



FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C.

OALJ 15-36

DEPARTMENT OF THE AIR FORCE
LUKE AIR FORCE BASE, ARIZONA

RESPONDENT

AND

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 1547

CHARGING PARTY

Case Nos. DE-CA-14-0006
DE-CA-14-0023
DE-CA-14-0036
DE-CA-14-0037

Michael Farley
For the General Counsel

Phillip G. Tidmore
For the Respondent

Harley Hembd
For the Charging Party

Before: CHARLES R. CENTER
Chief Administrative Law Judge

DECISION

STATEMENT OF THE CASE

This case arose under the Federal Service Labor-Management Relations Statute (Statute), 5 U.S.C. §§ 7101-7135 and the revised Rules and Regulations of the Federal Labor Relations Authority (FLRA/Authority), part 2423.

On October 17, 2013, the American Federation of Government Employees (AFGE), Local 1547 (Union) filed four unfair labor practice (ULP) charges with the Denver Region of the FLRA, against the Department of the Air Force, Luke Air Force Base, Arizona (Respondent/Agency) in Case Nos. DE-CA-14-0006, 0023, 0036, and 0037 alleging that the Respondent failed to provide information pursuant to § 7114(b)(4) of the Statute in response to requests submitted on April 4, 2013, July 22, 2013, and August 6, 2013. The Union filed four more ULP charges on June 5, 2014, in the same cases, alleging that the Respondent failed to provide information in a timely manner pursuant to § 7114(b)(4) of the Statute in

response to the requests submitted on April 4, 2013, July 22, 2013, and August 6, 2013. Based upon the charges, the Regional Director of the Denver Regional Office issued four separate Complaints on June 19, 2014. The complaints alleged that the Respondent violated § 7116(a)(1), (5) and (8) of the Statute when it failed to timely furnish information requested pursuant to § 7114(b)(4) of the Statute. (G.C. Exs. 1(c), 2(c), 3(c), 4(c)). The Respondent filed Answers denying the allegations of the complaint. (G.C. Exs. 1(d), 2(d), 3(d), 4(d)). On August 4, 2014, I issued an Order granting Respondent's Motion to Consolidate all four cases. (G.C. Ex. 5).

A hearing in this matter was held on August 14, 2014, in Phoenix, Arizona, at which time all parties were represented and afforded an opportunity to be heard, to introduce evidence, and to examine witnesses. The General Counsel and Respondent filed post-hearing briefs, which I have fully considered.

Based upon the record, I find that the Respondent failed to comply with § 7114(b)(4) of the Statute and committed unfair labor practices in violation of § 7116(a)(1), (5) and (8) of the Statute. In support of this determination, I make the following findings of fact, conclusions of law, and recommendations.

FINDINGS OF FACT

The American Federation of Government Employees (AFGE), Local 1547 (Union/Local 1547), is the exclusive collective bargaining representative of certain employees at the Department of the Air Force, Luke Air Force Base, and is a labor organization within the meaning of § 7103(a)(4) of the Statute. (G.C. Exs. 1(c) & (d)). The Union serves as the agent of AFGE for purposes of representing bargaining unit employees at Luke Air Force Base. (*Id.*). The Respondent is an agency within the meaning of § 7103(a)(3) of the Statute. (G.C. Ex. 1(c)).

Harley Hembd, Union President of Local 1547, submitted four separate information requests via email to Ronald (Ron) Veal, the Labor Relations Officer at Luke Air Force Base; the first two were submitted on April 4, 2013, while the other two were submitted on July 22, 2013 and August 6, 2013, respectively. (G.C. Exs. 6, 8, 10 & 11). All four requests asked for data related to the selection of candidates for certain vacant positions at Luke AFB. (*Id.*). The information requests on April 4 called for data related to the selection of candidates for the positions of Operations Flight Technician and Medical Support Assistant. (G.C. Exs. 6, 8). The requests on July 22 and August 6 concerned data related to the selection of candidates for the positions of Automotive Equipment Dispatcher, Health Systems Specialist, and Computer Assistant. (G.C. Exs. 10 & 11).

The types of information requested by the Union included correspondence between any Luke AFB supervisor and referred candidates, any internal/external referral lists used, a copy of the selecting official's CPO requesting a list of external candidates, the job announcements for the vacancies, information on any interviews that took place, email notices provided to employees regarding the vacancies, and any correspondence between the selecting official and internal/external candidates. (G.C. Exs. 6, 8, 10 & 11).

