OFFICE OF ADMINISTRATIVE LAW JUDGES

WASHINGTON, D.C. 20424-0001

DEPARTMENT OF VETERANS AFFAIRS, MEDICAL CENTER, NORTH CHICAGO, ILLINOIS

Respondent

and

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 2107, AFL-CIO

Case No. CH-CA-20551

Charging Party

Linda L. Cobine, Esquire

For the Respondent

John F. Gallagher, Esquire

For the General Counsel

Mr. Lawrence S. Jenkins

For the Charging Party

Before: WILLIAM B. DEVANEY

Administrative Law Judge

DECISION

Statement of the Case

This proceeding, under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the United States Code, 5 U.S.C. § 7101, et seq.[1], and the Rules and Regulations issued thereunder, 5 C.F.R. § 2431, et seq., concerns whether Respondent's refusal to furnish the names of all bargaining unit employees who were rated "Outstanding" for the 1992 rating cycle; the names of all persons who received a monetary award and the amount of each award; and the amount allocated to each service of Respondent for monetary awards was contrary to § 14(b)(4) and in violation of §§ 16(a)(1), (5) and (8) of the Statute.

This case was initiated by a charge filed on June 16, 1992 (G.C. Exh. 1(a)); and the Complaint and Notice of Hearing issued on December 30, 1992 (G.C. Exh. 1(b)), for a hearing at a location, date and time to be determined. By Order dated April 22, 1993 (G.C. Exh. 1(f)), the hearing was set for June 10, 1993, in Chicago, Illinois, at a place to be deter-mined; and by Order dated May 20, 1993 (G.C. Exh. 1(h)), the place of the hearing was fixed, and, pursuant thereto, a hearing was duly held on June 10, 1993, in Chicago, Illinois, before the undersigned. All parties were represented at the hearing, were afforded full opportunity to be heard, to introduce evidence bearing on the issues involved, and were afforded the opportunity to present oral argument which Respondent exercised. At the close of the hearing, July 15, 1993, was fixed as the date for mailing post-hearing briefs. Respondnet and General Counsel each timely mailed a brief, received on, or before, July 19, 1993. On July 26, 1993, General Counsel mailed a "Motion To Strike Portions of Respondent's Brief", received on August 3, 1993, and Respondent on August 4, 1993, mailed its "Answer to Strike Portions of Respondent's Brief and Motion For Judicial Notice", which was received on August 6, 1993.

General Counsel seeks to strike on page 20 of Respondent's Closing Brief, Paragraph 5, sentences two and three, namely, that Ms. Carol Campagnolo testified,

"Further, this information did not appear relevant to the Union's representational responsibilities.

No grievances were filed by any one employee dissatisfied with his evaluation or award."

I fully agree with General Counsel that the transcript shows no such testimony by Ms. Campagnolo[(2)] and, accordingly, sentences two and three of Paragraph 5 are hereby stricken.

General Counsel further seeks to strike on Pages 21 and 22, the paragraph beginning "Furthermore, . . ." on page 21, through the second paragraph on page 22, which ends with the words, ". . . and the Local Agreement.", for the reason that the Local Agreement was neither offered nor received in evidence. Antilles Consolidated Education Association, (OEA/NEA), San Juan, Puerto Rico, 36 FLRA 776, 785 (1990), specifically addressed the question of collective bargaining agreements not submitted at the hearing. I am aware that the Authority takes notice of directives promulgated by an agency, U.S. Department of The Treasury, Customs Service, Washington, D.C., 38 FLRA 875, 878 (1990); but a local agreement, executed more than four years before the Master Agreement, which was received in evidence (G.C. Exh. 4), is not a document of which official notice may be taken. Accordingly, General Counsel's motion to strike the paragraph on page 21 beginning with the word "Furthermore" through the second paragraph on page 22, is granted and those portions of Respondent's Closing Brief are hereby stricken. Further, Respondent's "Motion For Judicial Notice" is hereby denied and the tendered Local Agreement is hereby rejected. Upon the basis of the entire record, I make the following findings and conclusions:

Findings of Fact

1. The American Federation of Government Employees, AFL-CIO (AFGE), is the certified exclusive representative of nationwide consolidated units of non-professional employees, full-time, part-time and temporary (G.C. Exhs. 1(b), Par. 9; 4, Art. 1, Sec. 1). American Federation of Government Employees, Local 2107, AFL-CIO (Union), is an agent of AFGE for the representation of bargaining unit employees at

Respondent's North Chicago, Illinois, facility. The Union also represents professional employees at the North Chicago Medical Center (Tr. 12).

