UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
Washington, D.C. 20424-0001

DEPARTMENT OF TRANSPORTATION FEDERAL AVIATION ADMINISTRATION FORT WORTH, TEXAS Respondent	Case No. DA-CA-90788
and NATIONAL AIR TRAFFIC CONTROLLERS ASSOCIATION, LOCAL 171 Charging Party	

NOTICE OF TRANSMITTAL OF DECISION

The above-entitled case having been heard before the undersigned Administrative Law Judge pursuant to the Statute and the Rules and Regulations of the Authority, the undersigned herein serves his Decision, a copy of which is attached hereto, on all parties to the proceeding on this date and this case is hereby transferred to the Federal Labor Relations Authority pursuant to 5 C.F.R. § 2423.34(b).

PLEASE BE ADVISED that the filing of exceptions to the attached Decision is governed by 5 C.F.R. §§ 2423.40-2423.41, 2429.12, 2429.21-2429.22, 2429.24-2429.25, and 2429.27.

Any such exceptions must be filed on or before **APRIL 16, 2001**, and addressed to:

Federal Labor Relations Authority
Office of Case Control
607 14th Street, NW, 4th Floor
Washington, DC 20424

RICHARD A. PEARSON
Administrative Law Judge

Dated: March 16, 2001
Washington, DC

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
Washington, D.C. 20424-0001

MEMORANDUM DATE: March 16, 2001

TO: The Federal Labor Relations Authority

FROM: RICHARD A. PEARSON
Administrative Law Judge

SUBJECT: DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
FORT WORTH, TEXAS

Respondent

and Case No. DA-CA-90788

NATIONAL AIR TRAFFIC CONTROLLERS
ASSOCIATION, LOCAL 171

Charging Party

Pursuant to section 2423.34(b) of the Rules and Regulations, 5 C.F.R. § 2423.34(b), I am hereby transferring the above case to the Authority. Enclosed are copies of my Decision, the service sheet, and the transmittal form sent to the parties. Also enclosed are the transcripts, exhibits and any briefs filed by the parties.

Enclosures

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

01-27

DEPARTMENT OF TRANSPORTATION FEDERAL AVIATION ADMINISTRATION FORT WORTH, TEXAS Respondent	Case No. DA-CA-90788
and NATIONAL AIR TRAFFIC CONTROLLERS ASSOCIATION, LOCAL 171 Charging Party	

Melissa McIntosh, Esquire
For the General Counsel

Daniel Murphy, Esquire
For the Respondent

Darrell Meachum, President
For the Charging Party

Before: RICHARD A. PEARSON
Administrative Law Judge

DECISION

On July 28, 2000, the General Counsel of the Federal Labor Relations Authority, by the Regional Director of the Dallas Region, issued an unfair labor practice complaint, alleging that the Department of Transportation, Federal Aviation Administration (the Respondent, or the Employer) violated sections 7116(a)(1), (5) and (8) of the Federal Service Labor-Management Relations Statute (the Statute), by refusing to furnish certain information requested by the National Air Traffic Controllers Association (the Charging Party, or the Union). In its Answer, the Respondent admitted that it failed to furnish some of the requested information, but asserted that it was not required to give that information to the Union.

A hearing on this matter was held in Dallas, Texas, on October 11, 2000, at which all parties were represented and afforded the opportunity to be heard, to introduce evidence, to examine and cross-examine witnesses, and to submit post-hearing briefs. The General Counsel and the Respondent subsequently filed briefs, which I have fully considered.

Based on the entire record, including my observation of the witness and his demeanor, I make the following findings of fact, conclusions of law, and recommendations.

FINDINGS OF FACT

The Charging Party is the exclusive representative of a nationwide unit of employees, including air traffic controllers, at the Federal Aviation Administration. Local 171 of the Union is its agent for representing unit employees in the Dallas-Fort Worth area. At all relevant times, the Union and the Employer have been parties to successive collective bargaining agreements that have included a provision for the processing and arbitration of grievances.

