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

SOCIAL SECURITY ADMINISTRATION, BALTIMORE, MARYLAND AND SOCIAL SECURITY ADMINISTRATION AREA II, BOSTON REGION BOSTON, MASSACHUSETTS Respondent	
and	Case No. 1-CA-80309
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1164, AFL-CIO Charging Party	

Patricia A. Randle, Esquire
Ms. Linda Wilcox
For the Respondent

Mr. Thomas H. Durand
For the Charging Party

Marilyn H. Zuckerman, Esquire
For the General Counsel

Before: WILLIAM B. DEVANEY
Administrative Law Judge

DECISION

Statement of the Case

This proceeding, under the Federal Service Labor-Management Relations Statute, Chapter 71 of the United States Code, 5 U.S.C. § 7101, et seq.[1/], and the Rules and

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

Regulations issued thereunder, 5 C.F.R. § 2423.1, et seq., concerns whether Respondent violated §§ 16(a)(1), (5) and (8) of the Statute by refusing to furnish copies of: (a) the SF-81 Requests for Space; and (b) the GSA Lease Market Survey and further, as amended at the hearing, whether Respondent violated § 16(a)(1) and (8) of the Statute by failing to inform the Union that the GSA Lease Market Surveys, if it does not maintain them, do not exist.

This case was initiated by a charge filed on June 9, 1988 (G.C. Exh. 1A), which alleged violations of §§ 16(a)(1) and (5); by a First Amended Charge filed on August 8, 1988, which alleged violations of §§ 16(a)(1), (5) and (8) (G.C. Exh. 1C); and by a Second Amended charge filed on August 19, 1988, which also alleged violations of §§ 16(a)(1), (5) and (8) (G.C. Exh. 1E). The Complaint and Notice of Hearing issued on August 26, 1988 (G.C. Exh. 1G) and fixed the hearing for October 4, 1988, pursuant to which a hearing was duly held on October 4, 1988, in Boston, Massachusetts, before the undersigned.

All parties were represented at the hearing, were afforded full opportunity to be heard, to introduce evidence hearing on the issues involved, and were afforded the opportunity to present and argument, which General Council exercised. At the conclusion of the hearing, November 4, 1988, was fixed as the date for mailing post-hearing briefs, which time was subsequently extended, on timely motion of Respondent, to which the other parties did not object, for good cause shown, to November 18, 1988. Respondent and General Counsel each timely mailed an excellent brief, received on, or before, November 21, 1988, which have been carefully considered. Upon the basis of the entire record, I make the following findings and conclusions:

Findings

1. The American Federation of Government Employees, AFL-CIO (hereinafter referred to as "AFGE") is the recognized exclusive representative of a nationwide consolidated bargaining unit, more fully described in the Agreement between AFGE and Social Security Administration (Jt. Exh. 1), including all non-professional employees employed by Respondent in Area II of its New England Region.

2. American Federation of Government Employees, Local 1164, AFL-CIO (hereinafter referred to as the "Union") is the affiliate and agent of AFGE for the purpose of representing employees in Area II of Respondent's New England Region.

3. On, or about, May 2, 1988, the Union requested Respondent to furnish it for the purpose of bargaining, inter alia, with copies of the SF-81 Requests for Space and the GSA Market Surveys for Area II District Offices at: Lynn, Lowell, Malden and Salem.2/

4. By letter dated May 26, 1988, Respondent refused to furnish SF-81 Requests for Space and the GSA Lease Market Surveys for the Lynn, Lowell, Malden and Salem District Offices (G.C. Exh. 7), although it had furnished an SF-81 Request for Space at another District Office (G.C. Exh. 3), and stated,

> "The second category is information management has no current obligation to release.
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> The union's request to be involved in the site selection process is in conflict with management's right under 5 USC 7106(a)(1) of the Federal Service Labor-Management Relations Statute, including but not limited to the right to determine its organization and mission. Based on case law, the union would only have a right to bargain on the impact or implementation of a change once management exercises its right. Since decisions on site selection/location have not been made in this category, no duty to bargain exists. Since no duty to bargain exists, no duty to furnish information exists.
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> Included in this category are items . . . III C, D [G.C. Exh. 2; Lynn] . . .; IV B, C [id., Lowell] . . . ; V B, C [id., Malden] . . . ; VI B, C [id., Salem] . . . ." (Emphasis in original).