2. There are negotiated grievance procedures which cover both professional and non-professional employees (Tr. 12). Article 32, Performance Appraisal System, of the non-professional agreement contains the following provisions:

"Section 6 - Awards and Other Actions

"A. Whenever an employee is rated Highly Satisfactory on his/her annual performance evaluation rating, the appropriate supervisory official will review the rating prior to sending a copy to the official personnel folder to determine if the employee should be recommended for a monetary award under the Incentive Awards Program. The employee will be furnished a copy of the performance rating.

"B. Whenever an employee is rated Outstanding, the employee will automatically be considered for a monetary award under the provisions of the Incentive Awards Program and receive a certificate.

"C. Awards for performance will be distributed in a fair and equitable manner. (G.C. Exh. 4).

The annual performance appraisal year for all employees is from April 1 to March 31.

3. Because of complaints from employees who had been rated "Outstanding" but had received no monetary award and felt that the awards money had not been equitably distributed (Tr. 19, 20, 45) and because of other complaints as to whether awards were fairly and equitably distributed, the Union's Chief Steward, Mr. Lawrence S. Jenkins, on June 4, 1992, submitted the following request for information:

"Pursuant to 5 USC 7114(b)(4) and 5 USC 7103(a)(9) I request the following info that's relevant and necessary to represent the interests of bargaining unit employees.

"1. Names of all employee(s) of the bargaining unit who have received from there (sic)

'Rating Officials' the rating of Outstanding.

"2. Names of all persons considered and received a monetary award. And

"3. The amount received for each individual named.

"4. The amount allocated to each service at this medical center for the concern of equity.

"The requested information is necessary and relevant because the union is receiving complaints that persons other then (sic) the rating officials are denying and or instructing rating officials to downgrade several employees of the Bargaining unit from the rating of outstanding to the lower rating of Highly Successful." (G.C. Exh. 2).

4. By memorandum dated June 9, 1992, Respondent's Chief, Personnel Service, Mr. Robert L. Grant, replied as follows:

"1. This memorandum is in response to your request dated June 4, 1992, asking for information about the 1992 Performance Management System rating cycle.

"2. As you know, we cannot release the performance rating of record and/or cash award received for any bargaining unit member without his or her consent. To do otherwise would violate the Privacy Act.

"3. Since we cannot disclose individual dollar amounts or performance ratings, I can tell you that the Medical Center Director approved an Awards Budget of $192,000. This represents a 15% increase over last year.

"4. Specific to services, the following represents the number of Outstandings:

Audiology.....2 IRM.....3

A&MM.....10 Laboratory.....7

BMS.....43 Medical.....7

Chaplain.....3 Medical Media.....1

Ambulatory Care.....1 MAS.....20

Education.....2 Nuclear Med.....7

Geriatrics.....3 Personnel.....4

CQI.....9 Pharmacy.....6

Dental.....3 Prosthetics.....1

Dietetics.....26 Psychiatry.....20

Director's Office.....1 Psychology.....11

Domiciliary.....3 Radiology.....5

Engineering.....23 RMS.....12

Fiscal.....5 Social Work.....8

HBHC.....1 "

(G.C. Exh. 3).

5. Although Mr. Jenkins testified that after he received Mr. Grant's June 9, 1992, response he had no further communication with the VA on this issue (Tr. 15), the record shows that he did have further communication on this issue; and that, apparently, he made a further information request on June 24, 1992[(3)], inasmuch as Mr. Grant, by memorandum dated October 9, 1992, responded to Mr. Jenkins' ". . . Information Request of 6/24/92 (Outstanding Ratings)" as follows:

"1. Please consider this my response to your information request concerning all "Bargaining Unit" employees who were denied cash awards as a result of being promoted during the rating cycle ending March 31, 1992, with respect to an Outstanding Rating.