Hembd, as Union President, receives monthly "gains [reports]" from the Respondent that indicates employees added or subtracted from the bargaining unit. (Tr. 19-20). The Union requested data concerning the selection of candidates for the five positions mentioned in the information requests based upon information provided in the gains reports. The Union requested information concerning the selection of a candidate for the Operations Flight Technician position because the gains report showed that the position was filled through a management reassignment. (G.C. Ex. 6; Tr. 20). Hembd noticed that the individual selected for the position was not part of his bargaining unit. (Tr. 20). In Hembd's experience, most management reassignments involved an employee switching positions within the bargaining unit. (Tr. 20). Hembd wanted to know how the Respondent was able to reassign an employee into the bargaining unit and whether this complied with the staffing MOU. (*Id.*)

Hembd wanted information regarding the selection process for the Medical Support Assistant position because the position was filled externally and Hembd asserted that the selecting official did not properly articulate the reasons why an internal candidate was not selected, as required by the staffing MOU. (Tr. 27).

Regarding the Automotive Equipment Dispatcher position, Hembd noticed it was filled through a non-competitive Wounded Warrior hire. Hembd did not know what the Wounded Warrior program was so he wanted information related to the selection process for that position. (Tr. 34).

Hembd sought information related to the selection of the candidate for the Health System Specialist position because the gains report listed "see attachment[]" for the position. (*Id.*) Hembd suspected this referred to an email from the selecting official indicating the reason for filling the position externally. (*Id.*) Hembd stated there were several bargaining unit employees seeking a position at this grade level and he wanted to find out why the position was not filled internally. (*Id.*) Hembd cited the same reason for requesting information regarding the selection for the Computer Assistant position. (Tr. 38).

Each of the information requests included a similar statement of particularized need. The Union stated that it needed the information to "fully understand how this position was filled" and whether "the negotiated processes were circumvented." (G.C. Ex. 6 at 2). The Union wanted to ensure that the Respondent's hiring decisions were not motivated by complaints by some of the applicants. (G.C. Exs. 6, 8, 10 & 11). The Union also wanted to make sure that the job requirements were not being altered by the selecting officials to favor certain candidates over others. (*Id.*) In all four information requests, the Union wanted to determine whether the Respondent had complied with the staffing MOU entered into by the parties in April 2012, which set forth the procedures to be used by the Respondent in filling vacancies. (G.C. Exs. 6, 8, 10 & 11; Tr. 19-21, 26-28). The staffing MOU required the Respondent to give consideration to internal candidates before seeking candidates from external sources. (Tr. 21). The Union stated that it needed the information to represent employees in any potential grievance for violations of the staffing MOU or the parties' labor-management agreement. (G.C. Exs. 6, 8, 10 & 11).

Hembd testified that the delay in receiving information in response to his requests impeded his ability to represent bargaining unit employees. Hembd asserted that the delays did not allow him to effectively monitor the Respondent's compliance with the staffing MOU that had been negotiated with the Union. (Tr. 25). Hembd testified that the Union's contract with the Respondent required him to file a grievance within fifteen days but the Respondent's delays in providing the information ensured that he would miss this deadline. (Tr. 25-26). Hembd also contended that there was little he could do to remedy an illegitimate personnel action where a year had passed since the action took place and the employee was already well-settled into the position. (Tr. 32, 41).

Mr. Bryan Evans is the Civilian Personnel Officer at Luke AFB. (Tr. 150). Evans is Veal's first-line supervisor and sets his work priorities. (Tr. 124). Veal had no assistance when he became the labor relations officer. (Tr. 151). Evans testified about Veal's work priorities around the time of the information requests, which included contract negotiations for new appropriated fund and non-appropriated fund labor contracts, bargaining over the administrative and government shutdown furloughs, responding to grievances and providing advice to management officials on a daily basis. (Tr. 154-57). Evans stated that the number of information requests by the Union increased between July 2013 and November 2013. (Tr. 160). Evans testified that his office had a problem with handling data requests that had been going on for years. (*Id.*). In November 2013, Evans reclassified a vacated position in his office and hired Pam Nichols as a labor relations and employee management technician. (Tr. 160-61). Nichols' sole purpose was to eliminate the backlog of information requests. (Tr. 161). From November 2013 to the time of the hearing, the number of outstanding information requests was reduced from fifty-nine to four. (*Id.*).

