



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

MEMORANDUM

DATE: March 30, 2011

TO: The Federal Labor Relations Authority

FROM: SUSAN E. JELEN
Administrative Law Judge

SUBJECT: U.S. DEPARTMENT OF AGRICULTURE, RURAL DEVELOPMENT
ST. LOUIS, MISSOURI

RESPONDENT

AND

Case No. DE-CA-10-0397

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES,
LOCAL 3354

CHARGING PARTY

Pursuant to section 2423.34(b) of the Rules and Regulations 5 C.F.R. §2423.34(b), I am hereby transferring the above case to the Authority. Enclosed are copies of my Decision on Motion for Summary Judgment, the service sheet, and the transmittal form sent to the parties. Also enclosed are other supporting documents filed by the parties.

Enclosures



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U.S. DEPARTMENT OF AGRICULTURE
RURAL DEVELOPMENT
ST. LOUIS, MISSOURI

RESPONDENT

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AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 3354

CHARGING PARTY

Case No. DE-CA-10-0397

NOTICE OF TRANSMITTAL OF DECISION

The above-entitled case having been submitted to 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. §§2423.40-41, 2429.12, 2429.21-2429.22, 2429.24-2429.25, and 2429.27.

Any such exceptions must be filed on or before **MAY 2, 2011**, and addressed to:

Office of Case Intake & Publication
Federal Labor Relations Authority
1400 K Street, NW., 2nd Floor
Washington, DC 20424-0001

SUSAN E. JELEN
Administrative Law Judge

Dated: March 30, 2011
Washington, D.C.

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

U.S. DEPARTMENT OF AGRICULTURE
RURAL DEVELOPMENT
ST. LOUIS, MISSOURI

RESPONDENT

AND

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 3354

CHARGING PARTY

Case No. DE-CA-10-0397

Timothy Sullivan
For the General Counsel

Maria Edwards
For the Respondent

Gladys Meyer
For the Charging Party

Before: SUSAN E. JELEN
Administrative Law Judge

DECISION ON MOTION FOR SUMMARY JUDGMENT

On January 31, 2011, the Regional Director of the Denver Region of the Federal Labor Relations Authority (the Authority) issued a Complaint and Notice of Hearing, alleging that the U.S. Department of Agriculture, Rural Development, St. Louis, Missouri (the Respondent) violated section 7116(a)(1) and (8) of the Federal Service Labor-Management Relations Statute (the Statute). The complaint alleged that the Respondent failed and refused to comply with section 7115(a) of the Statute ¹ by failing to implement a requested change in

¹ Section 7115(a) provides in pertinent part:
Allotments to representatives

- (a) If an agency has received from an employee in an appropriate unit a written assignment which authorizes the agency to deduct from the pay of the employee amounts for the payment of regular and periodic dues of the exclusive representative of the unit, the agency shall honor the assignment and make an appropriate allotment pursuant to the assignment....

the American Federation of Government Employees, Local 3354's (Charging Party) dues structure. The complaint set forth a hearing date of April 5, 2011, and stated the Answer to the complaint was due no later than February 28, 2011. The complaint was served by certified mail on the Chief, Human Resources, USDA, Rural Development, St. Louis, Missouri.

On March 10, 2011, the General Counsel (GC) filed a Motion for Summary Judgment, based on the fact that the Respondent had failed to file an answer to the complaint and therefore, the Respondent had admitted all the allegations of the complaint. The GC asserted that there were no factual or legal issues in dispute and the case was ripe for summary judgment in the GC's favor.

The Respondent has not filed an answer to the complaint and has not filed a response to the Motion for Summary Judgment.

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 the required documents. *See, e.g.*, sections 2429.21 through 2429.23.

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 date 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. Envtl. Prot. Agency, Envtl. Res. 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. and Customs Serv., Region IV, Miami, Fla.*, 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 as required by the Regulations. Nor has the Respondent presented any "good cause" for its failure to do so. In accordance with section 2423.20(b) of the Authority's Rules and Regulations, failure to file an answer to the complaint constitutes an admission of each of the allegations of the complaint. Accordingly, there are no disputed factual or legal issues in this matter, and this case can be resolved by summary judgment. *United States Dep't of Transp., Fed. Aviation Admin., Houston, Tex.*, 63 FLRA 34 (2008). Based on the existing record, I make the following findings of fact, conclusions of law, and recommendations:

FINDINGS OF FACTS

1. The U.S. Department of Agriculture, Rural Development, St. Louis, Missouri is an agency as defined by 5 U.S.C. §7103(a)(3).
2. The American Federation of Government Employees, Local 3354 (Charging Party) is a labor organization as defined by 5 U.S.C. §7103(a)(4) and is the exclusive representative of a unit of employees appropriate for collective bargaining at the USDA, Rural Development, St. Louis, Missouri.
3. At all times material Maria Edwards, Chief, St. Louis Human Resources Office; Clifton Yancey, Acting Chief, St. Louis Human Resources Office; and Eddie Asadorian, Labor Relations Specialist occupied the positions described above and have been supervisors and/or management officials as defined by 5 U.S.C. §7103(a)(10) and (11) and have been acting on behalf of Respondent.
4. At all times material, the Respondent and the Union have been parties to a collective bargaining agreement covering employees in the bargaining unit described above.
5. On or about January 6, 2010, the Union notified the Respondent of changes to its dues structure and requested that the Respondent implement an increase in the amount of dues withholding for employees in the bargaining unit described above, who had authorized dues withholding by submission of a Standard Form 1187.
6. The Respondent, by Maria Edwards, Clifton Yancey, and Eddie Asadorian, failed to abide by the Union's request, as described in Paragraph 5 above, until on or about May 3, 2010 (Respondent's Pay Period #9).
7. By the conduct described above, the Respondent refused to comply with 5 U.S.C. §7115(a).
8. By the conduct described above, the Respondent committed an unfair labor practice in violation of 5 U.S.C. §7116(a)(1) and (8).

