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

U.S. DEPARTMENT OF JUSTICE, OFFICE OF JUSTICE PROGRAMS Respondent and AMERICAN FEDERATION OF STATE, COUNTY AND, MUNICIPAL EMPLOYEES, LOCAL 2830, AFL-CIO Charging Party	Case No. 3-CA-10207

Anna De La Torre, Esq.
For the General Counsel

Mr. Stuart S. Smith
For the Charging Party

Inez Alfonzo-Lasso, Esq.
For the Respondent

Before: ELI NASH, JR.
Administrative Law Judge

DECISION ON REMAND

Statement of the Case

This is a proceeding under the Federal Service Labor-Management Relations Statute, as amended, 5 U.S.C. § 7101 et seq., (herein called the Statute), and the Rules and Regulations of the Federal Labor Relations Authority (herein called the Authority), 5 C.F.R., Chapter XIV, Part 2423.

Pursuant to an unfair labor practice charge filed on January 11, 1991, by the American Federation of State, County and Municipal Employees, AFL-CIO (herein called the Union) the Regional Director of the Washington, D.C. Region of the Authority, issued a Complaint and Notice of Hearing alleging that on March 26, 1991 the U.S. Department of Justice, Office of Justice Programs (herein called the

Respondent) refused to comply with section 7114(b)(4) of the Statute and furnish the Union with certain information in violation of section 7116(a)(1), (5) and (8) of the Statute.

Thereafter, on May 10, 1991, Respondent filed a Motion to Dismiss the Complaint which was referred to the Chief Administrative Law Judge on May 17, 1991. Respondent's motion was denied by the Chief Administrative Law Judge on June 3, 1991. Following the denial, on June 14, 1991, under section 2429.1(a) of the Rules and Regulations, the parties filed a stipulation of facts to the Authority. On September 26, 1991, the Authority in 42 FLRA 371 (1991), remanded the case to the Regional Director for further proceedings.

In remanding the case, the Authority stated, among other things, that the "stipulated record contains insufficient information" for it to determine whether Respondent violated the Statute by refusing to furnish the Union certain information requested under section 7114(b)(4). Therefore, the Authority ordered factual determinations as follows: (1) the reason(s) for the Union's request for the information; (2) whether the Respondent offered to provide the Union with sanitized data and, if so, the precise form and content of the data offered; (3) whether the Union was willing to accept sanitized data from the Respondent and, if so, the form and content of the data; and (4) the number of employees in each of Respondent's sub-offices.

On October 2, 1991 the Regional Director moved to reschedule the hearing. Thereafter, on October 8, 1991 the hearing was rescheduled for January 14, 1992.

The hearing was held before the undersigned in Washington, D.C. All parties were represented and afforded the full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence and to argue orally. Briefs which were timely filed by all the parties have been fully considered. Following the hearing, Respondent filed a motion to amend its brief on remand. Since judicial notice is taken of the case cited by Respondent as a reason to allow it to amend the brief, its motion is, denied.[1/]

1/ Respondent's objection to Joint Exhibit 5 and General Counsel's Exhibits 2(a) and 2(b) which were timely served, is overruled. Accordingly, the above exhibits are received as part of the instant record.

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

Findings of Fact

The Office of Justice Programs is composed of about 330 employees of whom about 170-180 are included in the bargaining unit represented by the Union. The Office of Justice Programs is organizationally divided into six separate sub-offices. The Union represents employees in all six sub-offices.

The smallest staff in any of Respondent's six sub-offices is found in the Office of Victims of Crime which has 23 employees. The remaining five sub-office staff sizes are as follows: The Assistant Attorney General's Office - 126 employees; The Office of Juvenile Justice and Delinquency Prevention - 58 employees; The Bureau of Justice Statistics - 55 employees; The Bureau of Justice Assistance - 48 employees; and, The National Institute of Justice - 39 employees.

On September 6, 1990, Stu Smith, the President of both Council 26 and the Union, requested three categories of data concerning both bargaining and non-bargaining unit employees. First, Smith asked for a list of all employees in Respondent's six sub-offices who had received outstanding evaluations from January 1, 1988 to September 6, 1990. Secondly, he asked for a list of all employees who had during the same time period received awards. Finally, Smith asked for a list of all employees who had been promoted since January 1, 1990. About five weeks later, on October 5, 1990, Respondent wrote Smith informing him that it was compiling the data he requested. Some seven weeks after Smith's request Respondent furnished him with the names of the employees who had been promoted since January 1, 1990. Failing to receive any further data, Smith filed the subject unfair labor practice charge on January 11, 1991.