Veal testified that he had a very high workload between the time the Union issued the information requests and the Respondent furnished the information. (Tr. 124). Veal's daily responsibilities as a Labor Relations Specialist included providing guidance and advice to management and supervisory officials. (Tr. 92). He was also required to respond to grievances from the Union and investigate them. (*Id.*). The Respondent is required by contract to provide a response within fourteen days to grievances filed by the Union. (Tr. 109). Veal testified that it normally takes him the full two weeks to investigate and provide a response to grievances. (*Id.*). The Union filed around forty grievances between April 2013 and the time of the hearing. (*Id.*). Veal is also responsible for providing guidance and advice concerning employee relations to supervisors and managers. (Tr. 92-93).

Veal is involved in handling unfair labor practice cases for the Respondent. For fiscal years 2012 and 2013, Luke AFB had 34% of the Air Force's unfair labor practice cases. (Tr. 110). Veal was also responsible for responding to the Federal Labor Relations Authority, Federal Service Impasses Panel, and Federal Mediation & Conciliation Service. (Tr. 93). Veal was involved in contract negotiations between the Union and the Respondent for a new labor management agreement between the parties. (Tr. 97). Veal testified it took a year and a half to get the Union to begin negotiating a new contract, which began in January 2014. (Tr. 98). Veal was engaged in bargaining over administrative furloughs that were directed by the Department of Defense from December 2012 to July 2013. (Tr. 100-01). Following the administrative furloughs, the Federal Government shutdown in October 2013 and this became a priority for Veal and other employees in his office.

(Tr. 102). Veal testified that these events and other matters interfered with his ability to handle information requests from the Union. (Tr. 104). Veal asserted a manpower study was done, which indicated the Respondent needed over four employees to perform labor relations work in order to keep up with the labor-related workload. (Tr. 135, 139). Veal testified he was told by Evans that their office was not going to receive additional support or manpower from MAJCOM or the Air Force. (Tr. 135).

The Union and Respondent agreed to a Memorandum of Understanding (MOU) on August 9, 2012, addressing how the Respondent would handle information requests by the Union. (R. Ex. 1; Tr. 96). The MOU required the Respondent to acknowledge receipt of information requests within ten business days and either provide the data, submit a response indicating its intentions regarding the release of the data and/or describe the Respondent's progress in identifying and compiling the information. (R. Ex. 1). The MOU also allowed the Union to identify priority information requests for the Respondent to consider when responding to the requests. (*Id.*). Veal testified that allowing the Union to prioritize data requests did not work out well because the Union identified almost all of the data requests as a priority, therefore the information requests were processed by the date on which they were received. (Tr. 96-97, 146).

When Veal received an information request from the Union, he would evaluate each piece of data requested and the particularized need statement to determine whether the asserted particularized need justified furnishing the data. (Tr. 94). Veal also normally sends the requests to attorneys and other personnel to evaluate whether the particularized need justifies the release of the data. (Tr. 105). If it is determined release of the data is justified, Veal gathers the information to produce. (Tr. 94). Veal has to review the data and redact any information subject to the Privacy Act. (Tr. 106).

The Union did not receive a reply to the two information requests sent on April 4, 2013. Veal testified that he and others at Luke AFB were having email issues and that he may not have received the Union's April 4, 2013, requests. (Tr. 112). On September 5, 2013, Hembd emailed Veal inquiring about the status of those requests. (G.C. Ex. 7, 9). On September 6, 2013, Veal emailed Hembd acknowledging receipt of the two requests on September 5, 2013, and the requests were included in biweekly reports showing outstanding data requests. (Tr. 22). Hembd received documents in response to these requests in April 2014. (Tr. 23, 30). The response to the April 4, 2013, request concerning the Operations Flight Technician position consisted of a three page email. (Tr. 24). The response to the April 4, 2013, request concerning the Medical Support Assistant position consisted of an email containing pdf files. (Tr. 30, 31). Hembd asserted that the metadata from the pdf files indicated the files were created in March 2013. (Tr. 31).