5. The SF-81 Request for Space is a standard GSA form which an agency uses to began the process of space

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2/ The Union also requested a considerable amount of other data concerning these offices, as well as for other offices, which for the most part was supplied and none of which is at issue herein (G.C. Exh. 2).

acquisition. The Agency lists its space requirements in terms of square footage and in terms of special requirements, e.g. special electrical services, computer equipment, etc., (Tr. 11, 65; G.C. Exh. 3). While the particular needs of any office will vary, Respondent's SF-81 for Framingham, which it furnished to the Union, illustrates the information contained: space allowance for each position, number of employees for each position, total square footage for that position; space for each piece of equipment, e.g. photocopy machines; space for interview rooms, reception area, storage, files; space for training-multipurpose room; space for training center; number of keystations, number of printers, BTUs produced, additional kilowatts required, number of dedicated circuits required; telephone equipment; security; requirements for communications room; requirements for multipurpose room, including sink, water, etc.; observation windows; window covering; floor covering; restroom criteria; reception room area; and reception counter (G.C. Exh. 3).

Respondent endeavors to submit its SF-81 requests a year in advance of the earliest date it can terminate its present lease (Tr. 66).

6. Upon receipt of an agency's SF-81, GSA surveys possible locations. GSA may advertise or may contact real estate brokers (Tr. 67). GSA then prepares a Lease Market Survey (G.C. Exh. 4) for each building. The form (G.C. Exh. 4) has blanks for such information as: name and address of the building; owner or agent and telephone number(s); area or section (e.g., central business district, office park, urban renewal, commercial, industrial, residential); appearance of building; age of building; availability of employee parking; availability of public transportation; availability of eating facilities; proximity to banks, shopping, etc.; interior walls; lighting; ceilings; windows; floors-type and covering; toilet facilities; drinking fountains; elevators; heating; air conditioning; power distribution; zoning; plumbing; handicapped facilities; fire; safety and health: emergency illumination, exit lights, exterior doors, stairwell doors, fire extinguishers, standpipe for each stairwell, handrails, sprinkler system, asbestos, PCB's, hazardous waste site; asking price and what is included (G.C. Exh. 4).

7. The Union sought copies of both documents for each of the four District Offices because of the potential of an office relocation (Tr. 21), although it had not been notified of any actual relocation of any of the four

offices. The Union asserted that it needed the data in question to intelligently prepare to negotiate the impact and implementation of each move (Tr. 21-22, 23, 42).

8. At the hearing, the Union asserted that it also needed the data to police its Agreement. Thus, it asserted that the National Agreement provides, in part, that, "The employer agrees to continue to provide secure, adequate, convenient parking." (Jt. Exh. 1, Article 13, Sec. 2, p. 24); and the GSA Form 81 on its face, at lines 15 (inside parking) and 27 (outside parking), has spaces for entry of desired parking spaces. The Union asserted that it needed the data to determine compliance with its Agreement; that if Respondent had not requested parking spaces, as it did not on its Framingham SF-81 (G.C. Exh. 3), the Union could file a grievance, or take other action, to seek to achieve compliance with its Agreement; and that if Respondent had requested parking space but GSA had not responded on its Lease Market Survey, it could urge Respondent to seek clarification or correction.

Article 9 of the National Agreement (Jt. Exh. 1, p. 15) addresses "Health and Safety" and Section 1 provides: "The Administration shall provide a safe and healthy work environment in accordance with Executive Order 12196 and the Department of Labor implementing regulations. The Administration and the Union agree to cooperate in a continuing effort to avoid and reduce the possibility of and/or eliminate accidents, injuries and health hazards in all areas under the employer's control." (Emphasis supplied). Mr. Thomas H. Durand, Vice President of the Union, testified that the Union wanted to inspect each site to ensure that each met Executive Order 12196 and Department of Labor implementing regulations requirements (Tr. 21, 38). Mr. Durand also asserted that he needed SF-81 information respecting such stipulated conditions as temperature minimums and maximums for data communications rooms to use in combating employee complaints of excessive cold, i.e., below the stipulated minimum, with the District Office Managers (Tr. 57).

9. Mr. Durand asserted that the Union needed SF-81 data to carry out its consultative right (Tr. 21) and that to fulfill its responsibility to its members, has the right to know if the agency is considering relocation of a District Office (Tr. 21-22). He further asserted that the Union's consultative role necessitated Market Survey data, ". . . so that we can convey to the agency the employees' concerns on each of the properties under consideration." (Tr. 22).

Mr. Durand also asserted that the Union needed the Market Surveys to develop negotiation strategy because, ". . . depending on the characteristics of each of these properties, our negotiation strategy can be different." (Tr. 23).