On January 31, 1991, almost four months and three weeks after the September 6, 1990, data request, and after an unfair labor practice charge had been filed, Respondent furnished Smith a list of employees who had received awards and for the first time notified him that it would not provide a list of employees who had received outstanding performance appraisals.

Regarding whether the data was offered in sanitized form, in May 1991, after discussing the matter between

December and May 1991, finally, Smith and Respondent discussed ways the performance rating data might be provided without identifying employee recipients. Concerning whether the Union was willing to accept sanitized data, Smith submitted a written proposal which suggested that Respondent merely identify the number of employees by department and grade who had received outstanding appraisals in each of Respondent's six sub-offices, without listing any names. Respondent did not reply to this written offer. As to the form and content of the data offered by Respondent, Personnel Director, Colleen Boskin, testified that she had compiled data showing the recipients of outstanding performance by number and grade, without names and personal identifiers such as organizational units, because some offices were so small that providing the data in even a sanitized manner would enable Smith to identify the recipient of the outstanding performance rating. Boskin admitted that this perceived problem did not exist in all of Respondent's offices, but could not recall in which offices release of sanitized data would act as a "personal identifier." Nevertheless, Boskin stated that she did not provide Smith the sanitized data of recipients of outstanding ratings even where release did not act as a "personal identifier" of the recipient.

With respect to the Union's need for the requested data, Smith stated that the Union required the sanitized data showing the distribution of outstanding ratings identified only by the office, grade, and the bargaining unit status of the recipient, in order to aid it in policing and administering the parties' collective bargaining agreement and especially to enable the Union to determine whether non-unit employees, who compose over 45 percent of Respondent's employees, receive preferential treatment over unit employees in promotion, appraisal and award matters.

Conclusions

In remanding the case for further proceedings, the Authority noted that the parties' briefs showed that they disagreed "not only on the facts but also on the issues to be resolved." The "further proceedings" ordered by the Authority, in my opinion meant that the parties should supplement the stipulation, either by further stipulation or by a hearing, which was done here. Furthermore, the Authority, in essence, viewed the briefs submitted as insufficient to deal with the issues of the case. Since the Authority on remand made it clear that the issues had not been joined in those briefs, I have not considered either the General Counsel or Respondent's submission to the

Authority. In view of this disposition, it is unnecessary for me to rule on Respondent's motion to strike portions of the General Counsel's brief to the Authority. While this disagreement continued during the course of the hearing, the effort here is to simplify the issues based on the prior stipulation and the record made at the hearing.2/ My view is that the issues herein are: (1) Whether the list of all employees receiving outstanding evaluations since January 1988 is necessary for the full and proper discussion and understanding of subjects within the scope of collective bargaining and whether the failure and refusal to supply that data was a failure to comply with section 7114(b)(4) and therefore, a violation of section 7116(a)(1), (5) and (8) of the Statute; (2) Whether the request for a list of all employees who received outstanding performance evaluations since January 1, 1988 violated the Privacy Act; (3) Whether Respondent's delay in furnishing a list of employees who received awards in 1988, 1989 and 1990 pursuant to the Union's September 6, 1990 request violated section 7116(a)(1) and (5) of the Statute.

1. Whether the list of all employees receiving outstanding evaluations since January 1988 is necessary for the full and proper discussion and understanding of subjects within the scope of collective bargaining and whether the failure and refusal to supply that data was a failure to comply with section 7114(b)(4) and therefore, a violation of section 7116(a)(1), (5) and (8) of the Statute.

Respondent argues that the Union did not express why the information was "necessary" at the time the request was made, thereby, excusing it of any obligation to supply the requested data. Respondent relies on Defense Mapping, 21 FLRA 597 (1986); and, Social Security Administration, 21 FLRA 253, 278 (1986) in submitting that it need not lay open its books to every Union request for information. A look at the complete history of the Social Security case, supra, reveals however, that the Authority reversed its view and adhered to the 2d Circuit's ruling in the case that it must "consider the full range of Union responsibilities in

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2/ The Authority stated that the parties had stipulated that "the requested information is normally maintained by the Respondent in the regular course of business and does not constitute, guidance, advice, counsel, or training provided for management or supervisors relating to collective bargaining." Consequently, it is unnecessary for the undersigned to make findings in that respect.

both negotiation and administration of agreement[s]". Thus the Authority cited the circuit court's language in American Federation of Government Employees, AFL-CIO v. FLRA F.2d 769, 775 (2d Cir. 1987) favorably in Internal Revenue Service, Washington, D.C., 32 FLRA 920, 924 (1988) when it held that the "union's request must be evaluated in the context of the 'full range' of its representational responsibilities."

