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

DEPARTMENT OF THE AIR FORCE, AIR FORCE LOGISTICS COMMAND, SACRAMENTO AIR LOGISTICS CENTER, McCLELLAN AIR FORCE BASE, CALIFORNIA

Respondent

and

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1857, AFL-CIO

Charging Party

Case No. 9-CA-80233

Stefanie Arthur, Esquire
For the General Counsel

Dennis A. Sommese, Esquire
Major Norman F. Nivens, Esquire
For the Respondent

Before: JESSE ETELSON
Administrative Law Judge

DECISION

Statement of the Case

This case involves a union's request for information in connection with the processing of a grievance. The Respondent, in refusing to provide the information, relies principally on the contention that providing it would be unduly burdensome. Much of the requested information does not exist in the form in which the Union requested it. Therefore, part of the burden that would fall on the Respondent would be to compile the information from existing documents and, thus, "create" documents in response to the request.

To be decided, then, is whether the data requested and refused was "normally maintained by the agency" and was "reasonably available" within the meaning of those terms as used in section 7114(b)(4) of the Federal Service Labor-Management Relations Statute, 5 U.S.C. §§ 7101 et seq. (the Statute). Since the Respondent did not initially assert that the supplying of the data would be unduly burdensome, there is also a question of whether that ground for refusal is available to the Respondent at the litigation stage.

The unfair labor practice complaint alleges that the Respondent violated section 7116(a)(1), (5), and (8) of the Statute by refusing to provide data that was requested by the Charging Party (the Union) which (1) is normally maintained by the Respondent in the regular course of business; (2) is reasonably available and necessary; and (3) does not constitute guidance, advice, counsel, or training provided for management officials or supervisors relating to collective bargaining. Although the answer denies each of these allegations, there is no real dispute about the refusal, nor is it contended that the data constitutes "guidance, advice, counsel, or training."

A hearing was held on August 10 and 11, 1988, in Sacramento, California. All parties were permitted to present their positions, to call, examine, and cross-examine witnesses, and to introduce evidence bearing on the issues presented. The General Counsel and the Respondent submitted post-hearing briefs.

On the basis of the entire record, the briefs, and my evaluation of the evidence, I make the following findings of fact, conclusions, and recommendation:

Findings of Fact

A. Background of the Dispute

The Union is a local affiliate of the American Federation of Government Employees (AFGE), which is the exclusive representative of certain civilian employees of the Respondent. The Union has been designated by AFGE as its agent for representing bargaining unit employees employed at the Respondent's Sacramento, California, facility. The employer organization, for purposes of collective bargaining, is the Air Force Logistics Command (AFLC), of which the Sacramento Air Logistics Center at McClellan Air Force Base, Sacramento, California, is a component.

AFGE and AFLC have a nationwide Master Labor Agreement containing a broad grievance provision. The contractual grievance procedures are agreed to be the exclusive procedures available to "the Employer, the Union and employees of the bargaining unit" not only for the resolution of grievances involving the "interpretation, application, or violation" of the contract, but also those involving "working conditions, or any matter involving the interpretation and application of policies, regulations, and practices of the Air Force, AFLC, and subordinate AFLC activities not specifically covered by this Agreement." Another subject covered by the contract, and particularly relevant to this case, is the assignment of unit employees to temporary duty (TDY). It is provided that "TDY will be rotated among qualified and available employees with requisite skills on a fair and equitable basis."

B. Events Leading to Information Request

Late in 1987, Union President John Salas received reports of complaints from unit employees in the Respondent's Directorate of Maintenance (MA) that they were being denied the opportunity for TDY involving foreign and domestic travel to perform maintenance on aircraft. Thus, while the current contract had been in effect since September 1986, employees claimed that TDY assignments in which they had been sharing had, presumably in 1987, been shifted to military personnel.[1] These assignments involved both routine and emergency maintenance.[2]

Union President Salas assigned an associate to conduct an informal investigation, and, upon receiving a report that there was substance to the employee complaints, requested a meeting with management. A meeting was held on December 10, 1987. Management's spokesman confirmed that military personnel of the 2951st Combat Logistics Support Squadron (CLSS) were being given priority for TDY assignments in accordance with Air Force regulations "and other pertinent

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1/ For some TDY assignments, mixed teams of civilian and military personnel were used. It is not clear whether that practice changed.