10. The Union in its letter of June 6, 1988, to Mr. David L. Gaca, Acting Labor Relations Specialist (G.C. Exh. 8), did assert that it needed the data which Respondent had refused to furnish (G.C. Exh. 7) to police its agreements, stating, in part, that,

> ". . . A move of a district office involves many grievable issues, including but not limited to, health, safety and general environmental issues. An office's space allocation is directly and significantly determined by its staffing allocation. The Union needs to know the staffing allocation for these offices in order to determine whether the Agency followed the proper regulations and contractual procedures in this process. Thus whether the Union is able to negotiate these actual or potential moves or whether the Union shall address the employees' concern on these moves by the filing of grievances, the Union will attempt to have input on these moves. In either case, the staffing allocations will be necessary for a full and proper discussion, understanding, and negotiation of subjects within the scope of collection bargaining. "(G.C. Exh. 8, p. 2).

11. At the hearing, Mr. Gaca testified that Respondent never receives the Lease Market Survey (Tr. 75), that, "The best that we get is we get included when they [GSA] go around to the various sites" (Tr. 75); that Respondent does not maintain copies of the GSA market survey series of forms (Tr. 88); that he learned only the day before the hearing that Lease Market Surveys are not maintained by Respondent (Tr. 122); that Respondent," . . . does not receive the document, the market survey. "(Tr. 123).

General Counsel moved to amend the Complaint to add new Paragraphs 8(b) and 9(b) to read:

> "(b) Since on or about May 26, 1988, and continuing to date, the respondent has

failed to inform the union that the GSA market survey described in paragraph 6 above do not exist." (Tr. 104).

General Counsel's motion was granted and the Complaint was amended (Tr. 115); Respondent was given time to consider whether to present additional evidence; and Respondent did recall Mr. Gaca.

Conclusions

§ 14(b) of the Statute provides in pertinent part as follows:

> "(b) the duty of an agency and an exclusive representative to negotiate in good faith under subsection (a) of this section shall include the obligation--
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> . . .
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> "(4) in the case of an agency, to furnish to the exclusive representative involved, or its authorized representative, upon request and, to the extent not prohibited by law, data--
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> "(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
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> "(C) which does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining; . . . ." (5 U.S.C. § 7114(b)(4)).

The Authority has long made clear that under § 14(b)(4) an agency has a duty to furnish data within the scope of collective bargaining which means not only actual negotiations but the union's full range of representational responsibilities, including the effective evaluation and

processing of grievances. National Treasury Employees Union, Chapter 237, 32 FLRA 62, 68, 70 (1988); Internal Revenue Service, Washington, D.C. and Internal Revenue Service, Wichita District, Wichita, Kansas, 32 FLRA 920, 924, 925 (1988); U.S. Customs Service, Region VII, Los Angeles, California, 10 FLRA 251 (1982); Veterans Administration Regional Office, Denver, Colorado, 7 FLRA 629 (1982). Indeed, in American Federation of Government Employees, AFL-CIO, Local 1345 v. FLRA, 793 F.2d 1360 (D.C. Cir. 1986) (hereinafter referred to as "Local 1345" case) the Court of Appeals stated, in part, as follows [as the Authority had also stated therein: Army and Air Force Exchange Services (AAFES), Fort Carson, Colorado, 17 FLRA 624, 626 (1985)]:

> ". . . it is well-settled in both private and public sector labor law that this obligation applies not only to information needed to negotiate an agreement, but also to data relevant to its administration. The relevance of the requested data is considered on a case-by-case basis; [footnote omitted] however, the employer's duty to provide the information must be evaluated in the context of the full range of union responsibilities in both the negotiation and the administration of a labor agreement. . . . " (793 F.2d at 1363-1364) (Emphasis in original).

The Court in the Local 1345 case further stated,

> ". . . the Union has a legitimate concern with its own status as the exclusive bargaining representative. It is entitled to information when the Agency takes an action that affects its role as exclusive representative. The Union cannot fulfill its obligation to fully represent all employees in the unit if it lacks information necessary to access its representational responsibilities." (793 F.2d at 1364).

A. Respondent's SF-81

The Request For Space, i.e., SF-81, originates with Respondent and Respondent does not deny that it normally maintains it in the regular course of business; that it is

reasonably available; and that it does not constitute guidance, advice, counsel, training, etc., within the meaning of § 14(b)(4)(C).

Respondent's position, quite simply, is that the SF-81 is not necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining (Respondent's Brief, p. 6).