"2. In accordance with your request, below listed are the employees that were affected:

Employee Name **Service**

Allen, John E.	Rehabilitation Medicine Service
Bieber, Kenneth	Nursing Service
Clark, Jeffrey	Continuous Quality Improvement
Esterrich, Ileana A.	Rehabilitation Medicine Service
Ferraresi, Margaret E.	Rehabilitation Medicine Service
Fowkes, Anne L.	Rehabilitation Medicine Service
Franklin, Janet	Continuous Quality Improvement
Hasberry, Joyce	Psychiatry Service
Hilgenberg, June	Nursing Service
Johnson, Sadie	Psychology Service
Kim, Edmund	Psychiatry Service
Marchini, Donna R.	Rehabilitation Medicine Service
Reed, Sheryl	Nursing Service
Shah, Kay	Nuclear Medicine
Snyder, Colleen	Laboratory Service
Tompkins, Jacquelyn	Medical Administration Service
Weichers, Mary	Psychiatry Service
Wray, Crystal	Medical Administration Service"

(G.C. Exh. 5).

Conclusions

§ 14(b) provides, in relevant part, that,

"(b) The duty of an agency . . . shall include the obligation--

. .

"(4) . . . to furnish to the exclusive representative . . . upon request and, to

the extent not prohibited by law, data--

"(A) which is normally maintained by the agency in the regular course of business;

"(B) which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and

"(C) which does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining; . . ." (5 U.S.C. § 7114(b)(4)).

Paragraph 4 of the Union's June 4, 1992, information request, "The amount allocated to each service at this medical center for the concern of equity", at best is ambiguous; but the Union intended to ask for the amount of money allocated to each service for awards (Tr. 24) and Respondent so understood (Respondent's Brief, p. 18). Respondent offered no testimony or evidence as to whether the Awards Budget (G.C. Exh. 3) was allocated to services but asserts in its Brief that, ". . . there is no document which exists or has ever existed to compute the actual total amount of award funds received by each North Chicago service . . . Certainly a document, if it had existed, which detailed the amount of money allocated to each Service would have been an internal management document to provide guidance to the Service Chiefs. Information regarding the amount of money that each Service had available for awards for the Performance Evaluations would have been for management guidance in order that each Service Chief could determine how the number of awards related to the total amount of money to be divided. This internal management document would not have been releasable under the Labor Act." (Respondent's Brief, p. 18).

Except for the information requested in Paragraph 4, which Respondent asserts never existed, there is no doubt whatever, as General Counsel states in his Brief, pp. 6-7, that the information is normally maintained by Respondent in the regular course of business (14(b)(4)(A)); that it is reasonably available (14(b)(4)(B)) and that it does not constitute guidance, advice or counsel within the meaning of 14(b)(4)(C). Nor can there be the slightest doubt that, to the extent not prohibited by law, the Union needed the information requested in order to ascertain whether, pursuant to the Agreement of the parties, awards for performance were distributed in a fair and equitable manner (G.C. Exh. 4) and to resolve potential grievances growing out of complaints received that awards had not been distributed fairly. Compare, U.S. Air Force, Loring Air Force Base, Limestone, Maine, 43 FLRA 1087 (1992).

Whether "necessary", within the meaning of § 14(b)(4)(B), disclosure of such information is, nevertheless, subject to the limitations of the Privacy Act (5 U.S.C. § 552a) and of the Freedom of Information Act (5 U.S.C. § 552), i.e., as ". . . then Judge Ginsburg cogently explained . . .: 'The broad cross-reference in 5 U.S.C. § 7114(b)(4) - "to the extent not prohibited by law" - picks up the Privacy Act unmodified; that Act, in turn,

shelters personal records absent the consent of the person to whom the record pertains, unless disclosure would be required under the [FOIA]. Once placed wholly within the FOIA's domain, the union requesting information relevant to collective bargaining stands in no better position than members of the general public. . . .'" United States Department of Defense v. Federal Labor Relations Authority, No. 92-1223, U.S. , S. Ct. , 62 U.S.L.W. 4143 (hereinafter, "DoD") (February 23, 1994), quoting from then Judge Ginsburg's concurring opinion in FLRA v. Department of Treasury, Financial Management Service, 884 F.2d 1446 (D.C. Cir. 1989), cert. denied, 493 U.S. 1055 (1990).

