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

FEDERAL BUREAU OF PRISONS WASHINGTON, D.C. Respondent and FEDERAL BUREAU OF PRISONS SOUTH CENTRAL REGIONAL OFFICE DALLAS, TEXAS Respondent and FEDERAL BUREAU OF PRISONS FEDERAL TRANSFER CENTER OKLAHOMA CITY, OKLAHOMA Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 171, AFL-CIO Charging Party	Case Nos. DA-CA-60626 DA-CA-60627

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 **AUGUST 18, 1997**, and addressed to:

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

GARVIN LEE OLIVER
Administrative Law Judge

Dated: July 15, 1997
Washington, DC

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

MEMORANDUM DATE: July 15, 1997

TO: The Federal Labor Relations Authority

FROM: GARVIN LEE OLIVER
Administrative Law Judge

SUBJECT: FEDERAL BUREAU OF PRISONS
WASHINGTON, D.C.

Respondent

and

FEDERAL BUREAU OF PRISONS
SOUTH CENTRAL REGIONAL OFFICE
DALLAS, TEXAS

Respondent

and

FEDERAL BUREAU OF PRISONS
FEDERAL TRANSFER CENTER
OKLAHOMA CITY, OKLAHOMA

Respondent

and Case Nos. DA-CA-60626
DA-CA-60627

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 171, AFL-CIO

Charging Party

Pursuant to section 2423.26(b) of the 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. Also enclosed are the transcript, exhibits and any briefs filed by the parties.

Enclosures

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

FEDERAL BUREAU OF PRISONS WASHINGTON, D.C. Respondent and FEDERAL BUREAU OF PRISONS SOUTH CENTRAL REGIONAL OFFICE DALLAS, TEXAS Respondent and FEDERAL BUREAU OF PRISONS FEDERAL TRANSFER CENTER OKLAHOMA CITY, OKLAHOMA Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 171 Charging Party/Union	Case Nos. DA-CA-60626 DA-CA-60627

Octavia R. Johnson, Esq.
Counsel for the Respondent

Mr. Robert W. Brantley
Representative of the Charging Party

Kerry Simpson, Esq.
Counsel for the General Counsel, FLRA

Before: GARVIN LEE OLIVER
Administrative Law Judge

DECISION

Statement of the Case

The Amended Consolidated Complaint and Notice of Hearing in this case alleges that the Respondents, Federal Bureau of Prisons, Washington, D.C.; Federal Bureau of Prisons, South Central Regional Office, Dallas, Texas; and Federal Bureau of Prisons, Federal Transfer Center, Oklahoma City, Oklahoma, violated section 7116(a)(1), (5) and (8) of the Federal Service Labor-Management Relations Statute, 5 U.S.C. § 7116(a)(1), (5) and (8) (the Statute), by failing and refusing to provide the American Federation of Government Employees, Local 171, AFL-CIO (the Union) certain requested information. The Respondents' Answer denies that a violation of the Statute was committed as alleged in the consolidated complaint.

A hearing was held in Oklahoma City, Oklahoma, on May 7, 1997. The parties were represented and afforded full opportunity to be heard, adduce relevant evidence, examine and cross-examine witnesses, and file post-hearing briefs.[1]

Based on the entire record, including my observation of the witnesses and their demeanor, I make the following findings of fact, conclusions of law, and recommendations.

Findings of Fact

A. The Parties' Relationship

The Federal Bureau of Prisons (Agency) and the American Federation of Government Employees, AFL-CIO, Council of Prison Locals (AFGE) are parties to a Master Agreement covering a nationwide consolidated unit of employees appropriate for collective bargaining. The unit, as described in the parties' agreement, "consists of all employees, Class Act, Wage Board, and professional, employed in any facility or operation of the Federal Bureau of Prisons."[2] The Charging Party, AFGE Local 171 (the Union),

[1] Pursuant to the Respondents' request for a 2-day extension of time to file post-hearing briefs, which request was granted over the General Counsel's opposition, briefs were timely filed by the General Counsel and the Respondents on June 11, 1997.

