

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
OFFICE OF ADMINISTRATIVE LAW JUDGES
WASHINGTON, D.C. 20424

.....

DEPARTMENT OF JUSTICE .
UNITED STATES IMMIGRATION .
AND NATURALIZATION SERVICE .
UNITED STATES BORDER PATROL .
EL PASO, TEXAS .

Respondent .

and .

Case No. 6-CA-80004

AMERICAN FEDERATION OF .
GOVERNMENT EMPLOYEES, .
AFL-CIO, NATIONAL BORDER .
PATROL COUNCIL .

Charging Party .

.....
Sherry M. Cardenas, Esq.
For the Respondent

Christopher Ivits, Esq.
For the General Counsel

Robert J. Marren
For the Charging Party

Before: WILLIAM NAIMARK
Administrative Law Judge

DECISION

Statement of the Case

Pursuant to a Complaint and Notice of Hearing issued on December 23, 1987 by the Regional Director, Federal Labor Relations Authority, Region VI, a hearing was held before the undersigned on March 16, 1988 at El Paso, Texas.

This case arose under the Federal Service Labor-Management Relations Statute, 5 U.S.C. 7101 et seq. (herein called the Statute). It is based on a charge filed on October 1, 1987 by American Federation of Government Employees, AFL-CIO, National Border Patrol Council (herein called the Union) against United States Immigration and Naturalization Service (herein called the Respondent).

The Complaint alleged, in substance, that on or about June 1, 1987 and July 20, 1987 the Union requested from Respondent certain necessary and relevant information relating to bargaining unit employee Robert J. Marren's performance evaluation. It was further alleged that such data was reasonably available and necessary for full and proper discussion, understanding and negotiation of collective bargaining subjects. Further, the Complaint alleged that since on or about June 11, 1987 and October 8, 1987 Respondent failed and refused to furnish the requested information; that since July 20, 1987 Respondent failed and refused to bargain in good faith with the Union by engaging in unreasonable delay in processing the Union's request for information - all in violation of Section 7116(a)(1) and (5) of the Statute. It is also alleged that since on or about June 11, 1987 and October 8, 1987 Respondent has failed and refused to comply with 7114(b)(4) by refusing to furnish the data requested in violation of 7116(a)(1) and (8) of the Statute.

Respondent's Answer, dated January 15, 1988, denied the relevancy of, and necessity for, the requested data. It also denied that the data was normally maintained in the regular course of business and that it was reasonably available and necessary for negotiation of collective bargaining subjects.^{1/} The commission of any unfair labor practice was denied.

All parties were represented at the hearing. Each was afforded full opportunity to be heard, to adduce evidence, and to examine as well as cross-examine witnesses. Thereafter, briefs were filed with the undersigned which have been duly considered.

Upon the entire record herein, from my observation of the witnesses and their demeanor, and from all of the testimony and evidence adduced at the hearing, I make the following findings and conclusions:

Findings of Fact

1. At all times material herein the Union has been, and still is the exclusive bargaining representative of all

^{1/} The Answer alleged that the Union was provided with certain requested data in sanitized form.

nonprofessional employees at Respondent's Border Patrol Sectors excluding certain specified classes of employees.

2. At all times material herein both the Union and Respondent have given effect to a written collective bargaining agreement between them which, by its terms, expired on September 30, 1978.

3. Respondent's Central Office is located at Washington, D.C. In addition there are Regional and District Office Sectors, and the Sub-Station. Within the Southern Region are seven sectors, one of which is the El Paso Sector.

4. The Fabens Station is under the El Paso Sector, and employed thereat are eleven border patrol agents. One of these individuals, Robert J. Marren, has been so employed at the Fabens facility since September 1, 1984. Marren, who is Executive Vice-President of the Union,^{2/} has been a GS-9 patrol agent since June or July 1978.

5. The patrol agents are required to detect, deter and apprehend aliens who have entered the United States illegally. Each such agent receives a yearly performance appraisal covering the period from April 1 to the following March 31.

