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

INTERNAL REVENUE SERVICE WASHINGTON, D.C. and INTERNAL REVENUE SERVICE SALT LAKE CITY DISTRICT SALT LAKE CITY, UTAH Respondents and NATIONAL TREASURY EMPLOYEES UNION Charging Party	Case No. 7-CA-90546

Susan L. Nieser, Esq.
Gary A. Anderson, Esq.
For Respondents

Matthew Jarvinen, Esq.
For General Counsel of the FLRA

Dean Dehart
For the Charging Party

Before: SAMUEL A. CHAITOVITZ
Administrative Law Judge

DECISION

Statement of the Case

This is a proceeding under the Federal Service Labor-Management Relations Statute, 5 U.S.C. §7101 et seq., hereinafter referred to as the Statute, and the Rules and Regulations of the Federal Labor Relations Authority (FLRA), 5 C.F.R. Chapter XIV, §2423.1 et seq.

The charge herein was filed by the National Treasury Employees Union, hereinafter called NTEU, against Internal

Revenue Service, Washington, D.C., hereinafter called IRS,and Internal Revenue Service, Salt Lake City District, Salt Lake City, Utah, hereinafter called IRS Salt Lake City.1/ Pursuant to this charge the General Counsel of the FLRA, by the Regional Director of Region VII of the FLRA, issued a Complaint and Notice of Hearing alleging that Respondents violated section 7116(a)(1), (5) and (8) of the Statute by refusing to furnish NTEU with requested information. Respondents filed an answer denying the Statute had been violated.

A hearing in this matter was conducted before the undersigned in Farmington, Utah. Respondents, NTEU and General Counsel of the FLRA were represented and afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence and to argue orally. Briefs were filed and have been fully considered.

Based upon the entire record in this matter,2/ my observation of the witnesses and their demeanor, and my evaluation of the evidence, I make the following:

Findings of Fact

At all material times NTEU has been the exclusive collective bargaining representative for a nationwide unit of certain IRS employees employed in IRS District Offices, Regional Offices and the National Office, including IRS employees in IRS Salt Lake City. NTEU Chapter 17 is the NTEU local that represents the approximately 250 unit employees at IRS Salt Lake City. IRS and NTEU are parties to a collective bargaining agreement, NORD III, that became effective on July 1, 1989, and applied to all unit employees including those employed at IRS Salt Lake City. Prior thereto IRS and NTEU were parties to NORD II (Revised), which was the applicable agreement. Article 39 of both Nord II (Revised) and Nord III provides that in adverse actions management should consider, among a number of factors, "consistency of the penalty with those imposed upon other

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1/ Collectively referred to as Respondents.

2/ General Counsel of the FLRA filed a motion to correct the transcript of the hearing herein. This motion was unopposed. Accordingly this motion is hereby GRANTED and a copy of the motion is attached hereto as APPENDIX.

employees for the same or similar offenses," in deciding upon the appropriate discipline.

The Southwest Region of IRS is composed of fourteen separate offices with approximately 17,000 to 18,000 bargaining unit employees. The IRS Southwest Region is composed of the Regional Office in Dallas, the Austin Service Center with about 3,000 to 4,000 unit employees, the Ogden Service Center with about 3,000 to 4,000 unit employees, the Albuquerque District Office, the Austin District Office with about 670 unit employees, the Austin Compliance Center with about 1,200 to 1,500 unit employees, the Cheyenne District Office, the Dallas District Office with about 2,500 unit employees, the Denver District Office with about 1,000 unit employees, the Houston District Office with about 1,500 unit employees, the Oklahoma City District Office, the Phoenix District Office, IRS Salt Lake City, and the Wichita District Office.

Each component office of the IRS Southwest Region is serviced by the Employee Management Relations Section (EMR) which provides advice to individual office management concerning labor relations.

IRS maintains a computer system to organize tax data on taxpayers throughout the country called the "Integrated Data Retrieval System" (IDRS). Some employees are authorized to put data into or to change modify data within IDRS, but others, including Revenue Officers, are only authorized to look up information in IDRS. IRS has strict rules governing access to IDRS. Access to IDRS is allowed only if the IRS employee has a specific need to know the information and is doing work on the specific taxpayer's account that is being accessed. Employees are not allowed to access the system to look up information in their own accounts or in the accounts of relatives or any other individuals, especially those accounts in which an employee has a personal or financial interest.