[2] I take official notice that the Agency granted national exclusive recognition to AFGE on January 17, 1968, under Executive Order 10988, and that the Authority clarified the unit on April 4, 1996, to include within the nationwide unit all employees located at facilities opened since January 1968. *See U.S. Department of Justice, Bureau of Prisons, et al.*, Case Nos. WA-CU-50093, AT-RO-50069 and AT-RO-50070 (Apr. 4, 1996).

is an agent of AFGE for the purpose of representing unit employees at the Federal Transfer Center, Oklahoma City, Oklahoma (the Activity). The Federal Bureau of Prisons, South Central Regional Office, Dallas, Texas (the Region), is one of six geographical regions within the Agency with responsibility for overseeing 18 institutions (including the Activity) located in Oklahoma, Texas, Louisiana, Arkansas and New Mexico.

B. The Handling of Disciplinary Matters

Disciplinary matters within the Bureau of Prisons are handled in accordance with the Standards of Employee Conduct, a regulation (also referred to as a "program statement") promulgated by the Agency, distributed to all employees, and discussed with every employee at regular training sessions. The regulation applies to all Agency employees and specifies the "do's" and "don'ts" of expected appropriate behavior. One such expectation is that employees will conduct themselves in a "professional" manner. An attachment to the regulation, entitled *Standard Schedule of Disciplinary Offenses and Penalties*, is a lengthy list of actions or omissions that would violate the Agency's standards governing appropriate employee conduct and a range of penalties for each infraction. According to the testimony of the Respondents' witnesses-- specifically, the Agency's Chief of the Labor-Management Relations (LMR) Branch, Joseph Chapin; the Region's Deputy Director, Lucy Mallisham; and the Activity's Warden or Chief Executive Officer (CEO), Robert Guzik--the CEOs at the Agency's approximately 90 institutions are given very broad discretion to determine appropriate discipline for their employees (from reprimand to discharge) because each case is different and the wardens, as CEOs, are in the best position to know in all instances what penalties to impose.

Nevertheless, before imposing discipline, an institution is required to send all "proposal" letters, i.e., letters proposing disciplinary action, and all final decision letters, for review and approval by the Human Resources Management (HRM) office of the region having

responsibility for overseeing the institution's operations.[3]

Further, the Agency's Human Resource Management Manual, another regulation or program statement, contains a specific requirement that "[a]t the time a proposal or decision letter is issued in a disciplinary action, the HRM office will forward a copy of the letter to LMR." As explained by Mr. Chapin, the Agency's Chief of LMR, the above provision does require all disciplinary action letters to be sent to his office, but this procedure is not followed in practice because Mr. Chapin discourages compliance with such requirement.[4] Rather, all disciplinary records are retained at the institution where the disciplinary action was taken.

While it appears that there is no requirement for each of the Agency's six regions to keep copies of all proposed and final disciplinary decision letters submitted to them by the institutions under their control, it is unclear whether the regions in fact keep such records. Ms. Mallisham testified that she was "unaware" whether disciplinary letters were being retained by the Region, but if they were, the Region's Human Resources Management office would keep them. Mr. Chapin testified to the same effect. Similarly, when questioned about evidence submitted by the General Counsel which tended to show that at least some of the Agency's regions maintained disciplinary/adverse action logs from which the issues and final agency decisions in all such cases could be determined, both Mr. Chapin and Ms. Mallisham testified that they were unaware how many regions kept logs containing such data, but Mr. Chapin acknowledged that at least some regions maintain disciplinary/adverse action logs. Mr. Chapin also recognized that the regions could, and in some instances did, contact the institutions under their administrative control to request information

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[3] Ms. Mallisham testified that the regions provide "quality control" by reviewing proposed and final disciplinary letters for "appropriateness" so that disproportionate penalties can be called to the attention of the deciding official at the institution involved for reconsideration. Mr. Chapin similarly testified that the regions review proposed disciplinary letters for technical correctness and the "reasonableness" of the penalty, but do not interfere with a warden's discretion unless the proposed penalty is outside the range of reasonableness.

[4] According to Mr. Chapin, his office handles adverse action cases in third party proceedings, but does not ordinarily get involved with disciplinary matters which are limited to suspensions of 14 days or less and reprimands, so there would be no need for LRM to keep copies of such actions.

concerning prior disciplinary actions originating in those institutions.5

Mr. Chapin further testified that every allegation of employee misconduct throughout the Bureau of Prisons is referred to the Agency's Office of Internal Affairs, where a determination is made whether the investigation will be conducted at the national level or by the local institution. In either event, he testified, the Office of Internal Affairs keeps a log of every referral which identifies the alleged misconduct, and also opens a file in each case which contains a copy of the ultimate personnel action taken by the deciding official after completion of the investigation.