The hearing before me was the latest incarnation of a dispute which arose in early 1992 and has plagued the parties ever since. Between May 11 and 22 of 1992, joint military exercises entitled "Roving Sands" were conducted at the Roswell, New Mexico, airport. Although these exercises were conducted with military personnel and were organized by the Department of the Navy, civilian air traffic controllers (members of the Union's bargaining unit) were utilized in the air traffic control tower. Discussions between the Union and the FAA were held before and after the exercises, and the Union sought to negotiate over a variety of issues related to the conduct of the exercises; the primary issue which lingered, however, related to the Union's insistence that the controllers who worked at the Roswell tower during the Roving Sands exercises were entitled to hazardous duty pay.

Federal law entitles federal employees to a "hazard pay differential" (HPD) when they are subjected to hazards not usually involved in their jobs, as provided in 5 U.S.C. § 5545(d). The Office of Personnel Management has promulgated regulations on this subject at 5 C.F.R. Part 550, Subpart I. Appendix A of that regulation lists circumstances in which an employee is entitled to such a differential (up to 25% of basic pay), including: "Exposure to Hazardous Agents, work with or in close proximity to: . . . . Explosive or incendiary materials which are

unstable and highly sensitive. . . . [or] Toxic chemical materials when there is a possibility of leakage or spillage."

When the Employer refused to bargain concerning the hazard pay differential issues, the Union filed an unfair labor practice charge in July 1993, and the General Counsel thereafter issued a complaint that the Employer had violated sections 7116(a)(1) and (5) of the Statute by refusing to negotiate. Pursuant to a stipulation of facts, the case was submitted to the Authority, but in a Decision and Order dated October 31, 1996, the Authority found that the stipulated facts were insufficient to resolve the negotiability issues underlying the complaint. *Federal Aviation Administration, Washington, DC*, 52 FLRA 548 (1996). Instead, the Authority remanded the case to the Regional Director. Subsequently, the Union and the Employer agreed to resolve the dispute over HPD by submitting it to an arbitrator, and pursuant to that agreement, the unfair labor practice complaint was withdrawn. On September 16, 1997, the Union filed a national grievance regarding the denial of HPD to the Roswell employees, and on October 16, 1997, the Employer denied the grievance. Thereafter, an arbitration hearing was scheduled for March 9 and 10, 1999,[1] before Arbitrator Paul J. Fasser, Jr.

In anticipation of the arbitration hearing, Darrell Meachum, the President of Local 171 and the Union's national representative handling the Roswell HPD grievance, sent an information request to George Taylor, the FAA's Southwest Region Labor and Employee Relations Manager, on February 12, 1999.[2] Citing section 7114(b)(4) of the Statute as the basis of his request, as well as the need to represent his members in regard to the HPD arbitration, Mr. Meachum asked the Employer to furnish copies of all Material Safety Data Sheets (MSDS) for jet fuel, ordnance and other hazardous materials used during the Roving Sands exercises, as well as "any and all information . . . that the agency intends to rely upon in the presentation of your case." On February 19, Mr. Taylor responded that the Union's request "appears to be a discovery request" that is not authorized by the collective bargaining agreement; he noted further that the request did not properly articulate the Union's need for the

[1] Hereafter, all dates refer to 1999, unless otherwise specified.

[2] See G.C. Exhibit 2. While this letter is dated February 11, 1998, Mr. Meachum testified that it was not actually sent until February 12, and that "1998" was a typographical error and should have been "1999." Tr. at 13.

information under the Statute. Mr. Meachum then attempted to explain the need for the information in a letter dated February 25, 1999 (this letter also erroneously stated 1998; see Tr. at 16-17). He explained that in order to present the Union's case at the arbitration hearing, the Union needed to understand why the Employer believed the Roswell employees were not entitled to HPD; therefore the Union needed any information showing the materials used in the Roving Sands exercises (G.C. Exhibit 4).

The Employer next replied to Mr. Meachum in a letter dated March 2 (G.C. Exhibit 5). In that letter, Mr. Taylor stated first that he had previously given the Union all the documents he intended to rely upon in the arbitration, as part of a package of joint stipulations prepared for the 1996 FLRA decision. He additionally stated: "Should we obtain new documents that we plan on introducing in the hearing, we will provide you a copy no later than five (5) days before the hearing." With regard to the requested MSDS sheets, Mr. Taylor stated that he was "currently working with the military to see if the MSDS sheets exist. As soon as we know, we will inform you and fax them if they are available." These facts were reiterated in a phone conversation between Mr. Meachum and Mr. Taylor on March 2, during which Mr. Meachum further explained his need for documents reflecting the types of ammunition used in the military exercises, and Mr. Taylor stated that he was considering having a military official testify at the arbitration.