Respondent's Assistant Attorney General, Ricardo Narvaiz testified that Smith, at no time explained to him why the data requested was necessary. Narvaiz recalled that sometime during the period December 1990 to January 1991, he asked Smith why the requested data was necessary and Smith had replied that he needed it to carry out union representational functions. On January 11, 1991, Smith repeated his belief, in writing, to Narvaiz telling him that he was incorrect in his interpretation of 5 CFR 293.311(a)(4); that the agency had routinely announced the names of people receiving outstanding evaluations in the past; that the law cited by Navariz applied to the public and not to the exclusive representative; repeated that section 7114(b)(4) and Article 2, Section 12 of the Negotiated Agreement justified the request for information needed to fulfill its representational functions.

There is no question that Narvaiz did not believe that the representational functions rationale urged by Smith was a "good reason" for providing the data. His expressed belief was that the Union must have some "firm basis in fact to become involved in a specific issue." Although admittedly unsatisfied with Smith's response, Narvaiz stated that he did not question Smith further or ask him to explain the nature of the representational functions. Further questioning revealed that his understanding of the meaning of "representational functions" encompassed policing a contract, looking at grievances and investigating things in the work place. Narvaiz also testified that Respondent is vehement in its position that Privacy Act considerations take precedence over the necessary and relevant standards of section 7114(b)(4) and accordingly that, Respondent's position is that the balancing process is inappropriate in the instant case.

Respondent reads the Union's request in this case too narrowly. The concept that information sought under section 7114(b)(4) must be absolutely essential to be "necessary" has not been adopted by the Authority. It is sufficient that the information is useful for a valid representational purpose. U.S. Department of Justice, Immigration and Naturalization

Service, Border Patrol, El Paso, Texas, 37 FLRA 1310, 1320 (1990). As we later see, Smith articulated several well-grounded reasons why the requested information would be helpful in performing representational functions. Respondent maintains, the only way it could furnish the Union the requested information would be for the Union to obtain waivers for release of the information from the employees involved, but was never really specific about how the Union was to go about obtaining such waivers. Furthermore, Respondent relies on a line of National Labor Relations Board cases containing a doctrine of "presumptive relevance" which does not apply in the public sector.

In determining whether there is a duty to furnish requested data, the nature of the request and the circumstances of each particular case are considered. See U.S. Department of Defense, Defense Logistics Agency, Defense Contract Administration Services Region, Boston, Massachusetts, 31 FLRA 800, 808-809 (1988). In reviewing Smith's request, it becomes clear that it was based on a reason which makes it specifically necessary for the exclusive representative to perform its full range of representational duties. As Smith explained at the hearing, the Union needed the information to determine whether anyone was receiving inappropriate seniority and it needed to know actual identities. In comparable situations it has been found that supplying the requested data was necessary to allow the union to monitor a performance appraisal system and the administration of the system. Internal Revenue Service, Washington, D.C. and Internal Revenue Service, Omaha District, Omaha, Nebraska, 25 FLRA 181 (1987). Further, data requests for the names and duty stations of unit and non-unit employees who have received outstanding performance evaluations have been found necessary for the full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining. Department of Commerce, National Oceanic and Atmospheric Administration, National Weather Service, Silver Spring, Maryland, 38 FLRA 120 (1990), enforcement denied sub nom. FLRA v. U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Weather Service, Silver Spring, Maryland, No. 91-1175 (D.C. Cir. 1992). The use to which Smith intended to put the information is consistent with monitoring Respondent's performance appraisal system to insure that both bargaining unit and non-bargaining unit employees were not improperly rated outstanding and thus given additional service time for reduction-in-force purposes. It can hardly be argued that a union should wait until an actual reduction-in-force takes place and the

ratings are stale to challenge discriminatory or improper evaluations. Preventing situations where employees and supervisors are given not only unfair but, invaluable edges in a reduction-in-force situation certainly can be argued as within the full range of a union's representational functions. Since it can not be determined in advance when a reduction-in-force will occur monitoring such as suggested here seems perfectly appropriate. In addition, Respondent's preoccupation with its Privacy Act considerations prevented any real inquiry by Respondent into why the data was necessary. If it really thought there was a real issue as to why the information was necessary, it seems to me, that in this and other information cases, the agency is not restricted. It can therefore, ask why the information is necessary, thereby becoming involved in an effective dialogue instead of playing the cat and mouse game so often seen in information cases of this type. In such circumstances, noting particularly Respondent's apparent unwillingness to discuss anything other than the Privacy Act implications of the request, it appears that further explanation of why the data was necessary to perform representional functions would have been futile. Thus, it is found that stating the information was needed for representational functions, in this case, meets the requirement that the information was "necessary".