2/ There also existed a class of maintenance that was considered neither routine ("periodic") nor emergency (Tr. 88), but there was no exploration of the nature of this third classification. Compare "wartime" and "contingency" operations, mentioned below in the paragraph to which n. 3 is appended.

factors." He also told Salas, probably at the December 10, meeting but in any event on one or more occasions around the same time, that the assignment of military personnel to TDY was for training purposes.

The Union obtained copies of the relevant Air Force regulation and a related technical manual, both dealing with the use of CLSS military personnel for TDY and other maintenance assignments. After studying these materials and evaluating all the information then at the Union's disposal, Salas was not satisfied that the degree to which TDY assignments had been reallocated to military personnel was required to fulfill the training purposes asserted as its justification. In his view, the training opportunities should have been limited to TDY assignments for emergency, wartime, or "contingency" operations. He suspected that the real reason for the reallocation was to save money by eliminating the overtime pay that unit employees, but not military personnel, would earn during TDY. He prepared a detailed request for information in anticipation of filing an "activity grievance."3/

C. The Request

This request was in the form of a letter which, first, referred to the December 10 meeting and explained the nature of the issue about to be grieved over, and, then, requested the following information:4/

> (1) List of all TDY trips out of MA, that either civilian employees or the 2951 CLSS responded to for the past 24 months.
>
> (2) List of all personnel, by name, job series, and SCD [Service Computation

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3/ An "activity grievance" is distinguished from an employee grievance in that it is filed by the Union or by management, but, as opposed to a "Command level" grievance, involves only a single geographical component of AFLC.

4/ Numbered items in Salas' letter that are not relevant to this case, because the General Counsel does not contend that the Respondent was required to supply the data they requested, are omitted. (The Union acquiesces in the General Counsel's position.)

> Date] for civilians, and name, AFSC [Air Force Skill Code] and rank for Military, who have gone on TDY out of MA during the past 24 months.
>
> (4) List of requisite skills. . . required on all actual TDY trips out MA during the past 24 months.
>
> (6) Training requirements necessary to fully train the 2951 CLSS personnel for emergency, wartime, or contingency operations.
>
> (7) Training records of all 2951 CLSS personnel that are involved in emergency, wartime or contingency operations.
>
> (10) Length of all TDY trips not relating to emergency, wartime or contingency operations, and what the per diem rate was for each trip during the past 24 months, that the 2951 CLSS responded to.
>
> (11) Overtime hours worked by the 2951 CLSS during TDY trips that . . . were not in support of emergency, wartime or contingency operations during the past 24 months.

Salas' letter was dated January 5, 1988, and was received by the Respondent on January 8.5/

On January 8, without waiting for a response to the request for information, the Union filed its "activity grievance." The grievance letter describes the dispute over TDY assignments and alleges that the priority given to military personnel violates the contract provision that "TDY will be rotated among qualified and available employees with requisite skills on a fair and equitable basis." The letter refers to the Air Force regulation and technical manual that

5/ All further dates are in 1988.

management representatives had relied on, and disputes the legitimacy of that reliance, asserting that those documents justify military priority only for "TDY trips relating to emergency, wartime or contingency operations." The requested grievance remedy includes appropriate reallocation of TDY trips in the future and a make-whole remedy for unit employees unjustifiably denied trips, including lost overtime pay and per diem. The grievance letter also refers to the request for information, "to be used in support of this grievance."

D. The Union's Need for the Requested Data

Counsel for the General Counsel elicited testimony from Salas relating each numbered item of requested information to the grievance. As to item 1, the list of all TDY trips, Salas testified that he needed it to compare the use of military and civilian personnel in order to check for irregularities, inaccuracies, or a contract violation. Item 2 asked for information regarding the names, positions, skill codes, and related data for all personnel who had gone out on TDY trips, and item 4 requested the skills that each of the TDY trips required. Salas said he needed this data in order to determine whether military personnel who were assertedly being sent for training had actually completed their training, and whether civilian employees who were bypassed had the requisite skills to perform the TDY assignments, or, because of the nature of particular assignments, military personnel with specialized skills were required. Item 6, the training requirements for 2951st CLSS (military) personnel was also requested to facilitate verification of the Respondent's claim that the TDY trips were necessary for their training. Item 7, the training records for 2951st CLSS personnel, would permit an analysis of the training already received as compared with the training to be accomplished by the TDY assignments.6/

6/ Items 6 and 7 did not specify that the information requested was for those CLSS personnel who were being sent on TDY trips. However, Salas testified that those requests were intended to be so limited. The Respondent has not contended that the original requests were overbroad in this respect, from which it may be inferred that it understood the unexpressed limitation. In any event, these items should be so construed.