6. Patrol Agent Marren received his performance appraisal on or about May 26, 1987 which covered a period from November 28, 1986 through April 31, 1987. This appraisal (G.C. Exhibit 3) sets forth four critical and two non-critical job elements, with correlative ratings on these elements for each patrol agent, which impact upon the overall rating given the agent. The job elements set forth in Marren's appraisal, and his rating^{3/} for each, were as follows:

^{2/} At all times material herein Marren has also been Chief Steward of AFGE Local 1929.

^{3/} The available ratings for each element are:
Outstanding, Excellent, Fully Successful, Minimally Satisfactory, Unacceptable.

<u>Job Element</u>	<u>Title</u>	<u>Rating</u>
1	Conducts Station operations in accordance with regulations and instructions, Sector and Station policies.	Fully Successful
2	Prepares reports and documents relative to the final disposition of administrative and criminal cases.	Fully Successful
3	Demonstrates proper care and use of Government equipment.	Excellent
4	Prepares various administrative reports, forms, memoranda, and other documents required by Service instructions and regulations. ^{4/}	Excellent
5	Interpersonal relations, including but not limited to, liaison with other law enforcement agencies.	Fully Successful

7. Consideration was given to filing a grievance since Marren was dissatisfied with such rating. In order to ascertain whether he had received disparate treatment the Union, by Marren as Chief Steward of AFGE, Local 1929, National Border Patrol Council, wrote a letter on June 1, 1987 to the Chief Patrol Agent in El Paso, Texas. It notified the latter that Marren was considering filing a grievance and that certain data was needed by the Union to ascertain whether a basis existed for taking such action. Accordingly, the Union requested unsanitized copies of the following data re all journeymen unit employees at the Fabens Border Patrol Station:

A. Performance appraisals for the period 11/28/86 through 4/3[0]/87;

^{4/} This is a non-critical job element. The other non-critical element (No. 6) was not applicable to Marren during the rating period.

B. All documents contained in the performance work folder (including Mr. Marren), and;

C. Copies of any and all documents and reports completed during the period of 11/28/86 through 4/3[0]/87. (ex. I-213, I-50, DJ 296, I-44, G-166, G-170, memoranda, vehicle maintenance reports, G-205, all documents related to WA/OSC's and criminal prosecutions, etc.)

8. Record facts show that the performance appraisals may contain or include narratives concerning each Patrol Agent; that these may indicate instances where members of the public contacted a supervisor to praise or blame a particular agent or comment on the latter's conduct.

9. Particular documents or work reports of the various Patrol Agents, as specified in the record,^{5/} (G.C. 5 through 20), which the Union sought from Respondent were as follows:

- (a) I-213 - Record of Deportable Alien
- (b) I-50 - Border Patrol Activity and Time Report
- (c) DOJ-296 - Time and Attendance Report
- (d) I-44 - Report of Apprehension or Seizure
- (e) G-166 - Report of Investigation
- (f) G-170 - Alien Smuggler Data Input Sheet
- (g) Standard Preventative Maintenance Schedule
- (h) Preventative Maintenance Schedule
- (i) G-205 - Government Owned Vehicle Record

^{5/} Marren testified the records or documents referred to specifically in the record would be maintained at either the District or Sector level.

- (j) I-217 - Information Travel For Document or Passport
- (k) I-221S - Order to Show Cause, Notice of Hearing, and Warrant for Arrest of Alien
- (l) I-214 - Aviso De Derechos (Advice of Rights to Alien)
- (m) I-265 - Application For Order To Show Cause And Bond/Custody Processing Sheet
- (n) I-620 - Record Of Seized Vehicle, Vessel Or Aircraft
- (o) I-274 - Notice And Request For Disposition (companion document to I-213).

10. Marren testified that the reports submitted by the Patrol Agents would show the content, relevancy, neatness, grammatical correctness and spelling of the journeyman. It was contemplated that the Union would look at the work products of Marren and compare them to those of the other agents to determine the justification for higher ratings granted to those other individuals.