In the same vein, Respondent argues that the Union must show a "particularized need" for the data to make it "necessary". NLRB v. FLRA, 952 F.2d 523 (D.C. Cir. 1992); Scott Air Force Base v. FLRA, 956 F.2d 1223 (D.C. Cir. 1992) In the above cases the D.C. Circuit indicated that in addition to the Statutory requirement of "necessity" for data in section 7114(b)(4)(B) of the Statute, it was adding the requirement that the exclusive representative must show a "particularized need" for the data in the circumstances of those cases. At this writing the Authority has not adopted the circuit court's approach. In any event, it is my view that the evidence set forth to support a showing of "necessity" does satisfy the circuit court's additional standard of establishing a "particularized need" for the data requested.

2. Whether the request for a list of all employees who received outstanding performance evaluations since January 1, 1988 violated the Privacy Act.

At the outset, it must be recognized that Authority precedents offer little comfort for Respondent's position that outstanding performance evaluations need not be

furnished to an exclusive representative because of Privacy Act considerations. The principles responsibly established by the Authority must be applied here. U.S. Department of the Army, Fort Stewart Schools, Fort Stewart, Georgia, 37 FLRA 409 (1990).

Respondent contends that release of the data would violate section 552a(b) of the Privacy Act of 1974, 5 U.S.C. 552a, which provides, inter alia, that absent written consent of the individual to whom the record pertains, disclosure of any covered agency record is prohibited unless authorized by one or more of the enumerated exemptions. The General Counsel contends that disclosure is permitted under 552a(b)(2) of the Privacy Act which essentially permits disclosure if such would be required by 5 U.S.C. 552, known as the Freedom of Information Act (FOIA). However, section 552(b)(6) of the FOIA provides that the requirement of disclosure of information under the FOIA does not apply to "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. . . ."

When assessing whether information requested by a union is exempt from disclosure under section 552(b)(6) of the FOIA, the Authority has repeatedly balanced the individual's right to privacy against the public interest in having the information disclosed. See U.S. Department of Health and Human Services, Social Security Administration and Social Security Administration Field Operations, Region II, 43 FLRA 164 (1991) (Health and Human Services, Region II) and cases cited therein; and National Federation of Federal Employees, Local 858 and U.S. Department of Agriculture, Federal Crop Insurance Corp., Kansas City, Missouri, 42 FLRA 1169 (1991). It has also consistently rejected reliance on the Privacy Act as a vehicle to circumvent the broad requirements of section 7114(b)(4). Furthermore, determining what is "necessary" and what is prohibited by the Privacy Act is a function of the fact and a Privacy Act defense prevails only where disclosure of the requested information would constitute a "clearly unwarranted" invasion of personal privacy. U.S Department of Transportation, Federal Aviation Administration, New England Region, Burlington, Massachusetts, 38 FLRA 1623, 1630 (1991). While the Privacy Act generally prohibits the disclosure of personal information about Federal employees without their consent, section 552(b)(2) of the Privacy Act provides that the disclosure prohibition is not applicable if disclosure of the data is required under the Freedom of Information Act (FOIA). FOIA exemption 552(b) (6) requires the disclosure of data in personnel files unless such

disclosure constitutes a "clearly unwarranted" invasion of personal privacy. Again one finds the Authority has balanced the individual's right to privacy against the public interest in having the information disclosed. Veterans Administration Medical Center, Jackson, Mississippi, 32 FLRA 133, 139-140 (1988); Department of Defense, Maxwell Air Force Base, Georgia, 36 FLRA 110 (1990); U.S. Department of the Navy, Portsmouth Naval Shipyard, Portsmouth, New Hampshire, 37 FLRA 515, 501-31 (1990), enforcement denied sub nom. FLRA v. U.S. Department of the Navy, Naval Communications Unit Cutler, East Machias, Maine, 941 F.2d 49 (1st Cir. 1991); U.S. Department of Health and Human Services, Social Security Administration and Social Security Administration, Field Operations, Region II, 43 FLRA 164, 166 (1991). Although enforcement was denied in the Portsmouth Naval Shipyard case, supra, the Authority continues to adhere to its holding. Social Security Administration, Hemet Branch Office, Hemet, California, 43 FLRA 455 (1991). In applying this balancing test, the Authority looks at the public interest embodied in both section 7101 and 7114(b)(4) of the Statute.