Respondent would view this case as whether the information was "necessary" to negotiate an agreement and asserts that, "Only during the hearing did the union state that they needed the information to police the contract and for filing possible grievances . . . Accordingly, the Respondent could not unlawfully refuse to have furnished the data sought by the union on the new bases now offered." (Respondent's Brief, p. 13). Respondent cited, inter alia, Judge Oliver's decision in Social Security Administration (Baltimore, Maryland) and Social Security Administration Area I (Hartford, Connecticut), Case No. 1-CA-7022, ALJ Decisions Report No. 73 (Aug. 3, 1988); and my decision in Internal Revenue Service, Memphis Service Center, Case No. 4-CA-30371, ALJ Decisions Report No. 38 (July 5, 1984).

Respondent is certainly right that the Union in its initial request of May 2, 1988 (G.C. Exh. 2) and in its letter of May 23, 1988 (G.C. Exh. 5) was quite specific in stating that it wanted, and needed, the data, ". . . in order to intelligently fulfill our bargaining obligations" (G.C. Exh. 2, p. 2) and, ". . . the Union has only requested that information which is necessary for . . . actual or potential negotiations." (G.C. Exh. 5, p. 1). In neither of these letters did the Union mention, or make any reference whatever to, policing its agreements, grievances, etc., which would suggest that it needed the data for any reason except to negotiate an agreement. Because the Union was so forceful, clear and unambiguous in stating the reason for its request, Respondent had no cause to seek clarification (G.C. Exh. 5). However, after declining to provide, inter alia, the SF-81 by its letter of May 26, 1988 (G.C. Exh. 7), the Union responded by letter dated June 6, 1988 (G.C. Exh. 8) in which it very clearly stated that, in addition to needing the data to negotiate, it also needed the data to police its agreements, i.e. ". . . to file . . . grievances on issues that will arise in the move(s) "(G.C. Exh. 8, p. 2). Such references put Respondent on notice that the requests were related to existing or potential grievances and that, "'It is well-settled that section 7114 creates a duty to provide information that would enable the

Union to process a grievance or to determine whether or not to file a grievance.' . . . ." American Federation of Government Employees, AFL-CIO v. FLRA, 811 F.2d 769, 774 (2d/Cir. 1987). Accordingly, the Union's request for the SF-81 must be evaluated in the context of the full-range of its representational responsibilities.

At the point an agency requests space to relocate[3/] it has taken action which will affect conditions of employment even though the effect is still entirely in the future. The Union has a legitimate concern, as the Court noted in the Local 1345 case, supra, when the agency takes an action that affects its role as exclusive representative. The Union cold not fulfill its obligation as exclusive representative if it: (a) did not know that a relocation was planned; (b) when the relocation was expected; (c) how much space was being requested and its allocation. Potentially, it must prepare for bargaining and, also, police its existing agreements.

Specifically, the SF-81 shows, inter alia, the number of employees by grade; the work station space allowance by grade; the total square footage requested by category; space for: food service, training-multipurpose; and parking spaces (G.C. Exh. 3). Respondent needs such information to monitor any changes in space requirements, to police its agreements and to prepare for impact and implementation bargaining. For example, if, as here, an agency in a collective bargaining agreement has agreed to provide parking (Jt. Exh. 1, Art. 13, Sec. 2) but in its Request for Space (SF-81) has requested no parking spaces, the information that no parking spaces had been requested would be necessary for the union to take appropriate action, whether by filing a grievance and/or by preparing bargaining demands. Projected staff size would be necessary to evaluate various space allocations. Space requests would be necessary for bargaining proposals.

Because the SF-81s were necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining, Respondent

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3/ It is possible that the SF-81 is required by GSA to justify space requirements even if the agency does not wish to move; but in this case was used wholly in the sense of ". . . requesting the GSA to look for space." (Tr. 63).

failed and refused to comply with § 14(b)(4) of the Statute by refusing to furnish the requested data and thereby violated §§ 16(a)(1), (5) and (8) of the Statute.

B. GSA's Lease Market Surveys

The record shows that Respondent never receives the Lease Market Surveys (Tr. 75), although they most assuredly exist, and, necessarily, does not maintain copies of the GSA Lease Market Survey (Tr. 88). Mr. Gaca's testimony was neither challenged nor refuted. Accordingly, as the Lease Market Survey were not maintained by Respondent, Respondent did not violate §§ 16(a)(1), (5) or (8) by refusing to furnish the requested Lease Market Surveys. In view of the fact that Respondent does not maintain this data, I express no opinion as to whether such information, had it been maintained by Respondent, would have been "necessary" within the meaning of § 14(b)(4)(B) of the Statue.

C. Respondent's failure to inform Union that it did not maintain Lease Market Surveys.

At the hearing, General Counsel amended the Complaint to allege as a further violation Respondent's failure,

> ". . . to inform the union that the GSA market surveys . . . do not exist." (Tr. 104).

