UNITED STATES OF AMERICA

FEDERAL LABOR RELATIONS AUTHORITY

Office of Administrative Law Judges

WASHINGTON, D.C. 20424-0001

FEDERAL AVIATION ADMINISTRATION Respondent and NATIONAL AIR TRAFFIC CONTROLLERS ASSOCIATION, MEBA/AFL-CIO Charging Party AND NATIONAL AIR TRAFFIC CONTROLLERS ASSOCIATION, MEBA/AFL-CIO, TAMPA LOCAL Charging Party AND NATIONAL AIR TRAFFIC CONTROLLERS ASSOCIATION, MEBA/AFL-CIO, ZJX LOCAL Charging Party AND NATIONAL AIR TRAFFIC CONTROLLERS ASSOCIATION, MEBA/AFL-CIO, BIRMINGHAM LOCAL Charging Party NATIONAL AIR TRAFFIC CONTROLLERS ASSOCIATION, MEBA/AFL-CIO, MIA LOCAL Charging Party AND NATIONAL AIR TRAFFIC CONTROLLERS ASSOCIATION, MEBA/AFL-CIO, ORF LOCAL Charging Party AND	Case Nos. AT-CA-70058 AT-CA-70067 AT-CA-70072 AT-CA-70164 DE-CA-70121 DE-CA-70201 WA-CA-70064 WA-CA-70134 WA-CA-70140 AT-CA-70043

NATIONAL AIR TRAFFIC CONTROLLERS ASSOCIATION, MEBA/AFL-CIO, ROANOKE LOCAL
Charging Party

AND

NATIONAL AIR TRAFFIC CONTROLLERS ASSOCIATION, MEBA/AFL-CIO, ZDC LOCAL
Charging Party

AND

NATIONAL AIR TRAFFIC CONTROLLERS ASSOCIATION, MEBA/AFL-CIO, SALT LAKE CITY TRACON LOCAL
Charging Party

AND

NATIONAL AIR TRAFFIC CONTROLLERS ASSOCIATION, MEBA/AFL-CIO, RDU LOCAL
Charging Party

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 his 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. § 2423.26(b).

PLEASE BE ADVISED that the filing of exceptions to the attached Decision is governed by 5 C.F.R. §§ 2423.26(c) through 2423.29, 2429.21 through 2429.25 and 2429.27.

Any such exceptions must be filed on or before **SEPTEMBER 29, 1997**, and addressed to:

Federal Labor Relations Authority
Office of Case Control
607 14th Street, NW, 4th Floor
Washington, DC 20424-0001

ELI NASH, JR.
Administrative Law Judge

Dated: August 29, 1997
Washington, DC

UNITED STATES OF AMERICA

FEDERAL LABOR RELATIONS AUTHORITY

Office of Administrative Law Judges

WASHINGTON, D.C. 20424-0001

MEMORANDUM DATE: August 29, 1997

TO: The Federal Labor Relations Authority

FROM: ELI NASH, JR.
Administrative Law Judge

SUBJECT: FEDERAL AVIATION ADMINISTRATION
Respondent
and Case Nos. AT-CA-70058
NATIONAL AIR TRAFFIC CONTROLLERS AT-CA-70067
ASSOCIATION, MEBA/AFL-CIO AT-CA-70072
Charging Party AT-CA-70164
DE-CA-70121
AND
DE-CA-70201
WA-CA-70064
NATIONAL AIR TRAFFIC CONTROLLERS WA-CA-70134
ASSOCIATION, MEBA/AFL-CIO, WA-CA-70140
TAMPA LOCAL AT-CA-70043
Charging Party
AND

NATIONAL AIR TRAFFIC CONTROLLERS
ASSOCIATION, MEBA/AFL-CIO,
ZJX LOCAL
Charging Party
AND

NATIONAL AIR TRAFFIC CONTROLLERS
ASSOCIATION, MEBA/AFL-CIO,

BIRMINGHAM LOCAL
Charging Party

NATIONAL AIR TRAFFIC CONTROLLERS ASSOCIATION, MEBA/AFL-CIO, MIA LOCAL
Charging Party

AND

NATIONAL AIR TRAFFIC CONTROLLERS
ASSOCIATION, MEBA/AFL-CIO,
ORF LOCAL
Charging Party

AND

NATIONAL AIR TRAFFIC CONTROLLERS
ASSOCIATION, MEBA/AFL-CIO, ROANOKE LOCAL
Charging Party

AND

NATIONAL AIR TRAFFIC CONTROLLERS
ASSOCIATION, MEBA/AFL-CIO, ZDC LOCAL
Charging Party

AND

NATIONAL AIR TRAFFIC CONTROLLERS
ASSOCIATION, MEBA/AFL-CIO,
SALT LAKE CITY TRACON LOCAL
Charging Party

AND

NATIONAL AIR TRAFFIC CONTROLLERS
ASSOCIATION, MEBA/AFL-CIO, RDU LOCAL
Charging Party

Pursuant to section 2423.26(b) of the Final Rules and Regulations, 5 C.F.R. § 2423.26(b), 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.