Items 10 and 11 sought to establish the length of TDY assignments to military personnel which did not conform to the Union's understanding of the requirements of Air Force regulations, and the benefits that unit employees lost in the way of per diem and overtime. Each of the requests relating to actual TDY assignments encompassed a period of the past 24 months. Salas testified that he had been informed that management kept such records for five years, but that the most recent two years was a period in which any pattern of improper use of military personnel for TDY assignments would be demonstrated.

E. The Refusal and the Evidence Adduced to Justify the Refusal

On January 22, the Respondent answered the request for information with a very brief letter. The letter quoted a sentence out of the pertinent Air Force regulation in support of the practice of using CLSS personnel for TDY assignments. It denied the "request for information to support an activity grievance," stating that the "subject of assignment of work is a management retained right and therefore is non negotiable." Consistent with this position, the Respondent denied the grievance on February 3, stating that work assignment is a retained management right and that the TDY assignments were made in accordance with the Air Force regulation. The Respondent notes in its brief that the grievance was taken to arbitration but that the arbitrator deferred issuance of a final decision pending the outcome of this case.[7]

Robert Myers, the supervisor in charge of the office where most of the records relevant to the information request is maintained, testified about the availability of the information and the process of compiling it. Item 1, he testified, was not maintained in the form of a list of TDY trips, as requested, but could be provided by extracting the material from individual time and attendance (T&A) sheets, budgetary estimates, and bi-weekly briefing sheets. All of these documents, covering the requested 2-year period, were maintained in Myers' office. The basic information is available from the T&A sheets alone, but the other documents

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7/ I assume that this representation is uncontested.

would be used as backup checks for missing information.8/ Myers estimated that two or three employees would be required to spend a cumulative total of approximately 24 employee hours to go through the documents and extract the item 1 information.

Item 2 calls for information obtainable from the same T&A sheets, plus "computerized" lists containing the job series, service computation date, skill code, and rank information. No single list containing all the information exists. Myers was asked how many employee hours would be required to compile the list requested in item 2, assuming that item 1 was not provided. He estimated that it would take "maybe a half a dozen people or better, maybe a [cumulative] total of 32 hours or so." He was not asked about processing items 1 and 2 in a joint effort.

Item 4, a list of requisite skills, could be compiled from budgetary estimates on file, and Myers estimated that this compilation would take two employees a cumulative total of 16 hours. In answer to a leading question, Myers characterized that as a "conservative" estimate.

The information requested in items 6 and 7 is not maintained by Myers' office. Most of the information for item 10 is so maintained, and consists of the same T&A sheets needed for items 1 and 2, "possibly with the backup of the budgetary estimates," and, for the per diem information, the travel vouchers maintained in the travel finance office. Myers stated that travel request forms would also have to be consulted to aid in separating emergency and non-emergency trips. He estimated that, leaving aside the per diem information, the compilation would be performed most efficiently by using four or more employees and should take 36 employee hours. Concerning per diem, Myers testified that the reconstruction of every trip by reviewing the travel vouchers would be "astronomical," and that a less accurate, but manageable compilation could be made by using rates from current travel regulations. He estimated that two employees could provide that information, using that method, in eight employee hours. Item 11 information (overtime hours) extracted from the T&A sheets, would take 30 to 38 employee hours.

8/ The T&A sheets are maintained in Myers' office for TDY trips alone, by year. Therefore it would not be necessary to cull them from the general personnel records.

In sum, Myers' estimate for the number of employee hours necessary to compile the requested data that is under his control is 146-154 hours. Noting especially the repeated and extensive use of the T&A sheets, Counsel for the General Counsel attempted to elicit from Myers an estimate of the time that would be required to make copies of these sheets to provide the Union in lieu of compiling all of the relevant data from them. Aside from responding that it would take more than 24 hours, Myers was unable to make any estimate.