11. Second-line supervisor Ernesto Martinez, Jr. testified that it would be difficult to retrieve some of the forms^{6/} requested which are contained in the "A" (alien files). Those files might be in different sections or offices, in other Districts or Regions, and numerous calls might be required to locate them. These have been obtained when needed by Respondent. He further testified that obtaining the data would interfere with the functions and goals assigned to Respondent since it would necessitate much administrative work.

12. The record reflects the Union wanted the performance work folders of the journeymen Patrol Agents at Fabens Border Patrol Station to examine documents which supported the individual rating given each employee. These could

^{6/} Record facts reflect that the reports submitted by all the Patrol Agents for the requested period would number several thousand.

consist of memos to the file from supervisors re complaints or praise from the general public concerning employees. Marren testified that the work performance folders are kept at the Fabens Station. He based this knowledge on having noticed a folder with his name on the desk of his supervisor, Sterling Smith. Further, Marren testified he asked Smith what it was, and the supervisor stated it was a work folder for Marren's performance appraisals. Smith also mentioned these folders were maintained for everybody.

While no testimony regarding the existence of such folders was adduced by Respondent, the Administrative Manual (G.C. Exhibit 20) provides in Section 12 that an Employee Performance Folder will be established for each employee; that it will be maintained by the personnel office and contain, along with the appraisal, documents used by the supervisor to support a recommendation for personnel action, such as reassignment, demotion, awards, or within-grade increases.

13. Shortly after June 1, 1987 Marren contacted his supervisor, Sterling Smith, re the data requested of Respondent. Marren told the supervisor he was considering filing a grievance over his appraisal but the Union needed specific information before the decision was made. He also asked Smith for an extension of time to file the grievance, which was agreed to by the supervisor. Marren confirmed this conversation in a letter to Smith dated June 4, 1987.

14. By letter dated June 11, 1987,^{7/} and addressed to Marren, Chief Patrol Agent Michael S. Williams wrote that before Respondent can be assured that the data requested is relevant and necessary it must know the specific nature of the grievance.

15. Marren replied by letter dated July 20, 1987 where he stated that the data is relevant and necessary since his Performance Work Plan identifies the completion of such documents as a critical element in Job Element 2 and as a non-critical element in Job Element 4. Regarding the nature of the grievance, Marren wrote that the Union is investigating whether his rating was inconsistent with ratings of other unit employees at his station based on a review of the requested data.

^{7/} Record facts show this letter was not delivered to Marren until July 15, 1987.

16. In a letter dated October 8, 1987 Assistant Regional Commissioner James A. Brown wrote Marren in respect to the data requested. He stated that copies of performance ratings issued to other employees was not relevant or necessary. However, he set forth the ratings assigned to the other ten border patrol agents for each of the job elements, as well as the overall rating given each agent. No names were mentioned as each employee was identified by letters A through J. With respect to performance work folders, Brown noted that they were not maintained by the supervisor and therefore no relevant or necessary material was available. He stated further that the request for all documents and reports completed between 11/28/86 and 4/1/87 was overly broad; that every work product of an employee is not necessarily reviewed; that if errors were noted by the supervisor and corrections made, the incorrect copy was not retained and thus the retained record would not be reflective of an employee's actual level of performance. Brown also notified Marren thereon that any grievance filed regarding his rating should be filed within 30 days of receipt of that letter pursuant to Article 32 Section D of the negotiated agreement.^{8/}

17. Marren replied to Brown in a letter dated October 14, 1987. He stated that, while the list of ratings is useless in terms of evidence to support the Union's position, it supports the need for the data requested. He further advised management that the Union agreed with Smith on June 4 that the filing of a Step 1 grievance could take place 30 days after receipt of the data requested - as confirmed by Marren in his letter to Smith on June 5, 1987.

18. By letter dated November 16, 1987 Brown informed Marren that Respondent's response to the data requested remained the same. He noted that while an extension of time to file a grievance was granted by Smith, a further extension would no longer be warranted; that Marren's grievance should be filed within 30 days of the receipt of this letter.