C. The Union's Request for Information in this Case

By memorandum dated June 20, 1996, Bob Brantley, the Union's representative or "advocate," made identical requests for information to Bob Guzik, the Activity's Warden; Charles Turnbo, the Region's Director; and Joe Chapin, the Agency's LMR Chief. Each request was for sanitized copies of any proposal or final discipline letters where employees had been charged with unprofessional conduct for misuse of their two-way radio. As Mr. Brantley explained, he was in the process of representing an employee at the Activity, Ms. Andranette Boyd, who had been issued a one-day suspension for engaging in such misconduct. Since he had never heard of a similar action taken against another employee in his 22 years of service with the Bureau of Prisons, he wanted the information to determine whether Ms. Boyd had been treated fairly or in a disparate manner before proceeding to arbitration on her behalf.

The Activity responded to the Union's request by letter dated July 16, 1996, and signed by Max Flowers, the Acting Warden. As applicable to the allegations of the complaint herein, Mr. Flowers stated that the Activity had no documents which met the terms of Mr. Brantley's request. The letter further stated that, "[t]o the extent that your request extends beyond the [Activity] and beyond the tenure of the current Warden, you have failed to demonstrate either the relevance or the need for this information." Mr. Brantley testified at the hearing that he was satisfied with the Activity's response insofar as it acknowledged that

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He also indicated that the same procedure could be used at the national level whereby his LMR office would ask all of the six regions to contact their institutions for certain information, but expressed uncertainty about how long that process might take.

there were no proposal or final discipline letters which involved misuse of the two-way radio, as the Union had requested; however, he disagreed with the Acting Warden's statement that any Union request extending beyond the Activity and the current Warden, Mr. Guzik, was irrelevant and unnecessary.

By memorandum to Warden Guzik from Lucy Mallisham, the Region's Acting Director,[6] dated July 10, 1996, concerning the Union's information request that Mr. Brantley had directed to the Region, Ms. Mallisham stated:

> The decision in Ms. Boyd's case was made locally, and not by this office. Consequently, we do not believe that decisions made by other institutions in this Region are relevant to AFGE Local 171's representation of Ms. Boyd.
>
> We are declining to provide information on a region-wide basis and are forwarding this request to you for whatever response is appropriate locally.[7]

When asked whether she could have surveyed the 18 institutions for the information requested by the Union, Ms. Mallisham stated, "[W]e could do that, sure. If we considered it relevant, but, again, we did not consider that relevant."

The last to respond was Joe Chapin, Chief of the Agency's LMR Branch. By letter to Mr. Brantley dated July 29, 1996, Mr. Chapin stated in part:

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[6] Ms. Mallisham responded to the Union's information request because Charles Turnbo, the addressee, had retired and Ms. Mallisham was serving as the Acting Regional Director until a successor was appointed.

[7] Ms. Mallisham testified that she sent Mr. Brantley a copy of the memorandum, as the document itself reflects. Mr. Brantley testified that he received a copy from Warden Guzik. I credit Ms. Mallisham's testimony that she sent a copy of the memorandum to Mr. Brantley at the same time that it was sent to Warden Guzik, whether or not Mr. Brantley ever received it. In any event, I find that it is immaterial how the Union was informed of the Region's position with respect to the information request, so long as the Union received a copy of the memorandum in a timely fashion. I note that there is no allegation in the complaint that the Region failed to respond promptly to the Union's request.

> Since the nature of your request appears to have been related to a local disciplinary matter (Andranette Boyd) rather than a national issue, you have not established a particularized need for nationwide data and your request was inappropriately directed to my office.
>
> It was appropriate that the Human Resource Office at the Federal Transfer Center, Oklahoma City, Oklahoma respond to your request. It is my understanding that you submitted an identical request to that office on June 20, 1996 and they provided a response to you on July 16, 1996. A copy of that response is attached to this letter.