A different set of problems surrounds items 6 and 7. Captain John Fraser, the Chief of Maintenance for the 2951st CLSS, addressed these request items for the Respondent. He testified that the training requirements requested in item 6 were impossible to provide in full because the question of adequate training is too complex. However, he identified three documents which, together, provide at least a partial answer to the inquiry. As to item 7, Fraser ultimately testified that the requested training records do not exist, except to the extent that training information shows up on the individual T&A sheets.9/

Finally, the General Counsel established that the Respondent did not consult Myers or Fraser about the availability of the requested data before it sent its response refusing to provide it. The Respondent sought their advice only in preparation for the hearing.

Discussion and Conclusions

I. Applicable General Principles and Identification of Issues Raised

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9/ The record testimony is somewhat ambiguous on this point. Fraser originally testified that TDY training records were maintained in each individual supervisor's office (Tr. 118). However, the Respondent seems to take the position that the requested information does not exist, and Counsel for the General Counsel accepts that as true. Although I view the evidence as ambiguous, I see no benefit, in these circumstances, in questioning the parties' apparent agreement.

Under section 7114(b)(4) of the Statute,10/ an agency is required to furnish an exclusive representative of its employees, upon request and to the extent not prohibited by law, information that is reasonably available and necessary for the union effectively to carry out its representational functions and responsibilities, including its obligation in connection with the processing of an employee grievance. This includes information needed both for evaluation of a grievance for the purpose of deciding whether to pursue it and for preparing to represent the grievant. U.S. Army Reserve Components Personnel and Administration Center, St. Louis, Missouri, 26 FLRA 19, 27-28 (1987).

The General Counsel, of course, contends that each of the affirmative elements of section 7114(b)(4) has been established, and that the Respondent has unlawfully refused to furnish the data requested in items 1, 2, 4, 6, 10, and 11 of the Union's January 5 request. As to item 7, the only other item in dispute, Counsel for the General Counsel acknowledges that the requested data does not exist, but contends that the Respondent committed an independent violation of section 7116(a)(1), (5), and (8), by failing to inform the Union that the data does not exist.11/

The Respondent insists that the data requested is not normally maintained and that it is not readily available, its contentions falling generally along the lines described above, in the Statement of the Case. The Respondent also

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10/ Section 7114(b)(4) of the Statute requires an agency to furnish an 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;
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> (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.

11/ The Statute uses the word, "data," as though it were the singular, not the plural, form. I shall do likewise.

contests the Union's legitimate need for the data, particularly the data that concerns military personnel, thus renewing, in a somewhat different and more limited form, the contention (made in the letter refusing to furnish the data) that the subject matter is a management retained right and is non-negotiable. The Respondent argues also that the data concerning military personnel is protected from disclosure by the Privacy Act.

II. Testing the Request Against the Necessary Elements of Section 7114(b)(4)

A. Is the Requested Data "Normally Maintained" Within the Meaning of Section 7114(b)(4)(A)?

With the exception of item 7, and, in part, item 6, the Respondent is in possession of information enabling it to furnish the requested data, if necessary by compiling it from existing documents. The Respondent contends that it does not "normally maintain" the requested data because it is not maintained in the form in which the Union requested it, so that providing what the Union requested would require it to "create" documents that do not presently exist. That contention must be rejected. The Statute does not prescribe the form in which data must be provided. Presumably, the parties themselves are best able to work out the most efficient method for supplying information that the Statute requires to be furnished. See Food Employer Council, Inc., 197 NLRB 651 (1971)[12/]; Safeway Stores, Inc. v. NLRB, 691 F.2d 953, 958 (10th Cir. 1982). Should the optimal method for furnishing the data turn out to involve compilation from existing documents instead of merely copying them, the Respondent would still be doing no more than furnishing data which it normally maintains. The "creation" of new

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12/ To the extent that this Labor Board decision requires the parties to bargain over sharing the costs of providing the information, it is inapplicable to cases arising under the Statute. Veterans Administration Regional Office, Denver, Colorado, 10 FLRA 453 (1982). In other respects, however, the Labor Board's observations are consistent with the Authority's view of an agency's duty under the Statute to furnish data. See, e.g., United States Department of Defense, Dependents of the Army and the Air Force, Headquarters, Army and Air Force Exchange Service, Dallas, Texas, 19 FLRA 652, 667 (1985).

documents is within the statutory duty to furnish data which an agency "normally maintain[s]," as long as the information is so maintained in some form and need not be sought from outside sources. Defense Mapping Agency Aerospace Center, St. Louis, Missouri, 19 FLRA 675, 690-691 (1985).13/

To the extent that the training requirements which are the subject of item 6 are too complex to be reduced to an accurate recitation, one would have to conclude that this is data which is not "normally maintained." However, the three documents which, according to Captain Fraser, explain those requirements in part, are "normally maintained" and thus are potentially within the scope of section 7114(b)(4) discovery. The nonexistent item 7 training records, of course, are not.