Likewise, in U.S. Equal Employment Opportunity Commission, Washington, D.C., 20 FLRA 357, 361 (1985), the Authority held that, "In determining whether 'necessary' data under section 7114(b)(4) . . . should be disclosed to the Union, the Authority will balance the necessity of the data for the Union's purposes against the degree of intrusion on the individuals's privacy interests caused by disclosure of the data." Applying this test in National Labor Relations Board, Office of the General Counsel, Washington, D.C. and National Labor Relations Board Union, 37 FLRA 1036, 1044-1045 (1990), the Authority agreed with an arbitrator's findings that appraisal files should be released to the union because they were not "stigmatizing" to the employees and would not subject them to "harassment, disgrace, loss of employment or friends." The Authority went on to balance the employees' privacy interests against the union's need for the appraisal files and found that the public interest in disclosure to the union outweighed the personal privacy interests of the employees.

National Weather Service, supra, offers yet another example where the Authority found a union's request for the names and duty stations of all employees who received commendable or outstanding ratings to come within the FOIA, section 552(b)(6) exemption. There it was found that the union's interest in monitoring the activity's performance appraisal system outweighed the employees' privacy interests. The identical situation exists in the instant case where the

Union seeks the data to monitor Respondent's fair and equitable application of the performance appraisal system.

In U.S. Department of Health and Human Services, Social Security Administration and Social Security Administration Field Operations, Region II, 43 FLRA 164, 178, 180 (1991), the Authority considered a data request for employees' unsanitized performance appraisals requested to enable the Union to determine whether the activity had given lower appraisals for certain tasks than the prior year. The union planned to use the data to establish whether appraisals were lower and, if so, to then ask individual employees if they wanted the Union to grieve their appraisal rating. The activity refused to provide the data claiming that its release was barred by the Privacy Act. The Authority analyzed the request using the traditional "public interest" balancing test as well as the public interest identified by the Supreme Court in United States Department of Justice v. Reporters Committee for Freedom of the Press, 489 U.S. 749, 782 (1989). The Authority found that the requested data was necessary for a clearly representational purpose and that its release was not only in the public interest but also safeguarded the public interest. The Authority then described the Reporters Committee 'public interest' as taking into account "the nature of the requested document and its relationship to the basic purpose of the FOIA to open agency action to the light of public scrutiny." Social Security Administration, supra, at 167. The Authority agreed with the Administrative Law Judge's finding that there was no evidence that the Union planned to publicly disclose the data or desired the data for anything more than its representational activities. Accord, U.S. Department of Transportation, Federal Aviation Administration, National Aviation Support Facility, Atlantic City Airport, New Jersey, 43 FLRA 191 (1991), in which the Authority found a statutory duty to furnish the union with the transcript of an EEO hearing, as disclosure would open to public scrutiny the manner in which an agency administers its selection process. There it was noted that the transcript pertained "to the decisions the Agency takes in selecting among candidates and would open to 'public scrutiny' what the agency is 'up to' in its hiring and promotion practices" supra, at 203.

Consistent with the above decisions, the Authority most recently in Department of Justice, U.S. Immigration and Naturalization Service, U.S. Border Patrol, El Paso, Texas, 43 FLRA 697 (1991), found that the agency had an obligation to furnish the Union with, inter alia, unit employees'

performance appraisals which the union had requested in order to investigate a potential grievance.

An argument can be made herein that since the Union agreed to receive the requested data in a sanitized form, the Authority need not reach the issue whether release of the names of employees who received outstanding performance ratings was violative of the Privacy Act. Respondent has refused to provide this data in even the sanitized form offered by the Union which, in effect, omits the recipients' name and identifies by grade level the number of outstanding ratings received by employees in each of Respondent's six sub-offices. Given the size of Respondent's operations, it is found that identifying recipients of outstanding performance ratings by the office to which the recipient is assigned and not by name does not serve as a "personal identifier" of the employees herein. See Department of Health and Human Services, Region IV, Health Care Financing Administration, 21 FLRA 431 (1986).