In conclusion, the Respondent has admitted that it has violated section 7116(a)(1) and (8) of the Statute by failing and refusing to implement the change in the Union's dues structure by failing to implement an increase in the amount of dues withholding of those employees in the bargaining unit who had authorized dues withholding by submission of a Standard Form 1187. The Respondent has not shown good cause for its failure to file an answer to the complaint. I find that the Respondent violated section 7116(a)(1) and (8) of the Statute, as alleged.

REMEDY

Counsel for the General Counsel proposed a recommended remedy requiring the Respondent to recognize its obligations under the Statute, to cease and desist from certain activities and to take affirmative action in order to effectuate the purposes and policies of the Statute. Further, the Respondent would be required to post a Notice to employees at its facilities at the U.S. Department of Agriculture, Rural Development, St. Louis, Missouri, signed by the Deputy Administrator, Operations/Management for 60 consecutive days. The GC notes that its recommended remedy is consistent with the remedy ordered by the Authority in similar cases. *U.S. Dep't of the Treasury, U.S. Mint*, 35 FLRA 1095, 1100 (1990); *Dep't of Health and Human Serv., Soc. Sec. Admin.*, 13 FLRA 625, 628 (1984). The GC also asserts that the remedy should include a requirement that the Respondent disseminate a copy of the Notice to employees through Respondent's email system to all bargaining unit employees. The Respondent's email system is the primary method of communication with bargaining unit employees, and employees view the email system as the most reliable source of up-to-date necessary information. (G.C. Exhibit 1, Affidavit of Christine Wilder; G.C. Exhibits 2-11). *See Dep't of Homeland Sec., U.S. Customs and Border Prot., El Paso, Tex.*, Case Nos. DA-CA-08-0179 & DA-CA-08-0180 (2010), OALJ 10-03. The Respondent presented no evidence to the contrary.

Since I have found that the Respondent violated the Statute as alleged in the Complaint, I find that the General Counsel's recommended remedy to be appropriate. *See Internal Revenue Serv., Austin Dist. Office, Austin, Tex.*, 51 FLRA 1166 (1996).

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

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 (the Statute), it is hereby ordered that the U.S. Department of Agriculture, Rural Development, St. Louis, Missouri, shall:

1. Cease and desist from:

(a) Refusing to comply with the provisions of section 7115(a) of the Statute by failing to implement in a timely manner an authorized request to increase unit employees' dues allotments.

(b) Interfering with, restraining, or coercing bargaining unit employees by failing to implement in a timely manner an authorized request to increase bargaining unit employees' dues withholding.

(c) In any like or related manner, interfering with, restraining, or coercing bargaining unit 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) Reimburse the American Federation of Government Employees, Local 3354 (the Union), in an amount equal to the regular and periodic dues it would have received, but did not receive as a result of the unlawful delay in implementing the Union's authorized request to increase the appropriate dues allotment.

(b) Post at the St. Louis, Missouri faculty where bargaining unit employees represented by the Union are located, copies of the attached Notice on forms to be furnished by the Federal Labor Relations Authority. Upon receipt of such forms, they shall be signed by the Deputy Administrator, Operations/Management, and shall be posted and maintained for 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) Disseminate a copy of this Notice signed by the Deputy Administrator, Operations/Management, through the Respondent's email system to all bargaining unit employees.

(d) Pursuant to section 2423.41(e) of the Authority's Rules and Regulations, notify the Regional Director, Denver 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., March 30, 2011.

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 U.S. Department of Agriculture, Rural Development, St. Louis, Missouri, violated the Federal Service Labor-Management Relations Statute (the Statute), and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT refuse to comply with the provisions of section 7115(a) of the Statute by failing to implement in a timely manner an authorized request to increase unit employees' dues allotments.

WE WILL NOT interfere with, restrain, or coerce bargaining unit employees by failing to implement in a timely manner an authorized request to increase bargaining unit employees' dues allotments.

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

WE WILL reimburse the American Federation of Government Employees, Local 3354 (the Union) in an amount equal to the regular and periodic dues it would have received, but did not receive as a result of the unlawful delay in implementing the Union's authorized request to increase the appropriate dues allotment.

(Agency/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 any of its provisions, they may communicate directly with the Regional Director, Denver Region, Federal Labor Relations Authority, and whose address is: 1391 Speer Boulevard, Suite 300, Denver, Colorado 80204 and whose telephone number is: (303) 844-5224.

CERTIFICATE OF SERVICE

I hereby certify that copies of this **DECISION**, issued by SUSAN E. JELEN, Administrative Law Judge, in Case No. DE-CA-10-0397, were sent to the following parties:

CERTIFIED MAIL & RETURN RECEIPT

CERTIFIED NOS:

Timothy Sullivan
Counsel for the General Counsel
Federal Labor Relations Authority
1391 Speer Boulevard, Suite 300
Denver, CO 80204

7004-1350-0003-5175-4236

Maria Edwards
Chief, Human Resources Division
USDA, Rural Development
4300 Goodfellow Boulevard
St. Louis, MO 63120

7004-1350-0003-5175-4243

Gladys Meyer
Treasurer, AFGE, Local 3354
P.O. Box 211166
St. Louis, MO 63121

7004-1350-0003-5175-4250

REGULAR MAIL:

President
AFGE, AFL-CIO
80 F Street, N.W.
Washington, DC 20001

Catherine Turner
Office of Administrative Law Judges
Federal Labor Relations Authority

Dated: March 30, 2011
Washington, DC