Mr. Chapin elaborated on his written response at the hearing by testifying that, when he stated that the Union had not established a "particularized need" for the requested information, he meant only that there was no need for *nationwide* data because the request was made in connection with a *local* disciplinary matter rather than a *national* issue. In Mr. Chapin's view, requests for information concerning a local disciplinary matter must be directed exclusively to the specific institution where the discipline was imposed; the only appropriate requests for nationwide data are those made in connection with national disputes--i.e., those elevated to the Agency level by AFGE's national president or presenting issues affecting all employees in the nationwide bargaining unit. Accordingly, he did not "reject" the Union's request as unnecessary, but merely redirected it to the Activity. Mr. Chapin acknowledged that while his office did not have the information sought by the Union, he could have obtained it by asking the Regions to notify the institutions under their respective control to retrieve that information.[8]

Discussion and Conclusions

The General Counsel contends that Respondents violated section 7116(a)(1), (5) and (8) of the Statute by failing to comply with section 7114(b)(4) of the Statute, specifically by failing and refusing to furnish the Union with certain disciplinary records needed by the Union to represent a unit employee at an arbitration hearing in connection with the

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[8] The Respondents introduced no evidence concerning how costly, difficult or time-consuming the retrieval of such information would be. The only statement in the record on this question was made by Mr. Chapin in responding that the information could be obtained: "God knows how long it would take, but we could get that information, sure."

employee's suspension for alleged misuse of her two-way radio.

A. The Statutory Requirements

In defining the duty to negotiate in good faith, section 7114(b)(4) of the Statute requires an agency, to the extent not prohibited by law, to furnish the exclusive representative 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 for management officials or supervisors, relating to collective bargaining.

B. The Requirements Concededly Met

The Respondents do not contend that the information requested by the Union in this case is prohibited by law from being furnished. Indeed, since the Union's request was for *sanitized* disciplinary letters, such a contention would have been unavailing. Similarly, there is no assertion that the information sought herein constituted guidance, advice, counsel or training for management officials or supervisors relating to collective bargaining. Additionally, Respondents concede that the disciplinary information requested by the Union is normally maintained by the agency in the regular course of business. Thus, as previously set forth, the record evidence indicates that the proposal and final discipline letters must be maintained by the institution that issues them. In addition, copies of all such letters must be submitted to--and are routinely maintained by--the Agency's Office of Internal Affairs.

C. The Information Requested Was Reasonably Available

While it appears that the Respondents, in their post-hearing brief, claim that the information requested by the Union is not "reasonably available," I reject such assertion. Respondents introduced no evidence at all into the record concerning how long it would take, or how costly it would be, to retrieve and furnish the requested information to the Union. As the Authority has held in prior cases, an agency is not required to provide information that is available only through "extreme" or "excessive" means. Determining whether extreme or excessive means are required to retrieve available information involves a case-by-case analysis. *Department of Justice, United States Immigration and Naturalization Service, United States Border Patrol, El Paso, Texas*, 40 FLRA 792, 804 (1991) (*INS I*); *Department of Health and Human Services, Social Security Administration*, 36 FLRA 943, 950 (1990) (*SSA*). Where an agency fails to show that its production of the requested information would require extreme or excessive means, it thereby fails to establish that the information was not reasonably available within the meaning of section 7114(b)(4) of the Statute. *See INS I*, 40 FLRA at 805; *see also Department of Justice, United States Immigration and Naturalization Service, United States Border Patrol, El Paso, Texas*, 43 FLRA 697, 703, 706, 708 (1991) (*INS II*) (retrieval of between 5000 and 6000 sanitized documents located in a number of separate offices found to be reasonably available); *SSA*, 36 FLRA at 950-51 (Authority held that it was not unreasonable to require production of records that would take three weeks to retrieve, especially where some of the effort was due to the method of recordkeeping chosen by the agency); *Department of the Air Force, Headquarters, Air Force Logistics Command, Wright-Patterson Air Force Base, Ohio*, 28 FLRA 306 (1987), *reversed as to other matters sub nom. FLRA v. Depart-ment of the Air Force*, No. 87-1387 (D.C. Cir. Aug. 9, 1990) (information found to be reasonably available where it would take three

to four weeks to write a new computer program needed to retrieve the data).[9]

In this case, I conclude that the Respondents have failed to establish that the information requested by the Union was not reasonably available. Rather, I find that the information was reasonably available. Thus, the Agency could have retrieved the information from the Office of Internal Affairs, which maintains both a subject-matter log and copies of all proposed and final disciplinary actions taken at every institution throughout the Agency; or it could have asked the six Regions within the Agency to consult their disciplinary logs and/or request the institutions under their respective control to retrieve the information from the logs and files maintained by them. Similarly, the Region could have asked the 18 institutions under its control for such information as the Union requested herein, and as other regions have done in the past.