Enclosures

UNITED STATES OF AMERICA

FEDERAL LABOR RELATIONS AUTHORITY

Office of Administrative Law Judges

WASHINGTON, D.C. 20424-0001

FEDERAL AVIATION ADMINISTRATION Respondent and NATIONAL AIR TRAFFIC CONTROLLERS ASSOCIATION, MEBA/AFL-CIO Charging Party AND NATIONAL AIR TRAFFIC CONTROLLERS ASSOCIATION, MEBA/AFL-CIO, TAMPA LOCAL Charging Party AND NATIONAL AIR TRAFFIC CONTROLLERS ASSOCIATION, MEBA/AFL-CIO, ZJX LOCAL Charging Party AND NATIONAL AIR TRAFFIC CONTROLLERS ASSOCIATION, MEBA/AFL-CIO, BIRMINGHAM LOCAL Charging Party NATIONAL AIR TRAFFIC CONTROLLERS ASSOCIATION, MEBA/AFL-CIO, MIA LOCAL Charging Party AND NATIONAL AIR TRAFFIC CONTROLLERS ASSOCIATION, MEBA/AFL-CIO, ORF LOCAL Charging Party AND	Case Nos. AT-CA-70058 AT-CA-70067 AT-CA-70072 AT-CA-70164 DE-CA-70121 DE-CA-70201 WA-CA-70064 WA-CA-70134 WA-CA-70140 AT-CA-70043

NATIONAL AIR TRAFFIC CONTROLLERS ASSOCIATION, MEBA/AFL-CIO, ROANOKE LOCAL
Charging Party

AND

NATIONAL AIR TRAFFIC CONTROLLERS ASSOCIATION, MEBA/AFL-CIO, ZDC LOCAL
Charging Party

AND

NATIONAL AIR TRAFFIC CONTROLLERS ASSOCIATION, MEBA/AFL-CIO, SALT LAKE CITY TRACON LOCAL
Charging Party

AND

NATIONAL AIR TRAFFIC CONTROLLERS ASSOCIATION, MEBA/AFL-CIO, RDU LOCAL
Charging Party

Stewart T. Speck, Agency Representative
For the Respondent

Michelle Ledina, Esq.
For the General Counsel

William W. Osborne, Jr., Esq.
Marguerite L. Graf, Esq.
For the Charging Party

Before: ELI NASH, JR.
Administrative Law Judge

Statement of the Case

On July 9, 1997, the General Counsel, the Federal Aviation Administration (hereinafter called Respondent or Respondents) and the National Air Traffic Controllers Association, MEBA/AFL-CIO (herein called NATCA) the National Air Traffic Controllers Association, MEBA/AFL-CIO, Tampa Local, Traffic Control Tower, ZJX Local, Tampa, Florida; the

National Air Traffic Controllers Association, MEBA/AFL-CIO, Birmingham Local, Birmingham, Alabama, MIA, the National Air Traffic Controllers Association, MEBA/AFL-CIO, ORF Local, Roanoke, Virginia, the National Air Traffic Controllers Association, MEBA/AFL-CIO, ZDC Local, Salt Lake City TRACON Local Salt Lake City, Utah, the National Air Traffic Controllers Association, MEBA/AFL-CIO, RDU Local, Raleigh, North Carolina (herein called the Charging Parties, Locals or the Unions) filed a Joint Motion to Transfer Case to the Chief Administrative Law Judge on July 9, 1997, waiving a hearing before an administrative law judge and requesting a decision based on the stipulation and exhibits which the parties agreed constitute the entire record. The parties also agreed that no oral testimony was necessary and that no material issue of fact exists. The Chief Administrative Law Judge thereafter, assigned the matter to the undersigned. The instant matter arose from unfair labor practice charges filed on October 25, 1996, October 29, 1996, October 30, 1996, November 26, 1996, November 21, 1996, November 6, 1996, December 18, 1996, December 16, 1996, January 6, 19976, October 18, 1996, respectively. The charges in the above-matters were thereafter, transferred to the Regional Director of the Washington Regional Office of the Federal Labor Relations Authority (herein the Authority) between October 31, 1996 and April 29, 1997, respectively.

