLRA 1572 (1996) (*VA Asheville*). The General Counsel further asserted that in the past two years an administrative law judge had granted Motions for Summary Judgment filed by the General Counsel on the basis that Respondent's Dallas Office had failed to file timely answers to complaint. The General Counsel argued that there appeared to be a pattern in

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The brief concerned motions for summary judgment filed in two cases: the instant matter, Case No. DA-CA-03-0233, and Case No. DA-CA-03-0191. The latter case was settled by the parties, and is not an issue herein.

Respondent's Dallas Office of not filing timely responses to complaints.

On May 13, 2003 Respondent filed a Response To The General Counsel's Brief, which was received by facsimile in the Office of Administrative Law Judges the same date. Respondent's representative explained that the failure to provide a timely response to the complaint was due to an oversight on his part, noting a heavy workload at the time in preparing for several arbitration hearings. Further prior to the deadline for submission of the answer, it was his perception that settlement between the parties was imminent. Respondent further disputed the General Counsel's assertion that there appeared to be a deliberate pattern of failing to file timely responses by Respondent's Dallas Office, noting that the three cases in 2001 raised by the General Counsel involved different issues with another component of the Agency under the provisions of a different bargaining agreement. He further noted that in light of the number of complaints processed by the Dallas Office, the number of cases in which there was not a timely answer does not show a deliberate pattern. Respondent further noted that failure to respond, deliberately or through oversight, does not offer any conceivable advantage to the Respondent. Respondent requested that the Motion for Summary Judgment be denied.

Following a prehearing conference call on May 13, 2003, Respondent was given until May 15, 2003 to submit any further response regarding the Motion for Summary Judgment.

On May 15, 2003 Respondent's representative filed a Response To the General Counsel's Request For Motion Of Summary Judgement. No further explanation regarding its answer was presented, although Respondent presented an extensive discussion regarding its defense to the allegations of the unfair labor practice charge.

Discussion of Motion for Summary Judgment

Section 2423.20(b) of the Authority's Rules and 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 Rules and Regulations also explain how to calculate filing deadlines and how to request extensions of time for filing required documents. See, e.g., sections 2429.21 through 2429.23.

It is undisputed that the Respondent's answer was not timely filed. The answer in Case No. DA-CA-03-0233 was due on April 28, 2003, but was not filed until May 7, 2003, after receipt of the General Counsel's Motion for Summary Judgment. Therefore, the issue is whether the Respondent has shown "good cause" for its late submission. The Respondent, as noted above, has indicated that its representative failed to file the answer due to his oversight, noting a heavy workload and the possibility of settlement in the matter.

In the text of the Complaint and Notice of Hearing, the Regional Director provided the Respondent with detailed instructions concerning the requirements for its answer, including the dates on which the answer was due, the persons to whom it must be sent, and references to the applicable regulations. The plain language of the notice leaves no doubt that Respondent was required to file an answer to the Complaint.

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. Environmental Protection Agency, Environmental Research Laboratory, Narragansett, Rhode Island*, 49 FLRA 33, 35-36 (1994) (answer to a complaint and an ALJ's order); *U.S. Department of Veterans Affairs, Medical Center, Waco, Texas and American Federation of Government Employees, Local 1822*, 43 FLRA 1149, 1150 (1992) (exceptions to an arbitrator's award); *U.S. Department of the Treasury, Customs Service, Region IV, Miami, Florida*, 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 a timely answer as required by the Regulations. Nor has Respondent presented any "good cause" for its failure to do so. That the representative had a heavy workload and the parties had possibly reached a settlement does not support a finding of good cause or relieve the Respondent of its responsibilities for being aware of statutory and regulatory requirements. In accordance with section 2423.20(b) of the Rules and

Regulations, the failure to file an answer to the Complaint constitutes an admission of each of the allegations of the Complaints. *VA Asheville*, 51 FLRA 1572, 1594. See also *Fort Rucker*, 49 FLRA 361 and *Customs Miami*, 37 FLRA 603. Accordingly, there are no disputed factual or legal issues in these consolidated cases.