B. Is the Requested Data "Reasonably Available"?

Data which is "normally maintained" by an agency is usually deemed to be "reasonably available" unless its production is unduly burdensome. The Respondent contends that production of the data at issue would be unduly burdensome. The General Counsel, however, armed with the unreviewed decisions of some of the Authority's administrative law judges, argues that the Respondent's failure to raise this contention at the time it refused to furnish the data precludes consideration of the assertion at this stage.

I am unable to agree that the Respondent may be precluded, upon a showing of undue burden, from rebutting the presumption that the data maintained by the Respondent is "reasonably available" for production. In 438th Air Base Group, McGuire Air Force Base, U.S. Air Force, Department of Defense, Case No. 2-CA-609 (1981), ALJ Decision Reports, No. 4 (Jan. 6, 1982), Judge Oliver discussed the problem of an agency's failure to raise objections to an information request in a timely manner. But his discussion was in the

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13/ The Authority reversed the decision of the administrative law judge, in the cited case, on other grounds having to do with the duty to furnish names and addresses of unit employees. Id. at 676-678. However, the Authority later changed its position on names and addresses, and, on remand from the United States Court of Appeals for the Eighth Circuit, reached the same conclusion as the judge had. 24 FLRA 43, 46 (1986).

context of the issue of whether the agency satisfied its statutory obligation to give the union a response that was adequate to enable the union to work out mutually satisfactory alternative arrangements aimed at relieving an asserted undue burden on the agency. Id. slip op. at 8. Judge Oliver correctly noted that an agency's failure to give the union an adequate response constituted by itself a violation of its bargaining obligation. Id. slip op. at 8-11.[14/] This accords with the Authority's holding that a failure to reply to a request for information, even if it is only to inform the union that the requested data does not exist, violates the agency's section 7114(b)(4) bargaining obligations. U.S. Naval Supply Center, San Diego, California, 26 FLRA 324 (1987).

It does not follow, however, that an agency which fails to assert undue burden in its initial response is precluded from contesting the allegation that the data is "reasonably available." For that element of the duty to furnish is not a matter of defense.[15/] The Statute requires the furnishing of only such data as is "reasonably available." An agency may furnish or contract to furnish data that is not required by the Statute. But it cannot, by waiver or otherwise, give a union a statutory right that Congress has not given.

Nor does the Respondent's failure to raise the "burdensome" issue when the data was requested constitute a violation here, as in 438th Air Base Group. For the Respondent responded to the request, taking the position

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14/ I reject the Respondent's contention that Judge Oliver's decision places a burden on the union to come forward with suggestions for alternative methods of providing the data, even before the agency has advised it that it considers the request unduly burdensome. Whatever may be the appropriate consequence of failing to raise the issue of undue burden, it cannot be one that permits an agency to profit from its withholding of this contention. See United States Department of Defense, Department of the Army and the Air Force, Headquarters, Army and Air Force Exchange Service, Dallas, Texas, 19 FLRA 652, 667 (1985).

15/ In my view, although "unduly burdensome" is the opposite side of the coin from "reasonably available" and not a defense, the refusing agency still must come forward with the evidence of the burden.

that the Union was not entitled to any of the data because the subject of work assignments was not negotiable. This would not appear to be a particularly well-founded position, and the Respondent does not even urge it here except to the extent that it relates to military personnel. But it is not a patently frivolous position, and if the author of the response believed that it had merit (which I have no basis to dispute) it would have been pointless for him to investigate the extent of the burden, at that point, in order to provide an additional basis for refusing the request.

Turning to the merits of the Respondent's contention, I find that the Respondent's evidence of undue burden is not persuasive. Mr. Myers' testimony, taken at face value, puts the total burden at approximately 150 employee hours, plus the unstated but relatively insignificant cost of materials.[16/] Despite attempts to suggest that his estimates were conservative, objective factors make it appear that the opportunities for reducing the times he estimated are greater than the risks that they might be exceeded. Thus, Myers' estimates included repeated pulling of the T&A sheets. By coordinating the search for multiple items of requested information contained on each sheet, it is likely that a significant time saving could result. There is also at least a reasonable probability that making copies of some or all of the raw data for the Union would be cost-efficient as compared with the extraction and compilation of each of the items of information for which they are needed (even including the time necessary to "sanitize" certain documents if that is considered to be essential). Some intelligent planning and coordination of these efforts would, no doubt, increase their efficiency.