On April 1, 1997, the Regional Director of the Washington Regional Office and the Regional Director of the Atlanta Regional Office issued a Consolidated Complaint and Notice of hearing in Cases Nos. AT-CA-70058, AT-CA-70072, AT-CA-70164, DE-CA-70121, DE-CA-70201, WA-CA-70064, WA-CA-70134 and WA-CA-70140. A Complaint and Notice of hearing issued in Case No. AT-CA-70043 on April 10, 1997. Subsequently, on May 27, 1997 a Consolidated Complaint was issued which combined AT-CA-10043 with the other matters to effectuate the purposes of section 7101-7135 of the Statute. The Consolidated Complaint herein alleges that Respondents violated section 7116(a)(1), (5) and (8) of the Statute by refusing to furnish certain information necessary to determine seniority under the collective bargaining agreement.

Pursuant to an Order issued on July 10, 1997, all parties filed timely briefs in the matter. The briefs, stipulations and exhibits have been duly considered in reaching a recommended decision herein finding that Respondent violated section 7116(a)(1)(5) and (8) of the Statute.

Findings of Fact

The stipulated facts are as follows:

At all times material, the Union has been a labor organization within the meaning of section 7103(a)(4) of the Statute. At all times material, Respondent has been an agency within the meaning of section 7103(a)(3) of the Statute.

The Union is the exclusive representative of a nation-wide unit of all GS-2152 air traffic control specialists located at terminal and center facilities of the Respondent, whose primary duty is the separation of air traffic.[1]

The Union and Respondent are parties to a collective bargaining agreement, which became effective on August 1, 1993, and was in effect at all times material to this case. Article 83, section 1 of the agreement, provides that "[e]xcept as provided in Article 47 [Reduction-in-force], seniority will be determined by the Union at the local level." At least four different areas of the contract use seniority as a criterion to determine conditions of employment of unit employees. Those areas are as follows: watch schedules and shift assignments (Article 32, section 3), holiday leave (Article 28), temporary assignments

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[1] NATCA Tampa Local is an agent of NATCA for purposes of representing unit employees at the Respondent's Air Traffic Control Tower, Tampa, Florida. NATCA ZJX Local is an agent of NATCA for purposes of representing unit employees at the Respondent's Air Route Traffic Control Center, Jacksonville, Florida. NATCA Birmingham Local is an agent of NATCA for purposes of representing unit employees at the Respondent's Air Traffic Control Tower, Birmingham, Alabama. NATCA MIA Local is an agent of NATCA for purposes of representing unit employees at the Respondent's Air Traffic Control Tower, Miami, Florida. NATCA ORF Local is an agent of NATCA for purposes of representing unit employees at the Respondent's Air Traffic Control Tower, Norfolk, Virginia. NATCA Roanoke Local is an agent of NATCA for purposes of representing unit employees at the Respondent's Air Traffic Control Tower, Roanoke, Virginia. NATCA ZDC Local is an agent of NATCA for purposes of representing unit employees at the Respondent's Washington Air Route Traffic Control Center, Leesburg, Virginia. NATCA Salt Lake City TRACON Local is an agent of NATCA for purposes of representing employees at the Respondent's Terminal Radar Approach Control, Salt Lake City, Utah. NATCA RDU Local is an agent of NATCA for purposes of representing employees at the Respondent's Air Traffic Control Tower, Raleigh, North Carolina.

(Article 44, section 1), and reassignments of unit employees to fill vacant positions (Article 46, section 6).

Sometime in September 1996, the Union held its Sixth Biennial National Convention in Pittsburgh, Pennsylvania. During its convention, the Union adopted Resolution 96014, which provided for a national seniority policy and Resolution 96015, which established the substance of the national seniority policy.[2]

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[2] As adopted in final form, Resolution 96015 provided:

> The following system shall be used to determine seniority for the National Air Traffic Controllers Association:
>
> | | |
> |---|---|
> | NATCA Bargaining Unit Time | |
> | First Tie Breaker | EOD/FAA time |
> | Second Tie Breaker | Service Computation Date |
> | Third Tie Breaker | Lottery |
>
> Any bargaining unit member that voluntarily leaves the bargaining unit shall be, for the purpose of seniority under the provisions of Article 83 of the NATCA/FAA Agreement, assigned a NATCA Bargaining Unit date that coincides with the date that the individual returns to the bargaining unit. Individuals outside the NATCA bargaining unit shall have 45 days to return to the bargaining unit. Those individuals that have occupied a position outside of the NATCA bargaining unit prior to the passage of this resolution will not be adversely impacted with these provisions.
>
> For the purposes of Facility Release Policies, seniority will be determined by Facility Time only as a bargaining unit member at that present facility.
>
> NATCA Bargaining Unit Time is defined as that time an individual was or is employed as an air traffic control specialist in either the terminal or center option and in an assigned position as described in the FLRA designation of the NATCA Bargaining Unit.

After Resolution 96015 was passed, the Union's agents at the facility level requested certain information from Respondent. All of the Union's information requests were received by the Respondent's supervisors at the facility level.