Conclusions

The essential issues herein are whether Respondent (1) failed and refused to furnish the requested data to the

^{8/} Article 32 Section D provides that the employee and his representative will be given a reasonable amount of time to present a grievance. Further, Section E provides that an informal grievance must be filed within 30 days after the incident occurs.

Union as required by Section 7114(b)(4) of the Statute, and thus violated 7116(a)(1), (5) and (8) thereof, (2) failed and refused to bargain in good faith with the Union by delaying action on the latter's request for the data it sought to process a potential grievance - all in violation of 7116(a)(1) and (5) of the Statute.

(1) In respect to the data requested Respondent makes various contentions to support any failure to comply therewith. It argues that the Union has not demonstrated that the material sought is relevant and necessary. With regard to the particular items which the Union requested, it contends: (a) the Union was furnished, in the letter dated October 8, 1987, the sanitized ratings in respect to each job element and the overall rating for the other ten Patrol Agents for the requested period (November 28, 1986 through April 3[0], 1987); moreover, any narrative comments would have been sanitized; (b) Respondent explained to the Union in the October 8 letter that performance work folders are not maintained by the supervisor, and therefore no material existed; (c) the request for documents and reports completed by the Patrol Agents during the prescribed period was overly broad, the data would have been difficult to retrieve if in the alien's file so as to impose a burdensome task, and the same might not be relevant or necessary since incorrect work reports of an agent, if noted, would be discarded and the corrected report not be reflective of his performance. It is also averred that each form or report would have to be reviewed to see if any information should be deleted under the Freedom of Information Act and/or the Privacy Act.

Under Section 7114(b)(4)(B) of the Statute, the duty to bargain in good faith with a union requires an agency to furnish the representative 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, advise, counsel or training for management officials or supervisors, relating to collective bargaining.^{9/}

Decisional law stresses the fact that the data sought by a union must be necessary to enable it to fulfill its repre-

^{9/} Respondent's Answer admits that the data requested does not constitute guidance, advise, counsel or training for management officials.

sentational functions. This would include the effective evaluation and processing of grievances. A union may require information before it files a grievance so that it may determine and evaluate whether there may be merit to an employee's complaint. Immigration and Naturalization Service, et. al., 23 FLRA 239. Mere assertion that the data is needed to process a grievance does not automatically oblige the agency to supply same. The duty to do so turns upon the request of the circumstances of a particular case. U.S. Equal Employment Opportunity Commission, Washington, D.C., 20 FLRA 357.

Union's Request For Performance Appraisals

In his letter of July 20, 1987 to Respondent, Marren advised management that the Union was investigating whether his rating was inconsistent with those of other unit employees; that the request for information was in connection with a possible grievance thereon.

To process this grievance the Union would require unsanitized copies of the performance appraisals of other Patrol Agents at the Fabens Station. Such data would enable the Union to consider such appraisals (and narratives) in connection with other performance records of those agents. Further, unless the names of such individuals are known, the Union would be unable to relate the work product to a particular Patrol Agent. No effective comparison could be made by the Union of Marren's rating with the other unit agents if they were not identifiable. Accordingly, I conclude that the requested appraisals, along with any related narratives, are necessary and relevant within the meaning of Section 7114(b)(4) to determine whether a grievance should be filed on behalf of Border Patrol Marren. Internal Revenue Service, Washington, D.C. and Internal Revenue Services, Omaha District, Omaha, Nebraska, 25 FLRA 181; Equal Employment Opportunity Commission, supra; U.S. Office of Personnel Management, 17 FLRA 685.