At all times material the grievant has been employed at IRS Salt Lake City as a Revenue Officer and is an employee in the unit represented by NTEU. The grievant contacted NTEU Chapter 17 Chief Steward Jim Richards to represent her at an interview by Inspections concerning illegal access to IDRS.

Subsequent to the interview, a proposed letter of removal was issued to the grievant on May 16, 1989, by Jeffrey Stetina, Chief of Collection and Taxpayer Service at IRS

Salt Lake City, because of alleged falsification of an official document and improper access to IDRS. With respect to the latter allegation the grievant was accused of utilizing IDRS to examine, among others, the accounts of her husband's mistress, her mother and her stepfather. Because of the nature of the proposed adverse action, Richards contacted NTEU's Regional Office in Denver and requested National Field Representative Kathleen MacKenzie represent the grievant. MacKenzie agreed and asked Richards to request an oral reply on behalf of the grievant. By a letter dated May 23, 1989 Richards advised Stetina that MacKenzie would serve as the grievant's union representative and requested an oral reply.

By letter to Stetina dated May 24, 1989, NTEU Chapter 17 requested information pursuant to section 7114(b)(4) of the Statute in order to represent the grievant at the oral reply. Article 39 of NORD II (Revised) provides for such oral reply.

Item 4 of the request asked for copies of,

> All proposal letters, decision letters, letters of reprimand, and oral admonishments confirmed in writing, counseling memos, closed without action letters and clearance letters issue [sic] to <u>all</u> employees in the Southwest Region from January 1, 1984 to the present concerning the alleged accessing of the employee's own tax return or of another individual's tax return for personal purposes including partnerships and corporate tax returns.

The letter requesting the information stated that the information was needed so the union could adequately represent the grievant at the oral reply. The information was to be used to determine whether the proposed discipline was consistent with the discipline given to other employees in the Southwest Region for similar conduct.

Upon receipt of the request for information Kathleen Hirabayashi, Labor Relations Specialist in the EMR located in the Ogden Service Center, contacted Region Labor Relations Specialist Bill Walker, at the IRS Regional Office, asking about the types of disciplinary records maintained at the regional level. Walker advised Hirabayashi that Region-wide records could not be provided, but that they would provide records to the union if it provided the names of specific cases. They did not discuss what records could be retrieved.

Neither Walker nor Hirabayashi made any attempt to ascertain whether the requested disciplinary records were maintained and available at other offices within the Southwest Region.

Stetina responded to the request for information by an undated memorandum to MacKenzie, which was received by MacKenzie on June 12, 1989, and which was signed for Stetina by Richard Hardman. Hirabayashi helped in the preparation of the memorandum. With respect to the request for region-wide disciplinary records, the response stated:

> The information requested in item #4 has not been attached. The proposal imposed on the grievant is consistent with the Salt Lake District Office. Therefore, the information concerning all employees in the Southwest Region does not apply. If there are any specific cases you can reference, I can check for their availability within the scope of my office.

With respect to the foregoing response, Hirabayashi testified that information concerning the Southwest Region "does not apply" meant that such information was considered by IRS not to be relevant to the adverse action proposed against the grievant.

On June 13, 1989, MacKenzie called Stetina and talked to Hardman in Stetina's absence. MacKenzie advised Hardman that under the existing law NTEU believed it was entitled to the Region-wide information and that she needed it right away. Hardman said he would check with Hirabayashi and get back to MacKenzie.

On June 14, 1989 IRS attorney Susan L. Neiser called MacKenzie and informed her that IRS would provide the union with disciplinary information for IRS Salt Lake City concerning employees accused of improper IDRS access, but would not provide Region-wide information. MacKenzie argued NTEU was entitled, under the law, to the Region-wide information, citing Internal Revenue Service, Western Region, San Francisco, California, 9 FLRA 480 (1982).3/ Neiser responded that decisions of the Merit Systems Protection Board (MSPB) stated that Region-wide information need not be provided. She said further that Region-wide

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3/ Hereinafter referred to as IRS Western Region.

information was not relevant. Neiser suggested that MacKenzie communicate with Hirabayashi to secure the disciplinary information for IRS Salt Lake City. Neiser did not state that the requested Region-wide records were not normally maintained by IRS, that it would be burdensome to provide the Region-wide information, that release of the information was prohibited by the law, or that the request should have been directed to the Southwest Region.