On September 24, 1996, NATCA Tampa Local Facility Representative, Joseph Formoso, requested Respondent to furnish the dates that each bargaining unit member was assigned to a bargaining unit position and the dates of each break in service by a bargaining unit member. On October 16, 1996, the Tampa Air Traffic Manager (ATM), John T. Stewart, denied the request for information because the determination of seniority was considered internal union business.

On September 30, 1996, NATCA ZJX Local Facility Representative, Joseph M. Trainor, requested Respondent to furnish the Record of Employment History for bargaining unit members depicted on the Integrated Personnel and Payroll System (IPPS) and the service computation date for each bargaining unit member at the Jacksonville ARTCC. On October 16, 1996, the Jacksonville ARTCC Supervisory Personnel Management Specialist, Mary C. Vanzant, denied the request for information because the determination of seniority was considered internal union business.

On October 17, 1996, NATCA Birmingham Local Facility Representative, James D. Crane, requested Respondent to furnish the Record of Employment History for bargaining unit members depicted on the IPPS and the service computation date for each bargaining unit member at the Birmingham facility. In a memorandum dated October 21, 1996, the Birmingham ATM, Douglas M. Whitson, denied the request for information because the determination of seniority was considered internal union business.

On September 27, 1996, NATCA MIA Local Facility Representative, Andrew J. Cantwell, requested the Respondent to furnish the Record of Employment History for bargaining unit members at the Miami facility as depicted on the IPPS and the service computation date for each bargaining unit member at the Miami facility. In a memorandum dated October 30, 1996, the Miami ATM, Jimmy C. Mills, denied the request for information because the determination of seniority was considered internal union business, was not normally maintained by the facility, no grievance or representational issue existed, and the necessity and relevance of the information had to be determined before the request would be considered.

On October 2, 1996, NATCA Central Region Vice President, Michael Putzier, requested the Respondent to furnish the Record of Employment History for bargaining unit members in the Central Region as depicted on the IPPS and the service computation date for each bargaining unit member in the Central Region. In a letter dated October 22, 1996, Respondent's Director of Air Traffic, Ronald E. Morgan, denied the request for information and asked for the subject within the scope of collective bargaining for which the information is necessary and the relationship between the particularized need for the information and the subject of collective bargaining.

On October 5, 1996, NATCA ORF Local Facility Representative, Steve Hylinski, requested the Respondent to furnish the Record of Employment History for bargaining unit members as depicted on the IPPS and the date each bargaining unit member reported to their first FAA facility to begin on the job training. Thereafter, on October 22, 1996, the Norfolk ATM, Carl Zimmerman, denied the request for information because the Respondent filed a grievance and an unfair labor practice charge concerning the legality of the seniority system for which the information was requested.

On October 6, 1996, NATCA Roanoke Local Facility Representative, Keith Schwallenberg, requested Respondent to furnish the Record of Employment History for bargaining unit members and those employees expressing a desire to return to the bargaining unit by October 27, 1996, as depicted on the IPPS and the service computation date for each bargaining unit member and those employees that have expressed a desire to return to the bargaining unit by October 27, 1996. Around October 23, 1996, the Roanoke ATM, John D. Hinkle, denied the request for information because the Respondent filed a grievance and an unfair labor practice charge concerning the legality of the seniority system for which the information was requested.

On September 26, 1996, NATCA ZDC Local President, James R. Kidd II, requested Respondent to furnish the bargaining unit entry and exit dates for all bargaining unit employees assigned to the Washington ARTCC for the entirety of their careers, including any and all such time employees would have been eligible by the definition on the enclosed policy; the entrance on duty (EOD) FAA dates for all bargaining unit employees assigned to the Washington ARTCC; the service computation dates for all bargaining unit employees assigned to the Washington ARTCC; and the dates of all non-voluntary non-bargaining unit times for any employee in such a position currently. Sometime around October 24, 1996, Washington ARTCC Acting ATM, Heather J. Biblow, denied the

request for information by providing a copy of Morgan's letter to the NATCA president which requested clarification of the Union's particularized need for the requested information.

On October 14, 1996, NATCA Salt Lake City TRACON Local Facility Representative, Brian Johnson, requested the Respondent to furnish the date of entry (and exit/re-entry dates, if applicable) into the bargaining unit (as defined in the FLRA designation of the NATCA bargaining unit) for each controller assigned to Salt Lake City TRACON; the EOD/ FAA date for each controller assigned to Salt Lake City TRACON; the service computation date for each controller assigned to Salt Lake City TRACON; and the EOD to S56 for each controller at Salt Lake City TRACON. On October 30, 1996, Salt Lake City TRACON ATM, Susan Cornell, did not deny the request for information but stated that she was not certain the specified deadline for furnishing the information could be met.