Since Respondent resists disclosing the names of the rated Patrol Agents at the Fabens Station, consideration is given as to whether the privacy of the employees would be invaded. The Privacy Act regulates disclosure of information in an agency record within a system of records retrievable via reference to an individual's name. Employees' performance appraisals are considered such records under the Privacy Act. OPM/GOVT-1, 47 Fed. Reg. 16467, 16490(K)(1982). They are generally prohibited from disclosure unless one of

the specific Privacy Act exceptions is applicable. The exceptions set forth in 552(a)(b)(2) permit disclosure of Privacy Act protected information to the extent that it is required to be released under the Freedom of Information Act (FOIA), Pub. L. No. 89-487, 80 Stat. 256 (codified as amended at 5 U.S.C. 552 (1982)). Under the FOIA all records in the possession of agencies of the Federal Government must be disclosed upon request unless subject to a specific FOIA exemption. 5 U.S.C. 552(a)-(b) (1982).

Exemption (b)(6) of the FOIA permits an agency to withhold personnel files if a disclosure thereof would constitute a clearly unwarranted invasion of privacy. The Federal courts apply a balancing test to determine whether disclosure of such records would result in such an invasion of privacy. See e.g. AFGE, Local 1920 v. HHS, the Treasury, 457 F. Supp. 13 (D.D.C. 1977), 712 F.2d, 931 (4th Cir. 1983). The Authority applies the same balancing test where records, as performance appraisals, are requested. The balance to be drawn under FOIA's (b)(6) exemption is one between the protection of the individual's right to privacy and the promotion of important public interests. In a similar situation, the Authority has held that the union's need for performance appraisals to pursue its representational duties outweighs any limited intrusion of the privacy of other employees. Equal Employment Opportunity Commission, supra. Accordingly, I conclude that providing the unsanitized copies of the requested appraisals for the other ten Patrol Agents, together with any narratives, would not result in a clearly unwarranted invasion of their privacy. Respondent's refusal and failure to supply them is in contravention of 7114(b)(4) and violates 7116(a)(1), (5) and (8) of the Statute.

Union's Request For Documents In Performance Work Folders

In seeking the documents in the Patrol Agent's performance work folders, the Union believed that such data would show support for the ratings given each agent. Comments from supervisors or the public, whether laudatory or critical in nature, could bear on the ultimate appraisal.

An issue is raised as to the existence and availability of such folders. Respondent contends there are none. It adduced no testimony in this regard. However, it points to the letter of October 8, 1987 wherein Assistant Regional Commissioner Brown advised the Union that such work folders "are not maintained by the supervisor."

Contrariwise, General Counsel adduced testimony by Marren that the performance folders are kept at the Fabens Station; that he saw one with his name on the desk of his supervisor, Sterling Smith; and that Smith told him it was a work folder for Marren's performance appraisals. Further, Marren testified that Smith mentioned the folders were maintained for everyone.^{10/}

Based on the record as a whole, I am constrained to conclude that General Counsel has established, at least, a prima facie case with respect to the existence of such performance folders. Patrol Agent Marren's testimony in this regard supports a past existence of such folders for all unit employees. It is true that Assistant Regional Commissioner Brown advised the Union in a letter that these were not maintained by the supervisor. This statement leaves open the question as to whether they are maintained by Respondent at all. Moreover, no testimony was offered by Respondent to support its contention that these folders do not exist, or that the documents sought by the Union as part thereof are not kept by management.

It seems apparent that any documents contained in work performance folders which concern the work performance of the Patrol Agents would be relevant to their appraisals. Comments, if any, re the work, appearance, or behavior of each agent could well support his rating. See Bureau of Alcohol, Tobacco and Firearms, 18 FLRA 611. Thus, I conclude that such documents are necessary for the Union to perform its representational functions herein, i.e., to determine whether the material sheds light on disparate treatment of Marren in respect to his performance appraisal. Accordingly, I conclude that the failure to turn over the documents in any performance folders of the Patrol Agents was in contravention of 7114(b)(4) and violation of 7116(a)(1), (5) and (8) of the Statute.^{11/}

^{10/} While Smith testified at the hearing, he did not testify with respect to the existence of these folders nor contravene Marren concerning this conversation.