On June 15, 1989, MacKenzie called Hirabayashi and renewed the request for the Region-wide information, referring to IRS Western Region, supra. Although denying the request for Region-wide information, Hirabayashi agreed to send MacKenzie the IRS Salt Lake City disciplinary records by FAX. MacKenzie also asked for information concerning the number of improper accesses to IDRS at IRS Salt Lake City. Hirabayashi indicated that would be no problem and agreed to send a printout of this information. Hirabayashi also agreed to provide the full audit trail of the grievant's allegedly improper accesses to IDRS. With respect to MacKenzie's request for a copy of IRS employee Tonni Johnson's "Daily Report of Collection", Hirabayashi and MacKenzie agreed that, because of the huge volume of such reports, management would make the daily reports available for Richards to review and management would provide NTEU with copies of the documents specified by Richards. Hirabayashi did not indicate that to provide the requested region wide information was burdensome, that such records were not normally kept by IRS, that release of the records were prohibited by law, or that the request for the information should have been directed to the Regional Office or to the individual offices within the Southwest Region.

On June 16, 1989, MacKenzie received from Hirabayashi a FAX which contained the IDRS audit trail for the grievant, a computer printout of all illegal accesses to IDRS in IRS Salt Lake City between August 1983 and December 1988, and proposal and decision letters in the cases of two employees at IRS Salt Lake City who had been disciplined for improper IDRS access. In order to obtain the documents concerning the two employees at IRS Salt Lake City who had been disciplined Hirabayashi examined a logbook for IRS Salt Lake City maintained in the EMR Section, which was physically located in the Ogden Service Center, and identified the two employees who had been disciplined. She then retrieved the appropriate documents from a comprehensive file system also maintained in the EMR Section. It took Hirabayashi about one-half hour to identify the two disciplined employees and to obtain the documents.

The record herein establishes that seven offices in the Southwest Region[4/] maintained logbooks similar to the logbooks maintained in IRS Salt Lake City and Ogden Service Center. These logbooks contain chronological listings of all discipline cases and adverse actions against the employees in each office. The logbooks, list among other items, the names of the employees, a brief description of basis of the discipline, the date of the action or proposed action, the date the case was closed and the final disposition of the case. Hirabayashi examined the IRS Salt Lake City logbook under adverse actions and discipline cases and looked at the brief descriptions of the bases for actions to ascertain whether illegal IDRS access was involved. Walker testified that he was pretty sure most offices do maintain such logbooks and Respondents put in no evidence that all the individual offices did not maintain such log books.

In light of the foregoing and because Respondents, with knowledge whether such logbooks are maintained in each office, did not deny the existence of such logbooks, I find that each office in the Southwest Region does maintain such a logbook that permits easy identification of employees who were disciplined or were the subject of adverse actions because of illegal access to IDRS.

No records or logbooks of disciplinary and adverse actions are maintained by IRS at either the national level or at the Southwest Region.

IRS' regulations require that records of disciplinary and adverse actions must be maintained for various periods. The EMR section at Ogden Service Center maintains separate files for IRS Salt Lake City and Ogden Service Center for all discipline and adverse actions for three years. For each action the individual file contains the proposal letter, the decision, and related background material. IRS requires that adverse action files must be retained for four years and discipline case files must be retained for two years, or if appealed for five years. No evidence was submitted that any offices in the Southwest Region did not maintain such files for a number of years.

4/ IRS Salt Lake City, Ogden Service Center, Austin Service Center, Denver District Office, Dallas District Office, Houston District Office and Oklahoma City District Office.

In light of the foregoing I find that all the offices in the Southwest Region maintain for a number of years an individual file for each discipline and adverse action and that once an individual discipline or adverse action is identified it is a simple matter to retrieve the case file and have access to the documents.

The record, however, establishes that no such individual files for discipline or adverse actions are maintained on a Region-wide basis in the Southwest Regional Office.

On June 16, 1989, after receiving the documents sent by Hirabayashi, MacKenzie called Hirabayashi and repeated the request for the Region-wide information and to request a postponement of the June 23 oral reply meeting. Hirabayashi denied both requests. MacKenzie asked Hirabayashi if any of those listed on the printout of illegal IDRS accesses had been disciplined. Hirabayashi later advised MacKenzie that none of those so listed had been disciplined.

By letter dated June 16, 1989 to Hardman, Stetina and Hirabayshi, MacKenzie renewed the request for Region-wide disciplinary records needed to represent the grievant at the oral reply. MacKenzie received no reply.