With respect to the July 22, 2013, data request, Veal responded to Hembd within a few days of receiving the request and included it in the biweekly reports showing outstanding data requests until the Respondent produced the data in mid-May 2014. (Tr. 40-41). The Respondent produced hard copy documents in response to this request. (Tr. 41). The Respondent also produced hard copy documents in response to the Union's August 6, 2013, request in mid-April 2014. (Tr. 36-37).

POSITIONS OF THE PARTIES

General Counsel

The General Counsel asserts that the information requested on April 4, 2013, July 22, 2013, and August 6, 2103, by the Union met the statutory requirements of § 7114(b)(4) and that the Respondent's failure to furnish this information in a timely manner violated the Statute.

The General Counsel contends that the Respondent admits the information requested by the Union was normally maintained by the Respondent in the regular course of business, was reasonably available, did not constitute guidance, advice, counsel or training provided for management officials or supervisors related to collective bargaining, and was not prohibited from disclosure by law. The General Counsel asserts the information was necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining and that the Union stated a particularized need for the information. The General Counsel maintains all four requests clearly stated that the data was needed to understand how the relevant positions were filled, and see whether the Respondent had complied with the negotiated procedures set forth in the staffing MOU. The General Counsel points out that the Respondent never asserted the information requests failed to state a particularized need. The General Counsel contends that the Respondent's actions in providing the information constitute an admission that the requests met the particularized need standard.

The General Counsel rejects the Respondent's defense that it timely furnished the information under the circumstances. The General Counsel maintains that information releasable pursuant to § 7114(b)(4) must be furnished in a timely manner in order to effectuate the purposes and policies of the Statute. *Bureau of Prisons, Lewisburg Penitentiary, Lewisburg, Pa.*, 11 FLRA 639, 641-42 (1983) (*Bureau of Prisons*). The General Counsel points out the Authority found that a five month delay in furnishing information violated the Statute in *U.S. DOJ, Office of Justice Programs*, 45 FLRA 1022 (1992) (*Justice Programs*), and *U.S. Food & Drug Admin., U.S. Food & Drug Admin., Region VII, Kansas City, Mo.*, 19 FLRA 555, 557 (1985) (*FDA*). The General Counsel argues that the Respondent's delay of eight to twelve months in furnishing the information was not reasonable. The General Counsel contends the Respondent's delay in furnishing the information harmed the Union's ability to pursue a potential grievance or remedy potentially illegitimate personnel actions after so much time had passed.

As a remedy for the violations, the General Counsel requests that a Notice of the unfair labor practices be posted on bulletin boards at the facility and sent by email to all bargaining unit employees. The General Counsel requests that the Notice be signed by Brig. Gen. Scott L. Pleus, Commander, 56th Fighter Wing, since he is the highest level manager at Luke AFB, and the Authority has found that a Notice should be signed by the highest official of the activity responsible for the violation of law. *U.S. Dep't of VA*, 56 FLRA 696, 699 (2000). The General Counsel also asks that the Notice be distributed by electronic mail as a matter of course because that is the method that the Agency most commonly uses to communicate with its employees.

Respondent

The Respondent points out the well-established case law that the General Counsel bears the burden of proving the allegations made in the complaint by a preponderance of the evidence to establish a violation. The Respondent argues that the information was timely furnished given the circumstances. The Respondent contends Veal and others in his office were occupied by various important matters, which the Respondent had to prioritize over handling information requests. The Respondent argues that it furnished the information within a reasonable time period, given the heavy workload placed upon Veal and others in his office.

CONCLUSIONS OF LAW

Section 7114(b)(4) of the Statute requires an agency to furnish to the exclusive representative involved, or its authorized representative, upon request and, to the extent not prohibited by law, information: (1) which is normally maintained by the agency in the regular course of business; (2) which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and (3) 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 Respondent admitted in its Answers to the Complaints that the information requested is normally maintained in the regular course of business, reasonably available, does not constitute guidance, advice, counsel or training provided for management officials or supervisors relating to collective bargaining and is not prohibited from disclosure by law. (G.C. Exs. 1(d), 2(d), 3(d) & 4(d)). The Respondent denied in its Answers that the information requested was necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining. (*Id.*). An agency must furnish information requested by an exclusive representative if it is necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining. 5 U.S.C. § 7114(b)(4)(B). To demonstrate that requested information is "necessary," a union "must establish a particularized need for the information by articulating, with specificity, why it needs the requested information, including the uses to which the union will put the information and the connection between those uses and the union's representational responsibilities under the Statute." *IRS, Wash., D.C.*, 50 FLRA 661, 669 (1995). The union's responsibility for articulating its interests in the request requires more than a conclusory assertion and must permit an agency to make a reasoned judgment as to whether the disclosure of the information is required under the Statute. *Id.* at 670. It is well established that under § 7114(b)(4) of the Statute the exclusive representative is entitled to information that is necessary to enable it to carry out effectively its representational responsibilities, including information which will assist it in the investigation, evaluation, and processing of a grievance. *See Dep't of HHS, SSA, Balt., Md.*, 39 FLRA 298, 308 (1991)