The approximate maximum "burden," then, is 150 employee hours, with a real possibility that the actual burden would be substantially less. Making a calculated guess based on federal civil service classification GS levels and the basic pay tables, the employees needed for these compilations or copying should average no more than approximately $20,000 in annual salary, or in the range of $10 an hour. Thus, we are looking at a total maximum cost of somewhere in the

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16/ The documents to which Captain Fraser referred, relating to request item 6, are available without further processing.

neighborhood of $1,500, or somewhat higher if a significant amount of overtime pay were to be involved.17/

Is this an excessive burden, assuming the data is necessary and, therefore, that providing it is an essential step in collective bargaining?18/ Compared to other aspects of the collective bargaining process, it is a modest burden. And, as with all of the burdens of collective bargaining, the value received is one that has congressional recognition in the form of the Statute. See, in particular, section 7101. While the existing case precedent is of limited value because of the number of significant factual variables, it is noteworthy that in this case the burden is far less than that in the only case I have discovered where the burden was found sufficient to defeat the allegation that the data was reasonably available. Thus, in Department of the Air Force, Headquarters, Air Force Logistics Command, Wright-Patterson Air Force Base, Ohio, 21 FLRA 529, 531-2, 542-4 (1986), a request that would have cost in excess of $30,000 to process was held to be unduly burdensome, in connection with a finding that the request was too broad and that the Union, after being given notice of the heavy burden, made no effort to make an accommodation. I find the instant case closer to, although by no means controlled by, Department of Health and Human Services, Region IV, Health Care Financing Administration, 21 FLRA 431, 441 (1986) (duplication of 1500 pages is not unduly burdensome). In short, an agency which seeks to defeat a finding of "reasonably available" by showing undue burden undertakes a heavy burden by that very contention, because of the Statute's bias toward the process of collective bargaining. The Respondent has not met this burden.19/

17/ I do not see how the costs of existing employee fringe benefits can be allocated to this cost.

18/ The grievance to which this information request is related happens to be one of concern to a number of employees in the affected segment of the bargaining unit, but that is only an incidental factor in this analysis.

19/ The Respondent makes an argument concerning the Union's opportunity either to clarify its request or seek clarification at the December 10, 1987, meeting, and after the Respondent's refusal of the data and its denial of the grievance. I am unable to relate this argument to the issue of reasonable availability, although it purports to be directed to this issue.

C. Is the Requested Data Necessary?

On its face, the general subject matter of this information request relates directly to the Union's "activity grievance," and the two-year period covered by most requested items appears to be a reasonable period necessary for analysis under the circumstances presented.

The Respondent suggests, preliminarily, that the Union's need for the data is belied by the fact that, without waiting for a response to the request, it proceeded to file the grievance. However, the request was expressly labelled as being in support of the grievance that was about to be filed. Data needed in connection with a grievance is not solely for the purpose of deciding whether to pursue it. It is also for the purpose of aiding in the processing in general and in providing proof of the alleged infraction in particular. See United States Department of Agriculture, Animal and Plant Health Inspection Service, Plant Protection and Quarantine, 26 FLRA 630, 633-4 (1987). The Respondent also urges that all data relating to military personnel is irrelevant to any legitimate Union concern because those personnel are not statutory employees. That contention must also be rejected. The comparison between unit employee and military personnel assignments to TDY's is the very essence of the grievance. To the extent that the requested data illuminates that comparison, it is both relevant and necessary irrespective of its including records concerning non-employees or non-bargaining unit employees. Veterans Administration Medical Center, Jackson, Mississippi, 32 FLRA 133, 138-40 (1988).[20/] The grievance also involves the proper interpretation and application of the Air Force regulations and practices under which the military personnel were given priority for TDY trips.