The oral reply meeting was held on June 23, 1989. MacKenzie, representing the grievant, asked for a postponement until the union received Region-wide disciplinary records involving illegal access to IDRS. MacKenzie explained NTEU was entitled to the Region-wide records because the collective bargaining agreement covers a nationwide unit and the requested records would enable the union to determine whether the grievant's penalty was consistent with penalties imposed for similar infractions, as required by the collective bargaining agreement. MacKenzie argued that employees must be treated fairly throughout the nation, not just within IRS Salt Lake City. MacKenzie stated that NTEU would settle for Region-wide records and would not demand nationwide records. Hirabayashi stated she wished to proceed with the oral reply meeting based on the policies at IRS Salt Lake City. Hirabayashi also stated that Region-wide records were not maintained at IRS Salt Lake City, that she was not sure whether such records were maintained by IRS at the Region, and that if NTEU could cite specific cases within the Region she would provide the disciplinary records for such cases. Hirabayashi informed MacKenzie that Hirabayashi had been advised by the Regional Counsel that to provide the records on a Region-wide basis would be a voluminous job.

MacKenzie then asked that the oral reply meeting be postponed until NTEU received information about specific cases. Hirabayashi refused to agree to the postponement. After again referring Hirabayashi to IRS Western Region, supra, in support of the Region-wide request, MacKenzie proceeded to make the oral reply.

On July 27, 1989, the grievant was issued a 30-day suspension based on the charges contained in the May 16 letter of proposed removal. MacKenzie rushed a letter to District Director Carol Fay renewing the request for the Region-wide information so the union would have a chance to litigate the issue after being able to evaluate the information and make an informed decision. MacKenzie also asked that the suspension be stayed until after she received the information. Neiser responded that IRS was not going to stay the suspension.

On August 14, 1989, NTEU and NTEU Chapter 17 invoked arbitration over the grievant's suspension. The arbitration hearing was scheduled for February 7, 1990.

Discussion and Conclusions of Law

General Counsel of the FLRA contends that Respondents violated section 7116(a)(1)(5) and (8) of the Statute by failing to comply with section 7114(b)(4) of the Statute by failing and refusing to furnish NTEU with Region-wide disciplinary records needed by the union to represent a unit employee at an oral reply concerning a proposal to remove the grievant based on improper access to IDRS.

In defining an agency's duty to negotiate in good faith, section 7114(b)(4) of the Statute requires an agency, to the extent not prohibited by law, to furnish the exclusive representative data which is normally maintained by the agency in the regular course of business; which is reasonably available and necessary for full and proper discussion, understanding and negotiation of subjects within the scope of collective bargaining; and which does not constitute guidance, counsel or training for management officials or supervisors, relating to collective bargaining.

Respondents contend that since the Respondents did not maintain the requested Region-wide records "in this manner" it did not maintain the requested records, and this is a valid defense to a request under section 7114(b)(4) of the Statute, citing Federal Aviation Administration, Alaska

Region Office, 7 FLRA 164 (1981). The cited case involved management's refusal to furnish supervisors to the union to testify at an arbitration. The FLRA decided that witnesses were not data within the meaning of section 7114(b)(4) of the Statute and this case is inapposite to the subject case. IRS did in fact maintain the files containing the requested documents. It maintained the requested data in the form requested, although not in the Regional Office or in any one office. I find no requirement in the Statute that the requested data must be maintained in any one place for a union to be entitled to it under section 7114(b)(4). Cf IRS Western Region, supra; and Department of Defense Dependents Schools, Washington, D.C. and Department of Defense Dependents Schools, Germany Region, 19 FLRA 790 (1985), reversed on other grounds and remanded, sub nom., North Germany Area Council, Overseas Education Association v. FLRA, 805 F. 2d 1044 (D.C. Cir. 1986), modified on remand, 28 FLRA 202 (1987), hereinafter called DODDS.

Section 7114(b)(4)(A) requires only that the agency must furnish the requested data when it is normally maintained by the agency in the regular course of business.

The record establishes that each office in the Southwest Region maintained separate files for a number of years for each individual discipline and adverse action which contained the pertinent documents for each case. These files are kept in each office in a system whereby each case file can be located once the name of the individual is identified.