D. The Requested Information Was Necessary

1. The Activity

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[9] Respondents rely on *Department of the Air Force, Headquarters, Air Force Logistics Command, Wright-Patterson Air Force Base, Ohio and Department of the Air Force, Ogden Air Logistics Center, Hill Air Force Base, Utah*, 21 FLRA 529 (1986)(*Ogden ALC*), to support the opposite conclusion. I find that case easily distinguishable from the instant proceeding. Thus, in denying the union's request for information in *Ogden ALC*, the Authority held that "the request was so general, it sought data about proposed and imposed disciplinary actions for offenses other than the one involved in the grievance" and thus "much of the data sought was unnecessary to the processing of the grievance." *Ogden ALC*, 21 FLRA at 532. The Authority "emphasized, however, that a narrowly framed request for information about proposed and actual disciplinary actions in like circumstances might have been deemed to be necessary, and that a request for necessary data maintained in the Personnel Offices of the various facilities where unit employees are located might have been deemed reasonably available." *Id.* In this case, the Union's request for information was very narrowly framed in terms of proposed and actual disciplinary actions for unprofessional conduct involving the misuse of an employee's two-way radio, exactly the offense for which employee Andranette Boyd was suspended.

As set forth above, the Union made the same request for information to the Activity, the Region, and the Agency; it received a separate response from each entity. The Activity replied promptly that it had no documents which met the terms of the Union's request. On the record, the Union's advocate who made the request, Mr. Brantley, indicated that he was satisfied with the Activity's response. Accordingly, while Acting Warden Flowers included gratuitous comments in his response to the effect that the Union had no need for any proposed or actual discipline beyond that imposed by the Activity, I find that the Activity did not violate the Statute as alleged in the complaint and shall recommend that the complaint be dismissed to the extent that it names the Activity as a Respondent.

2. The Region

Unlike the Activity, the Region made no attempt to search for the requested information within its own records or to ask the other institutions within its control for the information. Instead, Ms. Mallisham's response rejected the Union's request on the basis that Ms. Boyd's discipline was a local matter and that decisions made by other institutions within the Region were "irrelevant."[10] Inasmuch as the Agency, by regulation, delegated responsibility to the Region for review and approval of all proposed and final disciplinary actions taken by the 18 institutions within the five-state South Central regional area, I find that the Region had an obligation to furnish the requested information to the Union if the data sought is determined to be necessary. *See, e.g., U.S. Department of Treasury, Internal Revenue Service, Washington, D.C. and Internal Revenue Service, Salt Lake City, Utah*, 40 FLRA 303, 311, 324-25 (1991) (*IRS, Salt Lake City*); *Department of the Treasury, Internal Revenue Service, Washington, D.C. and Internal Revenue Service, Detroit District, Detroit, Michigan*, 43 FLRA 1378, 1391 (1992) (*IRS, Detroit District*) (refusal of a regional office to honor a union's request for necessary information within that region violated the Statute even though the appropriate unit was nationwide in scope).

The Authority and the courts have held that the purpose of section 7114(b)(4) of the Statute is to provide unions with access to information that is necessary for them to provide effective representation to employees in their

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10 Ms. Mallisham neither mentioned the fact that exclusive recognition was at the national level nor referred the Union's request to the Agency as the appropriate level for a response.

bargaining units. *See Internal Revenue Service, Washington, D.C. and Internal Revenue Service, Kansas City Service Center, Kansas City, Missouri*, 50 FLRA 661, 668 (1995); *American Federation of Government Employees, AFL-CIO, Local 1345 v. FLRA*, 793 F.2d 1360, 1364 (D.C. Cir. 1986) ("The Union cannot fulfill its obligation to fully represent all employees in the unit if it lacks information necessary to assess its representational responsibilities"). More specifically in cases concerning disciplinary action, the Authority and the courts have recognized that unions need information concerning disciplinary actions taken against other individuals for similar misconduct because arbitrators take this factor into account when assessing what penalty, if any, to impose on the grievant. As the D.C. Circuit stated in a case involving a union's request for information concerning discipline assessed against *nonunit supervisors* for making false written statements to management:

> It is generally accepted in arbitration practice that enforcement of rules and assessment of discipline be exercised in a consistent manner unless a reasonable basis exists for the variation. Elkouri & Elkouri, How Arbitration Works, 684-85 (4th ed. 1985).
>
> * * * * * *
>
> Arbitrators regularly consider such evidence [of disparate treatment] as relevant to determining whether a unit employee has been disciplined for just cause.