(SSA) (citing *U.S. DOJ, INS, Border Patrol, El Paso, Tex.*, 37 FLRA 1310, 1319 (1990), *petition for review filed sub nom. U.S. DOJ, U.S. INS, U.S. Border Patrol, El Paso, Tex. v. FLRA*, 991 F.2d 285 (5th Cir. 1993); *U.S. Dep't of the Air Force, Air Force Logistics Command, Sacramento Air Logistics Ctr., McClellan AFB, Cal.*, 37 FLRA 987, 995 (1990)).

The Respondent was obligated by the staffing MOU to give priority consideration for open positions to bargaining unit employees before considering external candidates. (G.C. Exs. 6, 8, 10 & 11; Tr. 21). The Union sought information concerning the filling of certain vacant positions for the purpose of determining whether the Respondent complied with the staffing MOU when it selected candidates from outside the bargaining unit for the open positions at issue. (G.C. Exs. 6, 8, 10 & 11). The Union stated that it wanted the information to help verify that the Respondent's non-selection of bargaining unit employees for the position was not motivated by complaints filed by some of these applicants. (*Id.*). The Union sought to ensure that bargaining unit employees were not improperly denied consideration or not selected for the positions at issue. (*Id.*). The Union also wanted to ensure that the selecting officials were not imposing additional requirements for the position, beyond what was actually required, in order to fit a particular candidate and exclude others. (*Id.*). The Union stated that the information requested would indicate why bargaining unit employees were not selected for the positions, and thus either support or refute the Union's assertions. (*Id.*). The Union stated it would use the information to determine whether to pursue a grievance and support any potential grievance for violations of the parties staffing MOU. (*Id.*).

The Union clearly set forth the reasons why it needed the information (because it believed the Respondent may have improperly excluded bargaining unit employees from consideration for vacant positions), the uses to which it would put the information (to ensure that the Respondent complied with the staffing MOU when it filled the vacant positions at issue) and the nexus between those uses and the Union's representational responsibilities (determine whether to file grievance on behalf of bargaining unit employees). Further, the Union's request was sufficient to permit the Respondent to make an informed response. Therefore, I find that the Union clearly articulated its particularized need for the requested information at issue, which included data generated by the Respondent in connection with the selection of candidates for certain vacant positions, and such information was necessary, within the meaning of § 7114(b)(4) of the Statute, for the Union to perform its representational responsibilities under the Statute. *See e.g., SSA*, 39 FLRA at 298 (Agency violated the Statute by refusing to provide the Union with documents concerning the filling of a vacancy for the purpose of investigating whether there were grounds for filing grievances on behalf of two bargaining unit employees who were rated ineligible for the vacant position.); *Health Care Fin. Admin.*, 56 FLRA 156, 159 (2000) (Agency violated the Statute by refusing to provide the Union with certain information concerning the selection process used to fill a job vacancy for a bargaining unit position); *Health Care Fin. Admin.*, 56 FLRA 503 (2000) (Agency violated the Statute by refusing to provide the Union with certain information regarding the selection process used to fill two job vacancies for bargaining unit positions).

In addition, I note the Respondent's actions indicated that the Union had demonstrated a legitimate particularized need for the information. Veal admitted that the Union's requests in this case satisfied the particularized need requirement. (Tr. 146). The Respondent also ultimately provided the information to the Union, thus implicitly acknowledging that the Union's requests for information met the requirements of § 7114(b)(4) of the Statute.