Because the Court in DoD, supra, held, inter alia, that,

". . . The terms of the Labor Statute in no way suggest that the Privacy Act should be read in light of the purposes of the Labor Statute. If there is an exception, therefore, it must be found within the Privacy Act itself. Congress could have enacted an exception to the Privacy Act's coverage for information 'necessary' for collective-bargaining purposes, but it did not do so . . . Nowhere, however, does the Labor Statute amend FOIA's disclosure requirements or grant information requestors under the Labor Statute special status under FOIA [footnote omitted]. Therefore, because all FOIA requestors have an equal, and equally qualified, right to information, the fact that respondents are seeking to vindicate the policies behind the Labor Statute is irrelevant to the FOIA analysis." (62 U.S.L.W. at 4146).

Moreover, as the Court further emphasized,

". . . We must weigh the privacy interest of bargaining unit employees in nondisclosure . . . against the only relevant public interest in the FOIA balancing analysis - the extent to which disclosure of the information sought would 'she[d] light on an agency's performance of its statutory duties' or otherwise let citizens know 'what their government is up to.'" (DoD, supra, id. at 4146).

Accordingly, the Authority may no longer apply as the public interest in disclosure the interest in promoting federal sector collective bargaining, as the Court in DoD, supra, specifically rejected this position, and the

Authority must now consider ". . . the only relevant 'public interest in disclosure' to be weighed in this balance is the extent to which disclosure would serve the 'core purpose of the FOIA,' which is 'contribut[ing] significantly to public understanding of the operations or activities of the government.'" (DoD, supra, id. at 4145), and, ". . . the fact that respondents are seeking to vindicate the policies behind the Labor Statute is irrelevant to the FOIA analysis." (DOD, supra, id. at 4146).

The Privacy Act, 5 U.S.C. § 552a, provides that,

"(b) CONDITIONS of DISCLOSURE - No agency shall disclose any record which is contained in a system of records . . . except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be--

. . .

(2) required under section 552 of this title.

(3) for a routine use as defined in subsection (a)(7) of this section and described under subsection (e)(4)(D) of this section;

. ." (5 U.S.C. § 552a(b)(2) and (3)).

Although the Freedom of Information Act (FOIA) predominately favors disclosure, there are exemptions from the statute's broad policy of disclosure including, as applicable here:

"(b) This section does not apply to matters that are--

. . . .

"(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

. . ." (5 U.S.C. § 552(b)(6)).

For reasons fully stated by General Counsel (Brief, pp. 18-19), information concerning awards is governed by the "routine use" exception of the Privacy Act, 5 U.S.C. § 552a(b)(3). National Treasury Employees Union, 46 FLRA 234, 239-246 (1992); U.S. Department of Transportation, Federal Aviation Administration, New England Region, Burlington, Massachusetts, 38 FLRA 1623, 1632 (1991). Whether not prohibited from disclosure by (b)(2) or (3) of the Privacy Act, disclosure still is subject to the qualification of § (b)(6) of the FOIA, i.e., that, "personnel and medical files and similar files the disclosure of which would constitute a

clearly unwarranted invasion of personal privacy". This limitation on release requires a balance of the "harm" to the individual whose privacy is breached against the public interest served by disclosure. As the Supreme Court made clear in DoD, supra, for the purposes of FOIA, the public interest is solely, "the extent to which disclosure of the information sought would 'she[d] light on an agency's performance of its statutory duties' or otherwise let citizens know 'what their government is up to.'", DoD, supra, at 62 U.S.L.W. 4146.

Respondent maintains records of each award as part of its fiscal management and to administer the Incentive Awards Program. The amount of money involved, $192,000.00 budgeted for 1992 (G.C. Exh. 3), is substantial and the public has a right to know how Respondent distributes the awards money; whether awards reflect favoritism, disparate or discriminatory treatment or arbitrary conduct; whether they were rational; and whether Respondent was faithfully performing its duties.