On October 7, 1996, NATCA Local RDU Facility Representative, Michael J. Verderamo requested the Respondent to furnish the Record of Employment History for bargaining unit members at the Raleigh-Durham facility as depicted on the IPPS and the service computation date for each bargaining unit member at the Raleigh-Durham facility. An October 11, 1996 memorandum from Raleigh-Durham ATM's, Tom Adams, denied the request for information because the determination of seniority was considered internal union business.

Respondent did not provide any of the requested information, despite follow-up requests clarifying the Union's particularized need for this information sent by Formoso, Tampa Facility Representative; Trainor, Jacksonville Facility Representative; Crane, Birmingham Facility Representative; Putzier, Central Region Vice President; Kidd, Washington Center Facility Representative; Johnson, Salt Lake City Facility Representative; and Verderamo, Raleigh Facility Representative.

Analysis and Conclusions

The sole issue in these matters is whether the Respondent violated section 7116(a)(1), (5) and (8) of the Statute by failing to furnish requested information which was necessary within the meaning of section 7114(b)(4) of the Statute.

Section 7114(b)(4) of the Statute provides that the duty of an agency to bargain in good faith requires that the

agency furnish to the exclusive representative involved or its authorized agent, upon request, and to the extent not prohibited by law, data which is normally maintained by the agency in the regular course of business; which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and which does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining.

Respondent approaches the case from several different directions. First, it contends that there was no obligation to furnish information in the instant matters since it inter-prets the sense of Congress was to limit "data disclosures to requests arising in the context of negotiations . . . " In this regard it asserts that inasmuch as no negotiations were contemplated when the Union made its information requests herein there was no obligation to supply the requested information. This argument rests on its assumption that both the Authority and the D.C. Circuit incorrectly interpreted section 7114(b)(4)(B) of the Statute as obligating an agency to provide information to an exclusive representative that is "necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of the collective bargaining process."[3] The NLRB case cited by Respondent makes it evident that Respondent's interpretation of the Statute related to furnishing information is simply too narrow. In that case, it was determined that section 7114(b)(4)(B) encompasses information needed by the exclusive representative to perform "the full range of its representational responsi-bilities under the Statute and not simply related to collec-tive bargaining." The case also noted, that in reviewing the wording of section 7114(b)(4) of the Statute, the D.C. Circuit[4] made it clear that not only is it a well-understood principle that, in collective bargaining, '[the] duty to request and supply information is

[3] *National Labor Relations Board and and National Labor Relations Board Union Local 6*, 38 FLRA 506, 519 (1990).

[4] *AFGE, Local 1345,* 793 F.2d 1360 (D.C. 1986). While Respondent claims that the Court's language in the *AFGE* case is dicta, it does not dispute the Authority's use of that language in such cases as *SSA, New Bedford District Office*, 37 FLRA 1277, 1286 (1990) where it was held that section 7114(b)(4)(B) of the Statute entitles the exclusive representative to ". . . information that is necessary to enable it to carry out effectively its representational functions."

part and parcel of the fundamental duty to bargain. . . .” The Court further stated that an agency’s obligation to furnish data “must be evaluated in the context of the full range of union responsibilities in both the negotiation and administration of a labor agreement.” Thus, the arguments that Respondent presents have already
been rejected by both the Authority and the Court. While Respondent offered case precedent and legislative history in support of its position it failed to establish, in my opinion, that Congressional intent favored only its interpretation of section 7114(b)(4)(B) of the Statute. In considering the above holdings, the undersigned is obliged to find that Respondent’s arguments concerning the statutory construction of 7114(b)(4)(B) lack merit. Accordingly, Respondent’s position that section 7114(b)(4)(B) should be narrowly interpreted to mean that it is applicable only when the parties are engaged in “negotiations leading to a collective bargaining agreement,” is rejected.

Second, Respondent urges that the underlying seniority system established by the Union was illegal and that Respondent saw a “distinct possibility” that it could have been held jointly liable for the Union’s failure to represent employees herein.[5] Section 7114(b)(4) requires that data be furnished to the exclusive representative “to the extent not prohibited by law . . . ” It does not allow that there is a possibility that the data would be prohibited or that an agency can unilaterally determine that it might be jointly liable. In the circumstances, it appears to the undersigned that Respondent was not relieved of the responsibility to furnish necessary information simply because it felt that the seniority system was suspicious in nature.

Respondent’s waiver argument is also rejected. Case law still requires that the waiver of a Statutory right must be clear and unmistakable. U.S. *Department of the Treasury*, 38 FLRA 770, 784 (1990). The collective bargaining agreement does not free Respondent from its obligation under the Statute simply because it does not include the requested data among the bargained for topics by the parties. Thus, a Statutory right is not lightly waived

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It is noted that, Administrative Law Judge William B. Devaney issued a decision on July 17, 1997, in which the Respondent’s unfair labor practice charge was consolidated, finding that the Union did commit an unfair labor practice when it adopted the underlying seniority policy at issue here. At this writing, the Authority has not adopted that recom-mended decision. If that decision is upheld by the Authority, it would appear to make this matter moot.

and absent some evidence that the Union specifically relinquished its right to the requested information, the undersigned denies Respondent's argument.