Assuming Respondent's decision to withhold the sanitized data in offices where its release would somehow act as a "personal identifier," it is clear that the "personal identifier" rationale is not a legitimate concern in the majority of Respondent's sub-offices. Even Respondent's Personnel Director testified to this effect when she stated that the "personal identifier" concern cropped up in only "some offices" and conversely did not exist in all of Respondent's six sub-offices. This knowledge notwithstanding, Respondent supplied no data.

Based on the facts of the case and the cited precedents, the undersigned is obliged to find that Respondent's failure and refusal to furnish the Union with the requested data constitutes a violation of section 7116(a)(1), (5) and (8) of the Statute.

3. Whether Respondent's delay in furnishing a list of employees who received awards 1988, 1989 and 1990 pursuant to the Union's September 6, 1990 request violated section 7116(a)(1) and (5) of the Statute.

The issue of timeliness of a response was raised here by the General Counsel, but not responded to by the Respondent. Thus, Respondent never addressed its failure to provide the requested information or to give the Union any reason why it was not supplying the data for several months after the request was made. In addition, the General Counsel cited several cases which indicate that an agency has an

affirmative obligation to respond to information requests under section 7114(b)(4). Army and Air Force Exchange Service, McClellan Base Exchange, 35 FLRA 764 (1990); U.S. Naval Supply Center, San Diego, California, 26 FLRA 324 (1987), U.S. Border Patrol, El Paso, Texas, supra, at 710-711.

Factually, this case is very close to U.S. Border Patrol, El Paso, Texas, supra, where a respondent did not provide the requested information, i.e., a list of employees who received awards in 1988, 1989 and 1990, for over a four month period and then only after the subject unfair labor practice charge had been filed. Although the above cited cases make it clear that there is an affirmative obligation to respond to requests for information under section 7114(b)(4) they also contain an allegation of such a violation. I find no such allegation in the charge, complaint or in the stipulation to the Authority where the issues in the case were set out. Furthermore, the facts elicited at the hearing do not reveal this as an allegation. Since the matter was neither alleged nor tried, I cannot find it violative of the Statute. Department of Health, Education and Welfare, Office of Civil Rights, Region VI, Dallas, Texas, 5 FLRA 373 (1981). Accordingly, it is found that Respondent did not violate Section 7116(a)(1) and (5) by delaying its response to the Union's September 6, 1990 request for data.

Based on the foregoing it is recommended that the Authority adopt the following:

ORDER

Pursuant to section 2423.29 of the Federal Labor Relations Authority's Rules and Regulations and section 7118 of the Federal Service Labor-Management Relations Statute, it is hereby ordered that the U.S. Department of Justice, Office of Justice Programs, Washington, D.C., shall:

1. Cease and desist from:

(a) Refusing to furnish, upon request of the American Federation of State, County and Municipal Employees, Local 2380, AFL-CIO, the exclusive representative of certain of its employees, the names of bargaining unit and non-bargaining unit employees who received outstanding performance evaluations since January 1, 1988.

(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 the American Federation of State, County and Municipal Employees, Local 2380, AFL-CIO, the exclusive representative of certain of its employees, the names of bargaining unit and non-bargaining unit employees who received outstanding performance evaluations since January 1, 1988.

(b) Post at its Washington, D.C. facilities where bargaining unit employees represented by the American Federation of State, County and Municipal Employees, Local 2380, AFL-CIO, are located, 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 Assistant Attorney General for the Office of Justice Programs 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 of the Washington Regional Office, Federal Labor Relations Authority, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply.

Issued, Washington, DC, October 30, 1992

ELI NASH, JR.
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 refuse to furnish, upon request of the American Federation of State, County and Municipal Employees, Local 2380, AFL-CIO, the exclusive representative of certain of our employees, the names of bargaining unit and non-bargaining unit employees who received outstanding performance evaluations since January 1, 1988.

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.

WE WILL furnish, to the American Federation of State, County and Municipal Employees, Local 2380, AFL-CIO, the exclusive representative of certain of our employees, the names of bargaining unit and non-bargaining unit employees who received outstanding performance evaluations since January 1, 1988.

_____
(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, Washington Regional Office, whose address is: 1111 18th Street, NW, 7th Floor, P.O. Box 33758, Washington, DC 20033-0758, and whose telephone number is: (202) 653-8500.