On the other hand, employees who received outstanding evaluations have a strong privacy interest in preventing disclosure, so much so that the Court of Appeals for the District of Columbia Circuit, in FLRA v. United States Department of Commerce, National Oceanic and Atmospheric Administration, National Weather Service, Silver Spring, Maryland, 962 F.2d 1055 (D.C. Cir. 1992) (hereinafter, "National Weather Service"), held that supplying information identifying those employees who had received outstanding evaluations (i.e., unsanitized data) constituted an unwarranted invasion of personal privacy. See, also, Ripskis v. Department of Housing and Urban Development, 746 F.2d 1 (D.C. Cir. 1984). National Weather Service, supra, applied, as the Supreme Court in DoD, supra, now has mandated, that, ". . . for purposes of the exemption 6 balance, the public interest is defined solely by the values animating the FOIA; to wit, ensuing 'that the Government's activities be opened to the sharp eye of public scrutiny.'" (id. at 1060). Although the Authority's decision (38 FLRA 120 (1990)) had been to the contrary, the Court denied enforcement because the Authority ". . . misapplied the balancing test required by exemption 6 of the FOIA . . .", and, as noted, the Supreme Court in DoD, supra, has mandated that the Authority apply only the public interest of the FOIA, i.e., that, ". . . because all FOIA requestors have an equal, and equally qualified, right to information, the fact that respondents are seeking to vindicate the policies behind the Labor Statute is irrelevant to the FOIA analysis." (DoD, supra, 62 U.S.L.W. at 4146). As the Authority has not applied the FOIA mandated public interest, the decision of the Court in National Weather Service will be followed.

Of course, here, the Union sought not only the names of bargaining unit employees rated "Outstanding"; but it also sought the "Names of all persons considered and received a monetary award" and, "The amount received for each individual named." (G.C. Exh. 2). Employees who received an award and the amount received would be an additional, and further, privacy interest over and above their rating as "Outstanding" which would substantially increase their privacy interest. Balancing the public interest in disclosure against the Union's blanket request, to have identified all bargaining unit employees who were rated "Outstanding" and/or the names of all persons considered for a monetary award and the amount each named individual received would have constituted an unwarranted invasion of personal privacy. The substantial public interest in knowing how public funds for awards is spent overwhelmingly overbalances any meager privacy interest in disclosing the amount of each award and the service of each recipient (as well as the occupation of each recipient if requested); but with the name of each recipient removed. This will adequately protect the privacy interest of the individuals and, even though as more information is supplied, e.g., service and occupation of each recipient, there may be some slight encroachment on personal privacy, the substantial public interest greatly exceeds such modest intrusion of personal privacy. Indeed, neither the identity of employees who were rated "Outstanding" nor disclosure of the amount received by individuals as an award is sacrosanct and either, or both, may have to give way to the public's pervasive right to know whether Respondent faithfully fulfilled its public trust in granting awards when such personal identification is essential to the satisfaction of the public interest, as, presumably, Respondent found necessary in supplying the names of bargaining unit

employees rated "Outstanding" who were promoted during the rating cycle and, accordingly, denied cash awards (G.C. Exh. 5). From the testimony of Ms. Campagnolo (Tr. 45-46), Respondent may, by its October 9, 1992, response (G.C. Exh. 5) have intended to answer the substance of the Union's request No. 2, in essence, "Who was considered for awards and who received an award?" by its response, but the Union was entitled to know what employees were considered for awards[4] and who received awards. For example, if only "Outstanding" employees had been considered and each "Outstanding" employee received an award except those promoted during the rating cycle and who were, for that reason, denied a cash award, Respondent could have responded to the Union's request No. 2 of June 4, 1992, essentially as it did to a subsequent request on October 9, 1992 (G.C. Exh. 5). If employees other than "Outstanding" were considered for an award it should have so stated, as well as whether any award was given to other than to an "Outstanding" employee. Respondent resolved the (b)(6) exemption as to disclosure of the names of employees rated "Outstanding" who were promoted during the rating cycle and, for that reason, denied a cash award, by disclosing those names. The propriety of that action is not before me and I express no opinion as to its correctness beyond emphasizing, again, that the strong public interest in knowing whether Respondent faithfully fulfilled its duty in granting awards, weighs heavily against the right of personal privacy when disclosure is essential to resolution of the public interest.

Respondent denies that money was allocated to each service for awards. In the absence of any testimony or evidence to the contrary, the simple answer to the Union's request No. 4 is "none". At the same time, the record does not show how awards were made. Of course, the answer to Union's request No. 3 will show whether each award was of the same amount.[5] If awards were of different amounts, the Union would be entitled, upon request, to information as to the basis for determining awards, e.g., percentage of earnings; random,; etc. in any event, I quite agree with General Counsel that such data is devoid of Privacy Act concerns. United States Department of Veterans Affairs, Regional Office, San Diego, California, 44 FLRA 312, 314 (1992).