^{11/} It has not been established that any such documents would, if produced, have a stigmatizing effect upon the individual. Nor is it shown that the material would become generally known. No cause appears that the documents, if in existence, require sanitization. See Celmins v. United States Department of the Treasury, 457 F. Supp. 13, 15-16 (D.D.C. 1977).

While I have concluded that the record supports the past existence of the work performance folders, which are deemed herein as necessary for the Union to process or pursue Marren's grievance, the Authority has held that an agency cannot be responsible for data it does not possess. Department of Justice, United States Immigration and Naturalization Service, United States Border Patrol, 23 FLRA 239. In the cited case the Authority declared:

In the Authority's view, the availability of the data involved can best be determined during the compliance stage of this proceeding. . . . During the compliance stage of this proceeding, the General Counsel will determine what data is in fact available. (underscoring supplied).

Accordingly, the Order which is recommended herein will provide for Respondent to supply whatever documents kept in the performance folders that are available.

Reports By Patrol Agents, 11/28/86 through 4/30/87

The various documents or work reports submitted by each Patrol Agent cover the different duties and tasks performed by each individual. These reports (G.C. 5 through G.C. 20) were utilized by Respondent in evaluating the agent and assigning a rating for his performance during the prescribed period. Record facts reflect the forms submitted would be examples of the employee's work product; that they were examined for their content, accuracy, grammatical construction, and timeliness. Several job elements relate directly to the completion of these forms.

The Union has requested these reports or forms as the objective evidence to determine whether Marren's rating was disparately made based on the work product of the other agents. As such, I conclude that such forms completed^{12/} by the Patrol Agents at the Fabens Station would be necessary

^{12/} Respondent contends that many reports are required to be corrected and the incorrect ones discarded. Therefore, it is argued the forms or reports on hand would be meaningless. While this may occur at times, it does not appear that all documents turned in are replaced or corrected.

for the Union to properly represent Marren and determine whether to pursue his grievance of disparate treatment. See Internal Revenue Service, 21 FLRA 646. Accordingly, I conclude that the Union is entitled to those work reports in Respondent's possession for the period in question as to each of the Patrol Agents at the Fabens Station.

The record shows that some of the forms or records completed by the agents may not be available. Since it is not expected that Respondent furnish data not available, it will be recommended that the Union be provided only with copies of such reports which can be located.^{13/} Further, it also appears that the reports in the alien (A) files may have information re the alien which data could be sanitized. As to those particular forms or reports, it is concluded that personal information concerning the alien - which has no relevancy to the work product of the agent - may be sanitized in that respect. The record contains some suggestions from Respondent's counsel and Supervisor Martinez that providing these reports would be burdensome. However, no details appear in the record re the extent of this burden, and the supervisor testified that the data has been retrieved albeit with some difficulty as to some of the forms. Thus, I reject this as a valid defense to supplying copies of the work products completed by the Patrol Agents.^{14/} See Health Care Financing Administration, Region IV, 21 FLRA 431.

(2) General Counsel insists that since Respondent took three months to respond to the Union's request for information, as well as attempting to oppose an extension of time for Marren to file a grievance, such conduct constituted a failure to bargain in good faith. It seeks a separate finding that Respondent violated Section 7116(a)(1) and (5)

^{13/} As is true with respect to the documents in the work performance folders, the availability may need to be determined during the compliance stage.

^{14/} The record also reflects that Marren could have seen form I-213 and I-274 which are left in a basket for a week, and then he could have compared his work products with those of other agents. Even though a union may have obtained data it sought from other employees, that fact does not permit an agency to deny a union's request for such information. Department of Labor, Employment Standards Administration, Wage and Hour Division, 18 FLRA 105.

based on dilatory tactics and unreasonable delay of its untimely response to the request for data.

In view of the fact that Respondent has failed and refused to furnish the information requested, which has been found to be a violation of its duty to bargain in good faith and of 7116(a)(1), (5) and (8) of the Statute, the requested finding that Respondent engaged in dilatory tactics so as to constitute a refusal to bargain is deemed inappropriate. See U.S. Naval Supply Center, San Diego, California, 26 FLRA 324. Accordingly, it is recommended that the separate allegations in the Complaint that Respondent failed to bargain in good faith by reason of such conduct be dismissed.