Respondent disputed but, the record establishes that the Union sufficiently articulated and established a particularized need for the information requested from the various locations.

In this case, there is no dispute that the information requested by the Union, through its agents at the facility level, is normally maintained by the Respondent in the regular course of business; is reasonably available; does not consti-tute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining; and can be sanitized to omit social security numbers so as not to be prohibited from disclosure by law. Under section 7114(b)(4) a union making a request for data has to establish a particularized need for the information. Thus, the union must articulate, with specificity, the reasons why it needs the information, including the uses to which the information will be put, and the connection between those uses and the union's representational responsibilities under the Statute. Under present case law, in order for a union to meet its burden to establish a particularized need for the information, exclusive representatives must show that the information is required in order to permit an agency to make a reasoned judgment as to whether the information must be disclosed under the Statute. *Internal Revenue Service, Washington, D.C. and Internal Revenue Service, Kansas City Service Center, Kansas City, Missouri*, 50 FLRA 661 (1995) (*Internal Revenue Service*).

An agency denying such an information request must assert and establish any countervailing anti-disclosure interests and will not satisfy its burden by making unsupported or bare assertions, as was done in this case. The Authority will find an unfair labor practice if a union has established a particu-larized need for the information and either: (1) the agency has not established a countervailing interest; or (2) the agency has established such an interest but it does not outweigh the union's demonstration of particularized need.

Applying the Authority's analytical framework to this case, the Union, by its local agents, established a particularized need for the requested information, and the Respondent did not establish any countervailing interests against disclosure of the information which outweighs the Union's particularized need.

Each of the Union's local agents explained why it needed the information. In this regard, each written request stated that the information was required to determine seniority for bargaining unit employees. Essentially, the information sought by the Union consisted of certain dates recorded in unit employees' personnel records to which the Union would apply the seniority policy outlined in Resolution 96015 to establish a seniority roster at each of the Respondent's facilities. The seniority rosters determine the order in which employees select their shift assignments, holiday and annual leave, among other things.

Respondent's local agents, with the exception of the Respondent's agent at the Salt Lake City TRACON,[6] denied each of the information requests for various reasons. Respondents' agents at its Tampa, Jacksonville, Birmingham, and Raleigh facilities denied the information requests because they considered the determination of seniority to be internal union business. Respondents' agents at these facilities did not ask the Union's representatives to clarify their particularized need for the requested information. However, the Union's agents at the Respondent's Tampa, Jacksonville, Birmingham, and Raleigh facilities submitted additional letters further explaining the uses for the requested information and the connection between those uses and the Union's representational purposes, even though such clarification was not solicited by the Respondent's agents. These letters stated that the Union had exclusive authority under Article 83 of the parties' agreement to determine seniority; that under the agreement, seniorities, as determined by the Union, established watch schedules and shift assignments (Article 32, section 3), holiday leave (Article 28), temporary assignments (Article 44, section 1), and reassignments of unit employees to fill vacant positions (Article 46, section 6); and that the Union needed the information for the proper administration of these provisions of the parties' agreement.

At its Norfolk and Roanoke facilities Respondent's agents denied the Union's information requests because the Respondent filed a grievance and an unfair labor practice

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6 Respondent's agent at the Salt Lake City TRACON never denied the Union's information request but merely responded that the Respondent could not meet the Union's time frame for providing the requested information. There is no dispute that the Respondent did not furnish the information to the Union representative at the Salt Lake City TRACON.

charge regarding the validity of the seniority policy for which the information was requested. Respondents' agents at these facilities did not ask the Union's representatives to clarify their particularized need for the requested information. As later explained, Respondent's doubts as to the merits of the Union's seniority policy do not relieve it of the duty to furnish the information requested under section 7114(b)(4) of the Statute.

Agents of Respondent at its Miami, Central Region, and Washington Center facilities denied the Union's requests for information, and specifically asked the Union to clarify its particularized need for the requested information. In response, the Union's agents in the Central Region and Washington Center submitted letters which detailed the uses for the information and the connection between those uses and the Union's representational responsibilities under the Statute. Again it is noted that the Union's letters stated that Article 83 of the parties' collective bargaining agreement provided it with the exclusive authority to determine seniority; that under the agreement, seniority, as determined by the Union, is used to establish watch schedules and shift assignments, temporary assignments, and reassignments of unit employees to fill vacant positions and that the Union needed the information for the proper administration of these provisions of the parties' agreement.