General Counsel cites and relies upon Veterans Administration, Washington, D.C. and Veterans Administration Regional Office, Buffalo, New York, 28 FLRA 260 (1987) (hereinafter referred to as "VA Buffalo"). It is certainly true that the Authority stated in VA Buffalo that,

> ". . . the fact that the information sought did not exist or was not readily available did not relieve the Respondent of an obligation to so inform the Union. We have held that section 7114(b)(4) requires an agency to respond to a request from an exclusive representative for information even if the response is that the information sought does not exist. U.S. Naval Supply Center, San Diego, California, 26 FLRA No. 41, slip op. at 4 (1987)." (28 FLRA at 266).

Here, unlike VA Buffalo, supra, Respondent did respond to the Union request and stated,

> "The union's request to be involved in the site selection process is in conflict with management's right under 5 USC 7106(a)(1) of the Federal Service Labor-Management Relations Statute, including but not limited to, its right to determine its organization and mission. Based on case law, the Union would only have a right to bargain on the impact or implementation of a change once management exercises its right. Since decisions on site selection/location have not been made in this category, no duty to bargain exists. Since no duty to bargain exists, no duty to furnish information exists. . . . "(G.C. Exh. 7, p. 2) (this reason was made specifically applicable to the Union's request for " A copy of the GSA market survey. . . ." G.C. Exh. 2, III D, IV C, V C; VI C)

I fully agree that Respondent was required to respond to the Union's request for GSA market surveys and it did respond. While it is true that it stated, in essence, that the data was not "necessary" within the meaning of §§ 14(b)(4)(B) but did not state that it did not maintain the GSA market surveys, I do not find that its failure to state the further ground was a violation of the Statute.

From Mr. Gaca's testimony it is clear that he had had no prior experience as labor relation officer (Tr. 116); that he served only briefly as acting labor relations officer; and that when he wrote Respondent's reply to the Union's request for information (G.C. Exh. 7) on May 26, 1988, he did not know that Respondent did not receive the GSA Lease Market Surveys. Further, Mr. Gaca, now Branch Chief, Field and Financial Services Planning Branch, Boston Regional Office (Tr. 64), did not learn that Respondent does not receive the GSA Market Lease Surveys until October 3, 1988, the day before the hearing herein (Tr. 123). Although General Counsel was well aware that Mr. Gaca testified that Respondent does not get a copy of the GSA Market Lease Survey (Tr. 75-76, 88), she neither called witnesses to rebut Mr. Gaca's wholly credible testimony, nor requested additional time to call rebuttal witnesses.

Accordingly, I find that Respondent did not, under the circumstances of this case, violate §§ 16(a)(1), (5) or (8) by its failure to inform the Union that it does not maintain GSA Market Lease Surveys.

Having found that Respondent violated §§ 16(a)(1), (5) and (8) of the Statute by its failure and refusal to furnish, in compliance with § 14(b)(4) of the Statute, copies of its SF-81s, it is recommended that the Authority adopt the following:

ORDER

Pursuant to § 18(a)(7) of the Statute, 5 U.S.C. § 7118(a)(7), and § 2423.29 of the Regulations, 5 C.F.R. § 2423.29, it is hereby ordered that Social Security Administration, Baltimore, Maryland, and Social Security Administration Area II, Boston Region, Boston, Massachusetts, shall:

1. Cease and desist from:

(a) Failing or refusing to furnish, upon request by the American Federation of Government Employees, Local 1164, AFL-CIO, the designated agent of the exclusive representative of a unit of its employees, copies of its SF-81s, Requests for Space.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights under the Statute.

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

(a) Post at its facilities in Area II, Boston Region, Massachusetts, 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 Administrator and shall be posted 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.

(b) Pursuant to 5 C.F.R. § 2423.30, notify the Regional Director, Federal Labor Relations Authority,

Region 1, Room 1017, 10 Causeway Street, Boston, Massachusetts 02222-1046, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

William B. Devaney

WILLIAM B. DEVANEY
Administrative Law Judge

Dated: October 24, 1989
Washington, D.C.

NOTICE TO ALL EMPLOYEES

AS ORDERED BY THE FEDERAL LABOR RELATIONS AUTHORITY

AND TO EFFECTUATE THE POLICIES OF THE

FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS STATUTE

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT fail or refuse to furnish, upon request by the American Federation of Government Employees, Local 1164, AFL-CIO, the designates agent of the exclusive representative of a unit of our employees, copies of our SF-81s, Requests for Space.

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

_____
(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 1, whose address is: Room 1017, 10 Causeway Street, Boston, MA 02222-1046, and whose telephone number is: (617) 565-7280.