

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY
FOR EMPLOYMENT STANDARDS

IN THE MATTER OF *

DIRECTOR, DALLAS DISTRICT OFFICE *
OFFICE OF LABOR-MANAGEMENT STANDARDS *
EMPLOYMENT STANDARDS ADMINISTRATION *
COMPLAINANT *

AND * Case Number [REDACTED]

AMERICAN FEDERATION OF GOVERNMENT *
EMPLOYEES, LOCAL 2562 *
RESPONDENT *

DECISION AND ORDER

This proceeding arose under the standards of conduct provisions of the Civil Service Reform Act of 1978, 5 U.S.C. 7120, and the implementing regulations, 29 CFR 457 et seq., as a result of a complaint filed by the Director of the Dallas District Office of the Office of Labor-Management Standards (OLMS), Employment Standards Administration. The complaint alleged that the Respondent failed to file annual financial reports for 1999,2000, and 2001 as required by 29 CFR 458.3. The Respondent did not file an answer to the complaint as required by 29 CFR 458.68. The Respondent also failed to respond to the Order to Show Cause issued by Associate Chief Administrative Law Judge Thomas M. Burke.

As provided in 29 CFR 458.68(b), the failure to file an answer constitutes an admission of the allegation. As provided in 29 CFR 458.71, the admission of the allegation constitutes a waiver of hearing, and the administrative law judge's recommended decision and order shall adopt as his proposed findings of fact the material allegations in the complaint.

Consequently, on July 9,2003, Judge Burke issued his Recommended Decision and Order recommending that Respondent be ordered to file the required reports and take other specified actions. No exceptions were filed to the Recommended Decision and Order. In accordance with 29 CFR 458.91, the Recommended Decision and Order is adopted and incorporated hereto to the extent set forth below in my Order.

ORDER

IT IS HEREBY ORDERED, THAT, Respondent file the reports for fiscal years 1999,2000, and 2001 as required by 29 CFR 458.3 within thirty (30) days of the date of this Order, and cease and desist from failing to comply timely with the reporting requirements.

Dated *November 7, 2003*

Washington, D.C.

Victoria A. Lipnic

VICTORIA A. LIPNIC

Assistant Secretary

FEDERAL LABOR RELATIONS AUTHORITY
WASHINGTON, D.C.

VICTORIA A. LIPNIC,
ASSISTANT SECRETARY OF LABOR
FOR EMPLOYMENT STANDARDS,
U.S. DEPARTMENT OF LABOR,

Petitioner

AND.

Case MC-_____

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 2562,

Respondent

PETITION FOR ENFORCEMENT
OF AN ORDER OF THE ASSISTANT SECRETARY

Pursuant to 29 C.F.R. §458.92 and 5 C.F.R. §2428.2, Assistant Secretary of Labor Victoria A. Lipnic ("Assistant Secretary" or "Petitioner") hereby submits this Petition for Enforcement of her Decision and Order issued November 7, 2003, A/S No. 2004-2, in the matter of *Director, Dallas District Office of Labor-Management Standards, Employment Standards Administration and American Federation of Government Employees, Local 2562*, Case Number 2003-SOC-2. Pursuant to 29 C.F.R. §458.92, the Assistant Secretary shall refer to the Federal Labor Relations Authority ("Authority") a matter arising under the standards of conduct for labor organizations in the Federal sector set forth in Title VII of the Civil Service Reform Act of 1978, 5 U.S.C. §7120, when remedial action required by the Assistant Secretary has not been effectuated. Correspondingly, the Authority's

regulation, 5 C.F.R. §2428.2, permits the Assistant Secretary to file the instant petition to enforce her decision by transferring to the Authority the record in the case, including transcripts, if any, and exhibits, briefs, and other documents filed with the Assistant Secretary.

This matter is before the Authority effectively from a default summary judgment proceeding before the Department of Labor ("the Department"). The Respondent, American Federation of Government Employees, Local 2562 ("Respondent" or "Local 2562"), a local union with an office in Oklahoma City, failed to answer the Department's Complaint, which alleges violations of 5 U.S.C. §7120 and its implementing regulations, 29 C.F.R. §457 et seq., based on the Respondent's noncompliance with its financial reporting obligations for the years 1999, 2000 and 2001. In addition, Local 2562 has failed to respond to the Administrative Law Judge's Notice of Docketing, Notice to Show Cause Order, and Recommended Decision and Order, and the Assistant Secretary's final Decision and Order. In such a case, where Respondent has failed at every turn to respond to the pleadings and orders of the Department, it is evident that the Authority should enforce the Assistant Secretary's Decision and Order requiring compliance with the Respondent's legal reporting obligations. A more detailed procedural account follows.

Procedural History

The District Director of the Department's Office of Labor-Management Standards (OLMS) in Dallas issued a Complaint against Local 2562 on January 17, 2003, alleging that the Union failed to file its financial reports for fiscal years 1999, 2000, and 2001 as required by 5 U.S.C. §7120(c), 29 C.F.R. §§458.3, 403.2 and 403.4. See Complaint,

Petitioner's Exhibit A.¹ Local 2562 was served with the Complaint by certified mail addressed to its Oklahoma City office, with return receipt requested. The return receipt was delivered to OLMS's Dallas office, reflecting delivery to Local 2562 on January 23, **2003**. See Complaint Return Receipt, Pet. Ex. B.