North Germany Area Council, Overseas Education Association v. FLRA, 805 F.2d 1044, 1047-48 (D.C. Cir. 1986). On remand, the Authority concluded that such information concerning disparate treatment of supervisors and unit employees for the same or similar conduct was necessary for the union to represent the unit employee effectively in a disciplinary proceeding. *Department of Defense Dependents Schools, Washington, D.C. and Department of Defense Dependents Schools, Germany Region*, 28 FLRA 202, 205 (1987). *See also IRS, Detroit District*, 43 FLRA at 1391 (information sought by the union was necessary to the issue of whether an employee's discipline constituted disparate treatment which the union might wish to place before the arbitrator or

otherwise consider and evaluate when preparing its case for arbitration).[11]

Respondents do not assert that the type of information sought herein is unnecessary for the Union to represent Ms. Boyd, the bargaining unit employee whose suspension for misuse of her two-way radio engendered the request for proposed and final disciplinary letters in this case. Rather, they contend that the scope of the Union's request is too broad because the only meaningful comparison of disciplinary actions is limited to those imposed at the same institution. I find no basis for such an assertion, and the only case cited by the Respondents in support, *Ogden ALC*, is readily distinguishable. As previously discussed (n.9, *supra*), *Ogden ALC* actually supports the opposite conclusion: that a narrowly framed request for information--such as here--which would produce comparative results in the same or substantially similar circumstances from a number of personnel offices where bargaining unit employees are located--is necessary for the Union to fulfill its representational responsibilities on behalf of such unit employees. The argument that the CEO of each institution is given wide discretion in deciding upon appropriate discipline for violations of the Standards of Employee Conduct--from reprimand to discharge--does not require a different result. Indeed, the wider the discretion delegated by the Agency to its various institutions by regulation, the greater is the exclusive representative's need to reassure itself and those being represented nationwide that like cases are being treated in a comparable manner. The fact that the Agency believes the CEO of each institution is in the best position to determine the appropriate penalty in each case cannot mean that the exercise of such discretion should go largely unverified and unchallenged. Otherwise, the value of the parties' master agreement--which contemplates that final disciplinary action may be taken directly to arbitration for a determination as to whether the discipline was imposed for just and sufficient cause, and if not, for an appropriate remedy--would be significantly reduced if the arbitrator's opportunity to compare prior cases were circumscribed by the walls of each institution.

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[11] It appears that the arbitration for which the Union requested the information in this case already has taken place, but the Respondents do not contend--and it does not follow in any event--that the instant dispute has thereby been rendered moot. *See U.S. Department of Justice, Immigration and Naturalization Service, Northern Region, Twin Cities, Minnesota*, 52 FLRA 1323, 1336-37 (1997), and cases cited.

3. The Agency

What has been said above applies also to the Agency's refusal to furnish the Union with the information sought by Mr. Brantley in his memorandum to Mr. Chapin dated June 20, 1996. Thus, it is immaterial that the Union's request was in connection with a "local" disciplinary matter having no "national" implications. The unit of exclusive recognition is nationwide, and the obligation to furnish the Union necessary information exists at the Agency level. The Agency cannot disregard its own regulation which requires that all proposed and final disciplinary actions be forwarded to the LMR Branch and then refuse to provide the information because those records are kept at the various local institutions. Nor can the Agency declare that some grievances are "local" and, thus, requests for necessary information must be restricted to the institution that imposed the discipline. The Agency's argument that the Union did not demonstrate a "particularized need" for the requested information at the national level must be rejected. The Union carefully spelled out why the information was needed, and the Agency neither sought clarification of the Union's need nor presented countervailing considerations as to why the information should not be furnished. Indeed, Mr. Chapin candidly stated that he "never got that far" in his analysis because he thought the Union was seeking the information from the wrong source on a local disciplinary matter that did not concern him.

