

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA

3  
4 Michael Johnson,  
5 Plaintiff

2:16-cv-01739-JAD-GWF

6 v.

7 **Order Granting the FLRA's Unopposed  
8 Motion to Dismiss and Vacating Hearing**

9 American Federation of Government  
10 Employees, Local 1199; Vernon Steed,  
11 individually and in his capacity as President  
12 of AFGE Local 1199; Federal Labor  
13 Relations Authority; and Does I-X and Roe  
14 Corporations 110, inclusive,

[ECF Nos. 4, 11]

15 Defendants

13 Plaintiff Michael Johnson sues the Federal Labor Relations Authority ("FLRA") for  
14 violating his due process rights when resolving his labor-related dispute with his union and its  
15 president. He also sues the union and its president for defamation and intentional interference  
16 with his employment contract, and he asserts an additional negligence claim against the union.<sup>1</sup>

17 The FLRA moved to dismiss Johnson's single § 1983 claim against it, arguing that the  
18 claim is barred by sovereign immunity and fails because it does not allege an act under color of  
19 state law or in violation of any constitutional right.<sup>2</sup> Johnson's opposition, if any, was due by  
20 August 22, 2016.<sup>3</sup> He neither filed a response by that deadline nor moved to extend it. Local  
21 Rule 7-2(d) states that "The failure of an opposing party to file points and authorities in response  
22 to any motion, except a motion under Fed. R. Civ. P. 56 or a motion for attorney's fees,  
23 constitutes a consent to the granting of the motion." I apply this rule and,

24 IT IS HEREBY ORDERED that the Federal Labor Relations Authority's Motion to  
25 Dismiss [ECF No. 4] is **GRANTED**. Plaintiff's **first claim for relief (his only claim against**

26  
27 <sup>1</sup> ECF No.1.

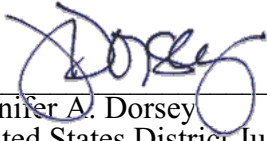
28 <sup>2</sup> ECF No. 4.

<sup>3</sup> L.R. 7-2(b).

1 **the FLRA) is DISMISSED with prejudice** under FRCP 12(b)(6) because it does not and cannot  
2 plead the state action required for a § 1983 claim,<sup>4</sup> so amendment would be futile. This order  
3 **terminates all claims against the Federal Labor Relations Authority** in this matter.

4 IT IS FURTHER ORDERED that the **hearing set for 10/3/16 is VACATED** and the  
5 Motion to Vacate that hearing **[ECF No. 11] is DENIED** as moot.

6 DATED: August 26, 2016

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9 Jennifer A. Dorsey  
10 United States District Judge  
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28 <sup>4</sup> Because I grant the motion on this basis, I decline to reach the remaining arguments.