With respect to whether the Respondent's timeliness in producing the information, the Authority has held that an agency must furnish information that meets the requirements of § 7114(b)(4) in a timely manner "under the circumstances." *Bureau of Prisons*, 11 FLRA at 641-42. An agency has a duty to furnish information in a timely manner in order to effectuate the purposes and policies of the Statute. *Justice Programs*, 45 FLRA at 1026. In *Bureau of Prisons*, the Authority found that the agency did not violate the Statute when it took two months to furnish certain information because it had furnished almost all of the information right away and made diligent efforts to find information that was not in the agency's current records. 11 FLRA at 642. In contrast, the Authority found in *Justice Programs*, 45 FLRA at 1026-27 and *FDA*, 19 FLRA at 556-57, that a five month delay by the agency in furnishing the information was not timely under the circumstances since the information was both reasonably available and normally maintained by the agency.

In the instant case, the Respondent took almost a year to furnish information relating to the Union's April 4, 2013, requests. (Tr. 23, 30). Even if I were to find that the Respondent did not receive those requests until September 5, 2013, it would still mean a seven month delay by the Respondent in furnishing the documents. With respect to the Union's July 22, 2013 and August 6, 2013, requests, the Respondent took ten months and eight months respectively, to furnish information to the Union. (Tr. 36-37, 40-41). The Respondent does not dispute that the information was normally maintained and reasonably available. The Respondent here did not produce enough evidence to justify a delay of seven to ten months to furnish information that was both normally maintained and reasonably available. The Respondent's delays in handling information requests were not a new issue. Evans testified that the Respondent "had a problem with data requests historically that had been going on for years." (Tr. 160). While the Respondent maintained that its employees had to handle other matters which took precedence over responding to information requests, the Respondent never sufficiently explained how this prevented it from furnishing the information until at least seven months after the Union requested it. Evans had nine employees under his supervision in the Civilian Personnel Section at Luke AFB. (Tr. 169). Although the Respondent had the right to assign work and set priorities for its employees, it was still required to find a way to fulfill its statutory duty to furnish the information in a reasonable amount of time. Veal testified that it took less than an hour to determine whether that the information requests in this case satisfied the particularized need requirement. (Tr. 146-47). Veal stated that "we [had] gotten so used to receiving [staffing information requests], he [Hembd had] satisfied our particularized need prior [to] that." (Tr. 146). Thus it is apparent that providing information in response to the Union's requests was not a particularly time-consuming endeavor for the Respondent in this case.

The Respondent has not shown that a delay of seven to ten months to furnish information to the Union was reasonable in this case. There are numerous cases where the Authority has held that an agency violated the Statute for similarly long delays in furnishing information. *See e.g., Justice Programs*, 45 FLRA at 1026 (five month delay in furnishing information not timely); *FDA*, 19 FLRA at 556-57 (agency violated Statute by waiting until five months after receiving information to furnish it to the union); *DOD Dependents Sch., Wash., D.C.*, 19 FLRA 790, 791 (1985) *remanded as to other matters sub nom. N. Germany Area Council, Overseas Educ. Ass'n v. FLRA*, 805 F.2d 1044 (D.C. Cir. 1986), decision on remand, 28 FLRA 202 (1987) (violation for failing to furnish information for slightly over two months); *U.S. Dep't of the Treasury, U.S. Customs Serv., Sw. Region, Hous., Tex.*, 43 FLRA 1362 (1992) (agency failed to respond in timely manner where it took nine months to supply information); *U.S. Patent & Trademark Office*, 45 FLRA 1090, 1113-14 (1992) (a one-month delay in furnishing documents, which the agency didn't initially possess but later obtained from other sources, was an unfair labor practice). On the other hand, the Respondent has not cited any decision in which the Authority has held that a delay approaching seven months or more in furnishing information was timely under the circumstances.

Additionally, there is evidence that Respondent's delays in furnishing the information negatively impacted the Union's ability to represent its bargaining unit employees. Hembd testified that there was nothing he could do for a bargaining unit employee that was improperly excluded from a vacant position since so much time had passed and the individual selected was already well-settled into the position. (Tr. 25-26, 32, 41). The Respondent also denied as untimely at least one of the Union's grievances concerning the selection process for one of the vacant positions in this case. (Tr. 51, 88). Hembd testified that he was not able to file the grievance sooner because he was waiting to receive relevant information from the Respondent in response to his information request. (Tr. 87-88). The adverse impact of the Respondent's delays upon the Union's ability to represent its employees further demonstrates that the Respondent did not timely furnish the information under the circumstances.