I find that the General Counsel's evidence regarding the Union's need for the requested information is persuasive, except for the following. The Union, both in President Salas' testimony and in the written grievance, indicated that the purpose of requesting per diem rates for each

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20/ Veterans Administration, supra, similarly disposes of the Respondent's contentions that all the data concerning military personnel is protected by the Privacy Act. As to Respondent's special Privacy Act argument with respect to item 7 (training records), the General counsel accepts that these records do not exist. I see no need, therefore, to resolve the Privacy Act defense to item 7.

routine TDY trip by military personnel (part of item 10) was to seek reimbursement for lost per diem opportunities. But, while I hesitate to give the appearance of preempting an arbitrator, it is difficult to envision such a payment as an appropriate remedy. Unlike the lost opportunity for earning overtime pay, the use of per diem has no determinable monetary value. Per diem is not a form of compensation, but is itself a reimbursement for expenses. An employee's potentiality for making a "profit" on a particular trip by subsisting like Ralph Nader while claiming to have dined at the maximum per diem level does not seem like a compensable event. An arbitrator might, nonetheless, wish to pursue that sort of remedy and, accordingly, order relevant data to be produced. At this stage, however, the potential relevance of this line of inquiry appears too remote to warrant a finding that the data is "necessary". Second, in the absence of any explanation of its relevance, I cannot make the requisite finding of necessity for the service computation dates of civilian employees who went on TDY trips (part of item 2). I can understand how, in certain circumstances, relative seniority might be an arguably relevant factor in selection for TDY, but the nature of the Union's grievance is an alleged inequity as between civilian and military personnel as a class. The service computation dates of the military personnel were not even requested, thus negating any impression that the Union envisions a seniority-based claim. There is simply a failure of proof on the necessity of the service computation dates.

III. The Violations

The Respondent has violated section 7116(a)(1), (5), and (8) of the Statute by refusing to provide the data requested in items 1, 2, 4, 10, and 11 of the Union's request, except for the service computation dates and the per diem rates, and by refusing to provide the data requested in item 6 to the extent that it is normally maintained as discussed above. The General Counsel also seeks a finding that the Respondent independently violated the Statute by failing to inform the Union that the data requested in item 7 does not exist. I cannot fault the General Counsel for failing to allege this violation in the complaint, as I have no reason to believe that the regional office knew of this in time to include it. However, as discussed above with respect to the "unduly burdensome" contention, the Respondent did not ignore the Union's request. It responded with a claim that the subject underlying all of the data requests was non-negotiable. Since I am not in a position to question the good faith of that erroneous contention, I conclude that at the time that response was made the Respondent had no

duty to investigate the state of its records concerning each of the requested items. It follows that it had no obligation to inform the Union that it lacked certain requested data.

To remedy the violations found, I recommend that the Authority issue the following Order:

ORDER

Pursuant to section 2423.29 of the Federal Labor Relations Authority's Rules and Regulations and section 7118 of the Statute, it is hereby ordered that the Department of the Air Force, Air Force Logistics Command, Sacramento Air Logistics Center, McClellan Air Force Base, California, shall:

1. Cease and desist from:

(a) Failing and refusing to furnish, upon request by the American Federation of Government Employees, Local 1857, AFL-CIO, the exclusive representative of its employees, a copy of all necessary and relevant documents and materials requested by such representative in connection with the processing of a grievance filed by the exclusive representative regarding TDY opportunity and selection.

(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, Local 1857, AFL-CIO, the employees' exclusive representative, a copy of all necessary and relevant documents and materials requested by such representative in connection with the processing of a grievance filed by the exclusive representative regarding TDY opportunity and selection.

(b) Post at its Sacramento facility 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 Commanding Officer 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 IX, Federal Labor Relations Authority, 901 Market Street, Suite 220, San Francisco, CA 94103, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

JESSE ETELSON
Administrative Law Judge

Dated: March 31, 1989
Washington, D.C.

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, upon request by the American Federation of Government Employees, Local 1857, AFL-CIO, the exclusive representative of its employees, a copy of all necessary and relevant documents and materials requested by such representative in connection with the processing of a grievance filed by the exclusive representative regarding TDY opportunity and selection.

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, Local 1857, AFL-CIO, the exclusive representative of its employees, a copy of all necessary and relevant documents and materials requested by such representative in connection with the processing of a grievance filed by the exclusive representative regarding TDY opportunity and selection.

____
(Agency or 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 IX, whose address is: 901 Market Street, Suite 220, San Francisco, CA 94103, and whose telephone number is: (415) 995-5000.