E. Remedy

Having found that the Agency and the Region violated section 7116(a)(1), (5) and (8) of the Statute in the circumstances of this case, the final issue is how to remedy such unfair labor practice. The General Counsel has asked that the Respondents be ordered to cease and desist from the violations found and, affirmatively, to provide the Union with the requested information and to post appropriate notices signed by the Activity's Warden, the Regional Office's Director, and the Agency's Chief of the LMR Branch.

In my judgment, the General Counsel's suggested remedy should be modified in several respects. First, I have dismissed the complaint herein against the Activity and thus will not include it within the remedial order. Second, since exclusive recognition is at the national level, I shall order the Agency's Director to sign and post the Notice. As the Authority has stated on many occasions, by

requiring the highest official at the activity or agency responsible for the violation to sign the Notice, a respondent signifies that it acknowledges its obligations under the Statute and intends to comply with those obligations. *See U.S. Department of Veterans Affairs, Washington, D.C.*, 48 FLRA 1400, 1402-03 (1994); *Department of the Air Force, Air Force Logistics Command, Sacramento Air Logistics Center, McClellan Air Force Base, California*, 35 FLRA 217, 220 (1990). Moreover, even though the refusal to furnish information concerns only one arbitration proceeding involving the disciplinary action taken against one employee, the significance of that incident has broader implications because the Agency has taken the erroneous position that its obligation to furnish information under section 7114(b)(4) of the Statute in circumstances such as involved herein is only at the local institution level. Accordingly, to fully remedy the violation of statutory rights in this case, I shall order a nationwide posting. *See, e.g., U.S. Department of the Treasury, Customs Service, Washington, D.C.*, 38 FLRA 1300, 1310-11 (1991); *U.S. Department of Treasury, Customs Service, Washington, D.C. and Customs Service, Region IV, Miami, Florida*, 37 FLRA 603, 604-06 (1990). Finally, since the arbitration proceeding for which the Union requested the information may have been completed and the Union may no longer have a need for such information, I shall direct the Respondents to furnish the information upon request of the Union. *See, e.g., IRS, Salt Lake City*, 40 FLRA at 311-12.

ORDER

Pursuant to section 2423.29 of the Authority's Rules and Regulations and section 7118 of the Federal Service Labor-Management Relations Statute, the Federal Bureau of Prisons, Washington, D.C. and the Federal Bureau of Prisons, South Central Regional Office, Dallas, Texas, shall:

1. Cease and desist from:

(a) Failing and refusing to furnish the American Federation of Government Employees, AFL-CIO (AFGE), the employees' exclusive representative, or its agent, AFGE Local 171 (the Union), with the nationwide and regional information requested by the Union on June 20, 1996.

(b) In any like or related manner interfering with, restraining or coercing bargaining unit employees in the exercise of their rights assured them by the Statute.

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

(a) Upon request, furnish the Union with the nationwide and regional information requested by it on June 20, 1996 in connection with a local grievance.

(b) Post at all facilities throughout the United States where bargaining unit employees are located, including, but not limited to, all facilities within the South Central Regional Office, 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 Federal Bureau of Prisons 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 of the Authority's Rules and Regulations, notify the Regional Director, Dallas 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, DC, July 15, 1997

GARVIN LEE OLIVER
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 Bureau of Prisons and the Federal Bureau of Prisons, South Central Regional Office violated the Federal Service Labor-Management Relations Statute and has ordered us to post and abide by this notice.

We hereby notify our employees that:

WE WILL NOT fail and refuse to furnish the American Federation of Government Employees, AFL-CIO (AFGE), the employees' exclusive representative, or its agent, AFGE Local 171 (the Union), with the nationwide and regional information requested by the Union on June 20, 1996.

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

WE WILL, upon request, furnish the Union with the nationwide and regional information requested by it on June 20, 1996 in connection with a local grievance.

(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 Federal Labor Relations Authority, Dallas Region, Federal Labor Relations

Authority, Federal Office Building, 525 Griffin Street, Suite 926, Dallas, TX 75202-1906, and whose telephone number is: (214) 767-4996.

CERTIFICATE OF SERVICE

I hereby certify that copies of this DECISION issued by GARVIN LEE OLIVER, Administrative Law Judge, in Case Nos. DA-CA-60626 and 60627, were sent to the following parties in the manner indicated:

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Dated: July 15, 1997
Washington, DC