Having found that Respondent violated §§ 16(a)(1), (5) and (8) of the Statute by failing and refusing to furnish information to the Union, it is recommended that the Authority adopt the following:

ORDER

Pursuant to § 2423.29 of the Rules and Regulations, 5 C.F.R. § 2423.29, and § 18 of the Statute, 5 U.S.C. § 7118, it is hereby ordered that the Department of Veterans Affairs, Medical Center, North Chicago, Illinois, shall:

1. Cease and desist from:

(a) Failing and refusing to provide the American Federation of Government Employees, Local 2107, AFL-CIO ("Union"), the exclusive representative of its employees, requested information that is reasonably available and necessary for it to properly perform its representational responsibilities in connection with the Incentive Awards Program.

(b) In any like or related manner interfering with, restraining or coercing its 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 Federal Service Labor-Management Relations Statute:

(a) Upon request of the Union, furnish, without names: (1) all employees considered for monetary awards and all employees who received monetary awards; (2) the amount of each recipient's Incentive Award with the Service and classification of each recipient; (3) if awards were not of an uniform amount, basis for fixing each award.

(b) Post at its facilities at the Medical Center at North Chicago, Illinois, 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 the Medical Center, 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 insure that such Notices are not altered, defaced, or covered by any other material.

(c) Pursuant to § 2423.30 of the Regulations, 5 C.F.R. § 2423.30, notify the Regional Director, Chicago Region, Federal Labor Relations Authority, 55 West Monroe Street, Suite 1150, Chicago, Illinois 60603-9729, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

WILLIAM B. DEVANEY

Administrative Law Judge

Dated: May 13, 1994

Washington, DC

NOTICE TO ALL EMPLOYEES

AS ORDERED BY THE FEDERAL LABOR RELATIONS AUTHORITY

AND TO EFFECTUATE THE POLICIES OF THE

FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS STATUTE

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT fail or refuse to provide the American Federation of Government Employees, Local 2107, AFL-CIO (hereinafter, "Union"), the exclusive representative of our employees, requested information that is reasonably available and necessary for the Union to properly perform its representational responsibilities in connection with the Incentive Awards Program.

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

WE WILL, upon request of the Union, furnish, without names: (1) all employees considered for monetary awards and all employees who received monetary awards; (2) the amount of each recipient's Incentive Award with the Service and classification of each recipient; (3) if awards were not of an uniform amount, basis for fixing each award.

_____

(Activity)

Date: _____ 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 of the Chicago Region, Federal Labor Relations Authority, whose address is: 55 West Monroe Street, Suite 1150, Chicago, Illinois 60603-9729, and whose telephone number is: (312) 353-6306.

1. For convenience of reference, sections of the Statute hereinafter are, also, referred to without inclusion of the initial "71" of the statutory reference, i.e., Section 7114(b)(4) will be referred to, simply, as, "§ 14(b)(4)".

2. Although Ms. Campagnolo did not testify that, "No grievances were filed. . . .", Mr. Jenkins did. (Tr. 29).

3. It is possible that Mr. Grant confused the date; that the only information request by the Union was that of June 4, 1992; and that Mr. Grant's response of October 9, 1992, was simply the furnishing of information

requested on June 4, 1992; but Ms. Campagnolo's testimony clearly indicates a further request, "limited in scope" (Tr. 47).

4. The record does not show the qualification for consideration for an award beyond the provision of Article 32, Section 6 B of the parties' Agreement that,

"B. Whenever an employee is rated Outstanding, the employee will automatically be considered for a monetary award under the provisions of the Incentive Awards Program and receive a certificate." (G.C. Exh. 4).

Would an employee, not rated "Outstanding", who, for example, had made a suggestion which was adopted and had proved of great value to Respondent be eligible for an award? The record does not show.

5. If awards were given only to "Outstanding" employees; if Respondent's Exhibit 3 constitutes all "Outstanding" employees, 247; if 18 "Outstanding" who were promoted and, for that reason, denied a cash award (G.C. Exh. 5) is subtracted, leaving a balance of 229, the budget for awards, $192,000.^{00}$ (G.C. Exh. 3), would have permitted an award of about $838.^{00}$ if each were equal.