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 Department of Justice, United States Immigration and Naturalization Service, United States Border Patrol, El Paso, Texas, shall:

1. Cease and desist from:

(a) Failing and refusing to furnish the American Federation of Government Employees, AFL-CIO, National Border Patrol Council, the exclusive representative of its nonprofessional employees assigned to the Border Patrol Sectors, the available unsanitized copies of the data requested in the letters dated June 1, 1987 and July 20, 1987 addressed to the Chief Patrol Agent, El Paso, Texas from Robert J. Marren, Vice President, National Border Patrol Council, excluding any personal data concerning aliens contained in the reports completed by the Patrol Agents assigned to the Fabens Station, which is deemed necessary to enable the exclusive representative to perform its representational duties relating to the evaluation and processing of a grievance on behalf of Robert J. Marren.

(b) In any like or related manner interfering with, restraining or coercing its employees in the exercise of 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) Furnish to the American Federation of Government Employees, AFL-CIO, National Border Patrol Council, the exclusive representative of its nonprofessional employees assigned to the Border Patrol Sectors, the available unsanitized copies of the data requested in the letters dated June 1, 1987 and July 20, 1987 addressed to the Chief Patrol Agent, El Paso, Texas from Robert J. Marren, Vice President, National Border Patrol Council, excluding any personal data concerning aliens contained in the reports completed by the Patrol Agents assigned to the Fabens Station, which is deemed necessary to enable the exclusive representative to perform its representational duties relating to the evaluation and processing of a grievance on behalf of Robert J. Marren.

(b) Post at its Fabens Station facilities, El Paso, Texas, 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 Regional Commissioner, or his designee, 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 section 2423.30 of the Authority's Rules and Regulations, notify the Regional Director, Region VI, Federal Labor Relations Authority, Federal Office Building, 525 Griffin Street, Suite 926, Dallas, TX 75202 in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

Issued, Washington, D.C., March 16, 1989



WILLIAM NAIMARK
Administrative Law Judge

NOTICE TO ALL EMPLOYEES

PURSUANT TO

A DECISION AND ORDER OF THE

FEDERAL LABOR RELATIONS AUTHORITY

AND IN ORDER TO EFFECTUATE THE POLICIES OF

CHAPTER 71 OF TITLE 5 OF THE

UNITED STATES CODE

FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS STATUTE

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT fail and refuse to furnish the American Federation of Government Employees, AFL-CIO, National Border Patrol Council, the exclusive representative of our nonprofessional employees assigned to the Border Patrol Sectors, the available unsanitized copies of the data requested in the letters dated June 1, 1987 and July 20, 1987 addressed to the Chief Patrol Agent, El Paso, Texas from Robert J. Marren, Vice President, National Border Patrol Council, excluding any personal data concerning aliens contained in the reports completed by the Patrol Agents assigned to the Fabens Station, which is deemed necessary to enable the exclusive representative to perform its representational duties relating to the evaluation and processing of a grievance on behalf of Robert J. Marren.

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

WE WILL furnish to the American Federation of Government Employees, AFL-CIO, National Border Patrol Council, the exclusive representative of all nonprofessional employees assigned to the Border Patrol Sectors, the available unsanitized copies of the data requested in the letters dated June 1, 1987 and July 20, 1987 addressed to the Chief Patrol Agent, El Paso, Texas from Robert J. Marren, Vice President, National Border Patrol Council, excluding any personal data concerning aliens contained in the reports completed by the Patrol Agents assigned to the Fabens Station, which is deemed necessary to enable the exclusive representative to perform its representational duties

relating to the evaluation and processing of a grievance on behalf of Robert J. Marren.

(Activity)

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 of the Federal Labor Relations Authority, Region VI, whose address is: Federal Office Building, 525 Griffin Street, Suite 926, Dallas, TX 75202, and whose telephone number is: (214) 767-4996.