Respondents claim, very similar to the argument described above, that because such files were not kept in the Regional Office, or in any one office, they were not normally maintained by the agency in the regular course of business. This contention is rejected. Rather the record establishes that each office within the Southwest Region did normally maintain the files containing the documents requested in the regular course of business. Thus such data was maintained on a Region-wide basis, albeit not in the Regional Office or even in any one office. There is no requirement in the Statute that for data to be maintained in the normal course of business it must be kept in any special place or, for that matter, that it be kept in any one place. Cf. IRS Western Region, supra, and DODDS, supra.

In light of the foregoing, I conclude that the request for the documents concerning employees who were disciplined for improper accessing the IDRS on a Region-wide basis was a

request for data that is maintained in the normal course of business, within the meaning of section 7114(b)(4)(A) of the Statute.

Section 7114(b)(4)(B) of the Statute requires that requested data must be "reasonably available". Respondents contend that to supply the requested documents in the subject case would have been unduly burdensome, voluminous was the expression used to deny the request, so they were permitted to deny the union's request. Respondents put in no evidence as to the voluminous nature of filling the request for documents. Rather Respondents seem to rely on the fact that the requested documents are contained in files that are located in fourteen separate offices. There was no estimate as to how many documents would have been involved and how much time would have been needed to identify, obtain and copy the requested document. The record establishes that each office contained a logbook and that it was a relatively easy matter to check the logbooks for disciplinary or adverse actions taken against employees for illegal access to IDRS. It was then a simple matter to obtain from the appropriate discipline file the requested documents.

Accordingly, I conclude that Respondents failed to establish that it would have been unduly burdensome to provide NTEU with the requested data. See IRS Western Region, supra; DODDS, supra; and Department of Justice, United States Immigration and Naturalization Service, United States Border Patrol, El Paso, Texas, Case No. 6-CA-80173, OALJ 90-17 (1989), hereinafter called INS.

Section 7114(b)(4)(B) of the Statute requires an agency to furnish the exclusive representative of its employees information that is necessary to enable the union to fulfill its representational responsibilities. DODDS, supra, and IRS Western Region, supra. These representational responsibilities include representing employees who are being, or have been disciplined, and determining whether to take the matters to arbitration, etc. In representing such employees the union is entitled to information necessary to determine whether the employee being represented was treated differently for the same or similar misconduct as other employees and supervisors. Such information includes the discipline records of employees and supervisors who were disciplined for misconduct similar that engaged in by the employee represented by the union. DODDS, supra.

In the subject case NTEU was representing the grievant with respect to the proposed adverse action and resulting

penalty based upon her illegal access to IDRS. NORD II (Revised) and later NORD III, was a collective bargaining agreement for a nationwide unit of employees that required, in Article 39-Adverse Actions, that one of the considerations in determining whether an action against an employee is appropriate is "consistency of the penalty with those imposed upon employees for the same or similar offenses."

The documents requested would have permitted NTEU to make a judgement before the oral reply and before deciding whether to take the matter to arbitration whether the grievant's proposed punishment and actual punishment were consistent with the penalties imposed upon other employees who engaged in similar misconduct. Thus I conclude the documents requested by NTEU were "necessary" for negotiation within the meaning of section 7114(b)(4)(B) of the Statute. DODDS, supra, and IRS Western Region, supra.

Respondents contend that the Region-wide data is irrelevant and not necessary for evaluating disparate treatment with respect to the grievant's proposed punishment and actual punishment. In so arguing Respondents rely upon cases involving determinations by the Merit Systems Protection Board (MSPB), for the proposition that the only relevant information for the purposes of evaluating disparate treatment is from the employee's same module or work unit. Carroll v. Dept. of Health and Human Services, 703 F. 2d 1388, 1390 (Fed. Cir. 1983); Phillips v. GSA, 38 M.S.P.R. 206 (1988), rev'd on other grounds 878 F. 2d 370 (Fed. Cir. 1989); Taylor v. Dept. of Navy, 35 M.S.P.R. 438 (1987); Little v. TVA,20 M.S.P.R. 563 (1984); and Gooch v. Postal Service, 30 M.S.P.R. 90 (1986); see also Kuhlman v. Dept. of Health and Human Services, 10 M.S.P.R. 356 (1982) and Mills v. Dept. of Navy, 30 M.S.P.R. 403 (1986).

Respondents argue that because section 7121 of the Statute permits an employee to appeal an adverse action to either the MSPB or through the grievance procedure to arbitration, and because the Civil Service Reform Act was intended to apply equally, no matter what the forum, arbitrators must apply the same substantive rules and standards that would be applied by the MSPB in deciding whether an adverse action was proper. Respondents cited Cornelius v. Nutt, 472 U.S. 648 (1985), to support this position. Thus, argues Respondents, an arbitrator in the subject case could not consider the consistency of adverse actions given to employees outside the grievant's same

module or work unit, and the Region-wide data is irrelevant and unnecessary.