Accordingly, the Union appears to have fully explained its particularized need for the information at the time that the requests for information were made and satisfied its burden for making a valid information request under the framework established by the Authority in *Internal Revenue Service*.

Respondent however, did not satisfy its burden under the *Internal Revenue Service* framework to establish any countervailing anti-disclosure interests which outweigh the Union's particularized need for the information. Respondent has asserted several reasons for denying the information requests, none of which, even if established, relieves Respondent of its duty to furnish the information under section 7114(b)(4) of the Statute.

In this regard, Respondent insists that the determination of seniority is internal union business. It is true that the contract gives the Union the exclusive authority to determine the type of seniority which will be used. However, the Union clearly explained that the requested information would be used to administer the provisions of the parties' contract that relies on a

seniority calculation for their operation. The administration of certain contract provisions depends on the ability of the Union to make accurate seniority calculations, which it cannot do without information maintained by the Respondent in its Consolidated Personnel Management Information System (CPMIS).7 Therefore, the Union's need for the information is broader than its internal decision to determine the type of seniority used. Rather, it affects the proper administration of several provisions of the parties' agreement, which the Respondent delegated to the Union through the negotiation of Article 83 of the parties' agreement.

Respondent now maintains that the Union had not articulated a particularized need for the requested information. The record reveals however, the Union provided a very detailed explanation of its particularized need for the information.

As earlier noted, Respondent also maintains that the underlying seniority policy adopted by the Union at its national convention was not valid because the policy violated the parties' agreement and the Statute and, therefore, the Respondent had no obligation to furnish the information. Respondent filed a grievance under the parties' agreement alleging that the seniority policy contained in Resolution 96015 violated Article 83 of the agreement and an unfair labor practice charge alleging that the seniority policy also violated section 7116(b)(1) and (8) of the Statute. However, at the time the Union made the information requests, there was no final and binding determination of the validity of the seniority policy. Thus, Respondent's grievance and unfair labor practice charge are not relevant to the determination of whether the Union established a particularized need for the information at the time the requests were made. The mere assertion that the underlying seniority policy is invalid or illegal does not disprove the Union's particularized need for the requested information. Until an arbitrator rules on the grievance or the Authority rules on the unfair labor practice charge, Respondent is obligated to furnish information where the Union's request meets the requirements of section 7114(b)(4) of the Statute.

It is a well-settled principle of private sector labor law that the standard for providing information under the

7 Although some of the Union's facility representatives requested the information from the IPPS, the Respondent stipulated that the information is available from the CPMIS.

National Labor Relations Act decides nothing about the merits of contractual claims.[8] Accordingly, the Authority held that an agency's doubts as to the merits of the underlying grievance will not constitute a sufficient countervailing interest against the disclosure of information that outweighs a union's particularized need for information under section 7114(b)(4) of the Statute.

Applying the Authority's rationale to Respondent's defense in this case, it is clear that the Respondent's doubt as to the validity of the Union's seniority policy is not sufficient to outweigh the Union's particularized need for the requested information. The instant record demonstrates a valid need for the information to administer various provisions of the parties' agreement which rely on the Union's authority and ability to make seniority calculations. Without the information, it would not be possible for the Union to establish valid seniority rosters upon which work schedules, leave, and other matters can be determined. Further, the disclosure of the information would have no impact on an arbitrator's determination of whether the Union's adoption of the underlying seniority policy breached Article 83 of the parties' agreement or on a Authority's decision of whether the Union's adoption of the underlying seniority policy violated the duty of fair representation under the Statute. Furthermore, disclosure of the requested information would not affect the power of an arbitrator or the Authority to fashion a remedy addressing conduct they might find improper.

When the particularized need for the information demonstrated by the Union is weighed against the Respondent's asserted countervailing interests, the record established, in my view, that the Union's interests should prevail. As already explained, the Union has a substantial interest in obtaining the information to establish valid seniority rosters on which several contract provisions depend for proper admin-istration. In contrast, Respondent's anti-disclosure interests are not as strong. In this regard, it is clear that the information was sought

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8 *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 436 (1967) (NLRB's requirement that the employer furnish certain information did not preclude an arbitrator from finding that the union's grievance, in which connection the information was sought, was without merit). The Authority followed the advice of the Supreme Court in *Department of the Air Force, Scott Air Force Base, Illinois*, 51 FLRA 675, 686-89 (1995) (grievability of the union's grievance was not a sufficient countervailing anti-disclosure interest which outweighed the union's particularized need for information).

to administer the parties' agree-ment, of which determining the type of seniority was only a part, and therefore, not solely internal union business. Finally, Respondent can hardly argue that its duty to furnish information is relieved by doubts as to the merits of the Union's adoption of the underlying seniority policy. Especially since no determination has been made by an arbitrator or the Authority in that respect. Thus, the Union's particularized need for the information outweighs the countervailing interests identified by the Respondent. Therefore, the information is necessary within the meaning of section 7114 (b)(4) of the Statute and Respondent's failure to furnish the information constituted unfair labor practices within the meaning of section 7116(a)(1), (5) and (8) of the Statute.