On Thursday, March 4, the Employer and Union were required by their collective bargaining agreement to exchange lists of witnesses. Mr. Meachum faxed the Union's list to Mr. Taylor at 4:13 p.m. CST, and Mr. Taylor faxed the Employer's list to Mr. Meachum at 4:28 p.m. CST (both of their offices were in the Dallas-Fort Worth area). Mr. Meachum's letter also contained a new request for information: in this letter, he asked not only for documents the Employer intended to use at the arbitration concerning the materials used in the military exercises, but also for any such documents that the Employer did not intend to introduce at the hearing. Because there were only five days remaining until the arbitration, Mr. Meachum offered to come to Mr. Taylor's office the next day to obtain the requested documents and "to make the release of the information as easy as possible." The Employer's March 4 fax to the Union consisted of a list of the agency's witnesses and the Joint and Agency Exhibits for the arbitration; none of the actual exhibits were attached, except for a 1-page memorandum, dated February 27, 1992, from the Navy to Dennis Ybarra, the manager of the Roswell Airport, detailing the types of

ammunition and explosives to be handled during the Roving Sands exercises (G.C. Exhibit 6).

At 1:53 p.m. PST (or 3:53 p.m. in Texas) on March 4, Lt. Michael Jaeger, a JAG officer in the Navy's Pacific Fleet Headquarters in San Diego, California, faxed a two-page memo to Lt. Col. Dan Lizzul in the Navy JAG headquarters in Washington, D.C., entitled "FAA Request for Expert Testimony" (Resp. Exhibit D). Mr. Taylor and his colleague Becky Lindley of FAA were also named as addressees of this memo. Lt. Jaeger explained that the FAA had requested, pursuant to 32 C.F.R. Part 725.1, the Navy's permission to use a civilian Navy employee at its upcoming arbitration, in order to establish what types of explosives were used in the 1992 exercises and to prove that air traffic controllers had been in "no real danger." The memo referred to "[d]ocuments and testimony from the Naval Ordnance Center (Mr. Kratovil)" which will show that controllers were not in danger and that only "Category 1.3/1.4 explosives" were utilized during Roving Sands. The memo named Edward Kratovil as the appropriate person to testify on these issues, and Lt. Jaeger expressed his "support" for the FAA request.

The following day, Friday, March 5, Mr. Meachum phoned Mr. Taylor to discuss the exchange of witness lists and other matters relating to the upcoming arbitration hearing. Mr. Meachum asked who the individuals named on the Employer's witness list were, since some of the names were not familiar to him. Mr. Taylor indicated that two of them (Edward Kratovil and Dennis Ybarra) were not employed by FAA, but he didn't identify them more specifically, and he didn't mention anything to Mr. Meachum about the availability of any additional documents that might be responsive to the Union's information requests.

At 3:01 p.m. CST on March 5, however, a 15-page fax transmission was sent to Mr. Taylor and Ms. Lindley's office by Lt. Jaeger in San Diego. (The date and time this document was transmitted is printed at the top of the first page of the document, G.C. Exhibit 7. The time shown, 13:01 or 1:01 p.m. in San Diego, was 3:01 p.m. in Fort Worth.) The fax contained detailed Navy documents relating to the planning of the 1992 Roving Sands exercises, including an itemized list and description of all ammunition and explosives to be used in the exercises. Also on March 5 (the exact time is not specified), Lt. Col. Lizzul of Navy JAG headquarters in Washington, D.C., sent a two-page fax to Mr. Taylor of FAA in Fort Worth, giving the Navy's official approval for Mr. Kratovil to testify for FAA (Resp. Exhibit C). The two-page document sent to Mr. Taylor included a

"memorandum setting forth the general nature of Mr. Kratovil's expected testimony," but only the Cover Sheet, and not the memorandum outlining the expected testimony, was introduced at the hearing before me.