On February 12, 2003, the Department's Office of Administrative Law Judges issued a Notice of Docketing, directing Local 2562 to answer the Complaint within 20 days. See Notice of Docketing, Pet. Ex. C. The docketing notice was mailed to Local 2562's Oklahoma City address. *Id.* at p. **3**. Local 2562 failed to respond to the Complaint. As a result, on May 2, 2003, Administrative Law Judge Thomas Burke issued to Local 2562 an Order to Show Cause, requiring the Respondent to show cause why a default judgment should not be entered against it. See Order to Show Cause, Pet. **Ex. D**. The show-cause order was mailed to Local 2562's Oklahoma City address. *Id.* at **3**.

On July 9, 2003, Judge Burke issued a Recommended Decision and Order, concluding that a Judgment of Default should be entered against Local 2562 pursuant to 29 C.F.R. §18.6(d)(2)(v), which permits default judgment to be entered against a non-complying party. See Recommended Decision and Order, Pet. **Ex. E**. The Recommended Decision and Order held that the Respondent, which has obligations as a labor organization arising from 5 U.S.C. §7120 and its implementing regulations, 29 C.F.R. §457 et seq., had failed to respond in the matter. Accordingly, the Recommended Decision and Order provided that the Respondent be compelled to file the required

¹ Filed as exhibits with this Petition are true and correct copies of documents contained in the record of this matter before the Assistant Secretary. Petitioner's exhibits will hereinafter be referred to as "Pet. **Ex.** _____."

annual financial reports for fiscal years 1999,2000, and 2001 on the appropriate forms, and cease and desist from failing to comply in a timely fashion with its mandatory reporting obligations in the future. *Id.* at 2-3. The Administrative Law Judge's Recommended Decision and Order was mailed to Local 2562's Oklahoma City address. *Id.* at 4. No exceptions were filed to the Recommended Decision and Order.

On November 7,2003, the Assistant Secretary issued a Decision and Order, adopting and incorporating Judge Burke's Recommended Decision and Order. See Assistant Secretary's Decision and Order, Pet. Ex. F. The Assistant Secretary's Order further concludes that pursuant to 29 C.F.R. §458.68(b), the Respondent's failure to answer the complaint constitutes an admission of the allegations therein, and pursuant to 29 C.F.R. §458.71, hearing is waived as to all admitted allegations. Accordingly, the Assistant Secretary's Order mandates that the Respondent file within 30 days its reports for fiscal years 1999,2000, and 2001, as required under the law, and cease and desist from failing to timely comply in the future with the Respondent's reporting requirements.² Following initial service of the Assistant Secretary's Decision and Order, which contained an inaccurate address for the Respondent, service on the Respondent was perfected on December 2,2003. See *id.* at 3.

The Respondent has failed to comply with the Assistant Secretary's Decision and Order within the designated period. Accordingly, because remedial action required by

² During the litigation of this case by the Department, Respondent's fiscal year 2002 report became overdue, and its fiscal year 2003 report became due 90 days after the close of its fiscal year on December 31,2003. Because the Assistant Secretary's November 7, 2003 Decision and Order expressly mandates that the Respondent comply both with its future reporting requirements as well as those for the years 1999, 2000, and 2001, the Petitioner requests that the Authority's order enforcing the Assistant Secretary's Order expressly include a mandate that the Respondent comply with any and all overdue reporting requirements.

the Assistant Secretary has not been effectuated, the Assistant Secretary now seeks enforcement of her Order by the Authority pursuant to 29 C.F.R. §458.92 and 5 C.F.R. §2428.2.

Argument

Pursuant to the Department's regulations, failure to answer a complaint is cause for rendering judgment against the Respondent. 29 C.F.R. §458.68(b); 29 C.F.R. §458.71.³ Such a decision is subject to enforcement by the Authority pursuant to 29 C.F.R. §458.92 and 5 C.F.R. §2428.2.

In this case, the Respondent has failed to respond to the Complaint; the Notice of Docketing; the Administrative Law Judge's Order to Show Cause; the Administrative Law Judge's Recommended Decision and Order; and the Assistant Secretary's Decision and Order requiring compliance with the Respondent's reporting requirements within 30 days. Given such blatant disregard for the Department's legal proceedings, Judge Burke properly recommended the issuance of a Judgment of Default against the Respondent, and the Assistant Secretary correctly adopted that decision pursuant to 29 C.F.R. §§458.68(b) and 458.71. On the record in this case, in which the Respondent has deliberately refused to respond or comply, and has offered no excuse for its conduct, the Assistant Secretary respectfully requests that the Authority issue an order enforcing the Assistant Secretary's November 7, 2003 Decision and Order.

³ The Department's authority to issue a default judgment for failure to answer the complaint is akin to the Authority's power under 5 C.F.R. §2423.20(b) to enter default judgment in an unfair labor practice proceeding against a Respondent for failure to answer a complaint. See, *e.g.*, *U.S. Dept. of Veterans Affairs, Veterans Affairs Medical Center Miami*, 2002 WL 32141666 (2002) (Authority adopted order of the ALJ granting General Counsel's motion for summary judgment where Respondent failed to answer either the complaint or the motion for summary judgment).

Dated: May 16, 2004

Victoria A. Lipnic

Victoria A. Lipnic
Assistant Secretary of Labor
for Employment Standards
U.S. Department of Labor
200 Constitution Avenue, N.W.
Room S2321
Washington, D.C.
202-693-0200