In Cornelius v. Nutt, supra, the Supreme Court held that an arbitrator hearing a case under the contractual grievance procedure, involving review of an agency's adverse action against two employees, must apply MSPB's definition of "harmful error". In concluding the arbitrator erred in failing to apply MSPB's "harmful error" definition the Supreme Court relied on language in Conference Committee report to the Civil Service reform act that stated, "'when considering a grievance involving an adverse action otherwise appealable to the [Board] . . . the arbitrator must follow the same rules governing burden of proof and standard of proof that govern adverse actions before the Board.' H.R. Conf. Rep. No. 95-1717, p 157 (1978)." Cornelius v. Nutt, supra, at 661.

In light of the foregoing it would at first appear that MSPB's rule limiting disparate treatment consideration only to work module information would apply in the subject case. However, the holding in Cornelius v. Nutt, supra, is that the same rules and standards shall apply to matters that can be taken to either MSPB or arbitration. This was to lead to uniformity in disposition of cases thus avoiding forum shopping. The Supreme Court stated that in reviewing an agency's disciplinary action to determine if there was harmful error in the application of the agency's procedures in arriving at such discipline, if there is a collective bargaining agreement, "The agency's 'procedures' considered by the Board . . . include not only procedures required by statute, rule, or regulation, but also procedures required by the collective bargaining agreement. . . . Thus, in an appeal of an agency disciplinary decision to the Board, the agency's failure to follow bargained-for procedures may result in the action being overturned, but only if the failure might have affected the result of the agency's decision to take disciplinary action . . ." Cornelius v. Nutt, supra, at 659. The Supreme Court was preventing forum shopping by insuring uniformity in the application of law and standards in each individual case, regardless of the forum used, while at the same time recognizing that labor organizations and agencies engaged in collective bargaining can create rights and obligations which must be enforced and recognized, again, regardless of the forum used.

Under the holding of Cornelius v. Nutt, supra, an arbitrator and MSPB would have to consider Article 39 of the

NORD II (Revised) in determining whether the grievant's punishment was appropriate. Thus Article 39's requirement of consis- tency of the penalty with those imposed upon employees for the same or similar offenses would have to be applied and interpreted by an arbitrator or MSPB, depending upon the forum in which review were sought. In the subject case, noting that NORD II (Revised) and NORD III both cover a nationwide unit, an arbitrator might very reasonably determine that nationwide or Region-wide data would be appropriate in determining disparate treatment in the grievant's situation. In the subject case the MSPB cases cited and relied upon by Respondents would not prevent such considera- tion by an arbitrator, or by MSPB, because they do not involve applying and interpreting the terms of collective bargaining agreements in determining the areas to be considered in determining if there had been disparate treatment in discipline cases.

In light of all of the foregoing, I conclude MSPB law does not prevent an arbitrator from considering Region-wide data in determining if the grievant's penalty was appropriate. Thus such information was necessary for NTEU to consider in preparing to represent the grievant at the oral reply and deciding how best to represent her, including whether to proceed to arbitration. DODDS, supra, and IRS Western Region, supra. In this regard I also note the language of the FLRA in Department of the Air Force, Wright-Patterson Air Force Base, 21 FLRA 529 (1986), wherein it states, "The Authority does not agree with the Judge's finding that 'the comparison of penalties imposed by a diverse group of AFLC management officials in different environments would not be relevant and necessary to the processing of the . . . grievance.' Rather, given the general mandate of 'like penalties for like offenses in like circumstances,' the Authority would find such data necessary for the Union to fulfill its representational duties if the information related to discipline of unit employees for similar offenses." Id footnote at 532.

In their brief Respondents contend that because NTEU did not direct the request for Region-wide data to the Regional Office or to each of the individual offices within the Region, Respondents were not obliged to provide the requested data. I reject this contention. NTEU made the request for information to the IRS representative involved in the grievant's discipline. There was no indication made by Respondents at that time that the request was made to the improper person. Rather Respondents denied the request for

other reasons. I conclude that the request for data herein was appropriately made by NTEU.