In these matters, Respondent has not asserted any anti-disclosure interests and the other statutory requirements of section 7114(b)(4) have been met. Accordingly, it is found that by its conduct in failing to furnish the Union with the data requested in these consolidated matters, Respondent refused to comply with section 7114(b)(4) of the Statute in violation of section 7116(a)(1), (5) and (8) of the Statute, as alleged.

Based on the above findings and conclusions, it is recommended that the Authority issue the following:

ORDER

Pursuant to section 2423.29 of the Federal Labor Relations Authority's Rules and Regulations and section 7118 of the Statute, it is hereby ordered that the Federal Aviation Administration, Washington, D.C. shall:

1. Cease and desist from:

(a) Failing and refusing to furnish the National Air Traffic Controllers Association, MEBA/AFL-CIO; Tampa Local; ZJX Local: Birmingham Local; MIA Local; ORF Local; Roanoke Local; ZDC Local; Salt Lake City TRACON Local; Raleigh-Durham Local information which is necessary for it to determine seniority under the collective bargaining agreement.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights assured by the Federal Service Labor-Management Relations Statute.

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

(a) Upon request, furnish the National Air Traffic Controllers Association, MEBA/AFL-CIO; Tampa Local; ZJX Local; Birmingham Local; MIA Local; ORF Local; Roanoke Local; ZDC Local; Salt Lake City TRACON Local; Raleigh-Durham Local, National Air Traffic Controllers Association, MEBA/AFL-CIO data which is necessary for it to determine seniority under the collective bargaining agreement.

(b) Post at all its facilities nationwide where members of the National Air Traffic Controllers Association, MEBA/AFL-CIO bargaining unit 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 Director of Air Traffic 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) Pursuant to section 2423.30 to the Authority's Rules and Regulations, notify the Regional Director, Washington D. C. Regional Office, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply.

Issued, Washington, DC, August 29, 1997.

ELI NASH, JR.
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 Federal Aviation Administration has violated the Federal Labor Management Relations Statute and has ordered us to post and abide by this notice.

We hereby notify bargaining unit employees that:

WE WILL NOT fail and refuse to furnish the National Air Traffic Controllers Association, MEBA/AFL-CIO; Tampa Local; ZJX Local; Birmingham Local; MIA Local; ORF Local; Roanoke Local; ZDC Local; Salt Lake City TRACON Local; Raleigh-Durham Local information which is necessary for it to determine seniority under the collective bargaining agreement.

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

WE WILL upon request, furnish the National Air Traffic Controllers Association, MEBA/AFL-CIO; Tampa Local; ZJX Local; Birmingham Local; MIA Local; ORF Local; Roanoke Local; ZDC Local; Salt Lake City TRACON Local; Raleigh-Durham Local, National Air Traffic Controllers Association, MEBA/AFL-CIO data which is necessary for full and proper discussion, understanding and negotiation of subjects within the scope of collective bargaining.

_____

(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 Regional Director, Washington Regional Office, Federal Labor Relations Authority, whose address is:

1255 22nd Street, NW, Suite 400, Washington, D.C. 20037-1206, and whose telephone number is: 202-653-8500.

CERTIFICATE OF SERVICE

I hereby certify that copies of this DECISION issued by ELI NASH, JR., Administrative Law Judge, in Case Nos. AT-CA-70058, AT-CA-70067, AT-CA-70072, AT-CA-70164, DE-CA-70121, DE-CA-70201, WA-CA-70064, WA-CA-70134, WA-CA-70140 and AT-CA-70043, were sent to the following parties in the manner indicated:

CERTIFIED MAIL:

Ms. Michelle Ledina
Counsel for the General Counsel
Federal Labor Relations Authority
1255 22nd Street, NW, Suite 400
West End Court
Washington, DC 20037-1206
P 600 695 415

Mr. Stewart Speck
Office of Labor Relations, AHR-12
Federal Aviation Administration
800 Independence Avenue, SW
Washington, DC 20591
P 600 695 416

William W. Osborne, Jr., Esq.
Marguerite L. Graf, Esq.
Osborne Law Offices, P.C.
One Thomas Circle, NW, Suite 1150
Washington, D.C. 20005
P 600 695 417

REGULAR MAIL:

President
National Air Traffic Controllers Association
1150 17th Street, NW, Suite 701
Washington, DC 20036

Dated: August 29, 1997
Washington, DC