Consequently, it can only be found that the Respondent has admitted that it has bypassed the Union by e-mailing bargaining unit employees soliciting volunteers to work on a second shift while that issue was still a matter being addressed in negotiations with the Union. Therefore, Respondent has violated section 7116(a)(1) and (5) of the Statute, as alleged. *Department of the Treasury, Internal Revenue Service, Kansas City Service Center, Kansas City, Missouri*, 57 FLRA 126 (2001).²

Counsel for the General Counsel proposed a recommended remedy requiring the Respondent to cease and desist from engaging in conduct which violates the Statute accompanied by an appropriate Notice To All Employees signed by Respondent's Texas Service Center Director Evelyn M. Upchurch.

Accordingly, I recommend that the Authority grant the General Counsel's Motion for Summary Judgment and issue the following:

ORDER

Pursuant to section 2423.41(c) of the Authority's Rules and Regulations and section 7118 of the Federal Service Labor-Management Relations Statute (Statute), it is hereby ordered that the Department of Homeland Security, Bureau of Citizenship and Immigration Services, Dallas, Texas (Respondent), shall:

1. Cease and desist from:

(a) Bypassing the American Federation of Government Employees, AFL-CIO, Local 3377, and dealing directly with bargaining unit employees concerning their conditions of employment.

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I make no determination regarding the General Counsel's assertion of a pattern of not filing timely responses to complaints by the Respondent as this issue is not properly before me based on the Complaint and Motion for Summary Judgment.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights assured by the Statute.

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

(a) Post at its Dallas, Texas facility, copies of the attached Notice on forms to be furnished by the Federal Labor Relations Authority. Upon receipt of such forms, the forms shall be signed by the Texas Service Center Director and shall be posted and maintained for 60 consecutive days thereafter. Reasonable steps shall be taken to ensure that such Notices are not altered, defaced, or covered by any other material.

(b) Pursuant to section 2423.41(e) of the Authority's Rules and Regulations, notify the Regional Director of the Dallas Regional Office, Federal Labor Relations Authority, 525 S. Griffin Street, Suite 926, Dallas, Texas 75202-1906, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply.

Issued, Washington, DC, June 12, 2003

SUSAN E. JELEN
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 Homeland Security, Bureau of Citizenship and Immigration Services, Dallas, Texas, violated the Federal Service Labor-Management Relations Statute and has ordered us to post and abide by this Notice.

We hereby notify employees that:

WE WILL NOT bypass the American Federation of Government Employees, AFL-CIO, Local 3377 by dealing directly with bargaining unit employees regarding solicitation of volunteers to work on a second shift while that issue is still a matter being addressed in negotiations with the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of their rights assured by the Federal Service Labor-Management Relations Statute.

(Respondent/Activity)

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 its provisions, they may communicate directly with the Regional Director of the Federal Labor Relations Authority, Dallas Regional Office, whose address is: 525 S. Griffin Street, Suite 926, Dallas, Texas 75202-1906, and whose phone number is: 214-767-4996.

CERTIFICATE OF SERVICE

I hereby certify that copies of this **DECISION**, issued by SUSAN E. JELEN, Administrative Law Judge, in Case No. DA-CA-03-0233, were sent to the following parties:

CERTIFIED MAIL AND RETURN RECEIPT

CERTIFIED NOS:

John M. Bates, Esq.
2034

7000 1670 0000 1175

Federal Labor Relations Authority
Dallas Regional Office
525 S. Griffin Street, Suite 926
Dallas, TX 75202-1906

Van Balzer
2041

7000 1670 0000 1175

Labor Relations Specialist
Department of Homeland Security
Bureau of Citizenship &
Immigration Services
7701 N. Stemmons Freeway
Dallas, TX 75247

Kevin Tinker, First Vice President
AFGE, Local 3377
P.O. Box 560905
Dallas, TX 75356-0905

Dated: June 12, 2003
Washington, DC