I reject Respondents' contention that the request for data was too broad because it presumably included employees not within the unit. Again I note that this objection was not raised at the time of the request. The FLRA has held that requests for data for non-unit persons is relevant for comparing consistency of penalties. See DODDS, supra, and Department of the Air Force, Wright-Patterson Air Force Base, supra.

Respondents at no time have alleged that providing the requested information is prohibited by any law. Rather it provided the data for IRS Salt Lake City and offered to provide it for any individual that NTEU could specifically identify. Accordingly, I conclude that the record herein fails to establish that providing the requested data was prohibited by any law.

The data herein was requested for the period from 1984 until the date of the request. Respondents did not contend that they no longer had all the requested documents and produced no evidence to that effect. Of course Respondents are obliged to furnish only the documents they have.

Respondents have at no time contended that the requested data was guidance, advice, counsel or training provided management officials or supervisors, relating to collective bargaining and put in no evidence to support such a finding. Accordingly, I find the requested data was not such guidance, advice, counsel or training.

In light of all of the foregoing I conclude that Respondents were obliged under section 7114(b)(4) of the Statute to furnish to NTEU the Region-wide data it requested and Respondents failure to comply with the request for the information constituted a violation of section 7116(a)(1)(5) and (8) of the Statute. IRS Western Region, supra, and DODDS, supra.

Because arbitration was being sought to review the grievant's punishment and the requested data was to be used to decide whether to proceed to arbitration and, if arbitration is sought, to be presented to the arbitrator, I conclude the appropriate remedy herein must require Respondents to furnish the requested data and, upon request of NTEU, to proceed to arbitration concerning the grievant's punishment.

Having found that Respondents violated section 7116(a)(1)(5) and (8) of the Statute, I recommend the authority issue the following Order:

ORDER

Pursuant to section 2423.9 of the Authority's Rules and Regulations and section 7118 of the Federal Service Labor-Management Relations Statute, it is hereby ordered that Internal Revenue Service, Washington, D.C. and Internal Revenue Service, Salt Lake City District, Salt Lake City, Utah shall:

1. Cease and desist from:

(a) Failing and refusing to furnish National Treasury Employees Union, the employees' exclusive representative, all disciplinary documents issued to all employees in the Southwest Region from January 1, 1984 until May 24, 1989 concerning alleged improper accessing of the employee's own tax return or another individual's tax return for personal purposes including partnerships and corporate tax returns.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights assured by the Federal Service Labor-Management Relations Statute.

2. Take the following affirmative action in order to effectuate the purposes and policies of the Federal Service Labor-Management Relations Statute:

(a) Furnish the National Treasury Employees Union all disciplinary documents issued to all employees in the Southwest Region from January 1, 1984 until May 24, 1989 concerning alleged improper accessing of the employee's own tax return or another individual's tax return for personal purposes including partnerships and corporate tax returns.

(b) Upon the request of National Treasury Employees Union, proceed to arbitration under the collective bargaining agreement concerning the penalty issued to the grievant for her alleged improper access to the Integrated Data Retrieval System.

(c) Post at the Salt Lake City District Office copies of the attached Notice on forms to be furnished by

the Federal Labor Relations Authority. Upon receipt of such they shall be signed by the District Director for the Salt Lake City District and shall be posted and maintained by him for 60 consecutive days thereafter, in conspicuous 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.

(d) Pursuant to section 2423.30 of the Authority's Rules and Regulations, notify the Regional Director, Region VII in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

Issued: September 25, 1990, Washington, D.C.

Samuel A. Chaitovitz

SAMUEL A. CHAITOVITZ
Administrative Law Judge

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 and refuse to furnish National Treasury Employees Union, the employees' exclusive representative, all disciplinary documents issued to all employees in the Southwest Region from January 1, 1984 until May 24, 1989 concerning alleged improper accessing of the employee's own tax return or another individual's tax return for personal purposes including partnerships and corporate tax returns.

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 the National Treasury Employees Union all disciplinary documents issued to all employees in the Southwest Region from January 1, 1984 until May 24, 1989 concerning alleged improper accessing of the employee's own tax return or another individual's tax return for personal purposes including partnerships and corporate tax returns.

WE WILL upon the request of National Treasury Employees Union, proceed to arbitration under the collective bargaining agreement concerning the penalty issued to the grievant for her alleged improper access to the Integrated Data Retrieval System.

_____
(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 VII, whose address is: 535 16th Street, Suite 310, Denver, CO 80202 and whose telephone number is: (303) 844-5224.