In conclusion, I find that the Union established a particularized need for the requested information and that the Respondent failed to furnish the information in a timely manner under the circumstances. Consequently, I find that the Respondent failed to comply with § 7114(b)(4) of the Statute and violated § 7116(a)(1), (5) and (8) of the Statute by not furnishing in a timely manner, the information requested by the Union on April 4, 2013, July 22, 2013, and August 6, 2013.

REMEDY

The General Counsel requests that a Cease and Desist Order be issued and that Respondent be required to post a Notice to all employees throughout the Department of the Air Force, Luke Air Force Base, Arizona, for a period of sixty days. The General Counsel requests that the Notice be signed by the Commander, 56th Fighter Wing, since he is the highest level manager at Luke AFB. The Authority typically directs the posting of a Notice signed by the highest official of the activity responsible for the violation. *See U.S. Dep't of VA, Wash., D.C.*, 48 FLRA 1400, 1402 (1994). As such, the Notice in this case shall be signed by the Commander, 56th Fighter Wing.

The General Counsel seeks a posting and electronic dissemination of the Notice in this matter. In accordance with the Authority's decision that unfair labor practice notices should, as a matter of course, be posted on bulletin boards and electronically whenever an agency uses such methods to communicate with bargaining unit employees, such postings are ordered. *See U.S. DOJ, Fed. BOP, Fed. Transfer Ctr., Okla. City, Okla.*, 67 FLRA 221 (2014).

Accordingly, I recommend that the Authority adopt the following Order:

ORDER

Pursuant to § 2423.41(c) of the Authority's Rules and Regulations and § 7118 of the Federal Service Labor-Management Relations Statute (Statute), the Department of the Air Force, Luke Air Force Base, Arizona, shall:

1. Cease and desist from:

(a) Failing or refusing to timely furnish the American Federation of Government Employees, Local 1547 (Union/AFGE Local 1547), with data it requested pursuant to 5 U.S.C. § 7114(b)(4) and to which the Union is entitled under the Statute.

(b) In any like or related manner, interfering with, restraining, or coercing bargaining unit employees in the exercise of their rights assured by the Statute.

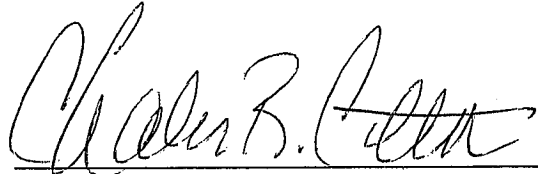
2. Take the following affirmative actions in order to effectuate the purposes and policies of the Statute:

(a) Post at its facilities where bargaining unit employees represented by the Union 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 Commander, 56th Fighter Wing, and shall be posted and maintained for sixty (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 ensure that such Notices are not altered, defaced, or covered by any other material.

(b) Distribute a copy of the Notice signed by the Commander, through the Respondent's email system to all AFGE Local 1547 bargaining unit employees at Luke Air Force Base. The Notice will be sent by email on the same day that the Notice is physically posted.

(c) Pursuant to § 2423.41(e) of the Authority's Rules and Regulations, notify the Regional Director, Denver Region, Federal Labor Relations Authority, in writing, within thirty (30) days of the date of this Order, as to what steps have been taken to comply.

Issued Washington, D.C., June 30, 2015

A handwritten signature in cursive script, appearing to read "Charles R. Center". The signature is written in black ink and is positioned above a horizontal line.

CHARLES R. CENTER
Chief Administrative Law Judge

NOTICE TO ALL EMPLOYEES

POSTED BY ORDER OF

THE FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the Department of the Air Force, Luke Air Force Base, Arizona, violated the Federal Service Labor-Management Relations Statute (Statute), and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT fail or refuse to timely furnish the American Federation of Government Employees, Local 1547 (Union), with data it requested pursuant to 5 U.S.C. § 7114(b)(4) and to which the Union is entitled under the Statute.

WE WILL NOT, in any like or related manner, interfere with, restrain, or coerce bargaining unit employees in the exercise of their rights assured by the Statute.

(Agency/Respondent)

Dated: _____

By: _____
(Signature) (Title)

This Notice must remain posted for sixty (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 its provisions, they may communicate directly with the Regional Director, Denver Regional Office, Federal Labor Relations Authority, whose address is: 1244 Speer Boulevard, Suite 446, Denver, CO 80204, and whose telephone number is: (303) 844-5224.