The record does not reflect that there were any further communications between the Union and the Employer after March 5, until the start of the arbitration hearing on March 9, 1999. During the arbitration, the Employer called, among others, Mr. Kratovil of the Navy as a witness, as well as an Army official and Mr. Ybarra, the Roswell airport manager. Mr. Taylor introduced into evidence at the arbitration, among other exhibits, the 15 pages of Navy documents describing the ammunition and explosives authorized for use in the Roving Sands exercises, which indicated that all of the ammunition fell into Explosives Class 1.3 and 1.4, and which Lt. Jaeger had faxed to Mr. Taylor on March 5. The Union was given a copy of these documents for the first time at the arbitration (except for the February 27, 1992 memo to the Roswell airport manager, which had been faxed to the Union on March 4).

On November 23, 1999, Arbitrator Fasser issued his decision (G.C. Exhibit 14), which denied the Union's grievance and held that the controllers were not entitled to HPD in 1992. He ruled that despite testimony from controllers that they had observed bombs marked with green bands and fuel bladders stored near the control tower, and that they had heard military planners talk about the tower being within the "kill zone" of the weapons, there was no confirmed proof that controllers had worked "in close proximity to . . . explosive or incendiary materials which are unstable and highly sensitive," as required by federal law to qualify them for HPD. The arbitrator stated that most of the Union's evidence concerning the explosiveness of the materials used in Roving Sands was indirect and not as reliable as the 1992 Navy documents, which indicated that only ammunition of Explosives Class 1.3 and 1.4 was used, not Class 1.1 ammunition as the Union contended.

Mr. Meachum was the only witness to testify at the hearing before me. The Respondent listed Mr. Taylor as a potential witness for its case, but it chose not to call any witnesses. Mr. Meachum further testified that the Navy documents from 1992 which the Employer introduced at the arbitration caught him by surprise, because he had repeatedly asked for such documents and had been told by Mr. Taylor that he didn't have anything of the sort. Mr. Meachum testified that if he had been given these documents on March 4 or 5, he would have realized that the Union's grievance lacked merit, and he would have withdrawn his

request for arbitration, thereby saving the Union almost $6000 in expenses. He testified that the documents first shown to him by Mr. Taylor on March 9 "blew [the Union's case] out of the water," and that "We wouldn't have gone to arbitration" if he'd received them beforehand.

DISCUSSION AND CONCLUSIONS

A. Issues and Positions of the Parties

In its Complaint, the General Counsel alleged that the FAA violated section 7114(b)(4) of the Statute (and thereby sections 7116(a)(1), (5) and (8) as well) by its March 2 response to the Union's information requests, and also by its delay in furnishing the Union with the Navy documents that it obtained on March 5, 1999. In its Theory of the Case in its Prehearing Disclosure, however, the General Counsel cited only the Employer's failure to promptly furnish the Union with the documents received on March 5, and did not claim that the Employer's March 2 response itself violated the Statute. Similarly, at the hearing and in its post-hearing brief, the General Counsel has focused its attacks on the Employer's delay in furnishing the documents obtained on March 5, while seeming to abandon its allegation that the Employer's March 2 response was unlawful. With regard to the Employer's actions on and after March 5, the General Counsel argues that the FAA not only violated section 7114(b)(4) in refusing the Union's information request, but also negotiated in bad faith by withholding the sought-after information from March 5 to March 9.

The Respondent, in turn, argues that it complied with the Union's information requests fully on each occasion: its March 2 answer accurately reflected that it had previously given the Union all requested information in the stipulations to the earlier FLRA hearing, and that it had no additional documents; similarly, when the Union renewed and expanded its information request on March 4, the Employer insists that it had no additional information, other than that which it had sent to the Union on March 4. The Respondent admits that it received additional documents from the Navy on March 5, some of which it introduced into evidence at the March 9 arbitration, but it argues that it had no legal obligation to furnish those documents to the Union. Principally, it argues: (1) since the Employer gave the Union everything in its possession on March 4, the Union would have had to make a new information request on or after March 5 for the Employer to become obligated to respond further; (2) Navy documents were not "normally maintained by

the agency in the regular course of business," as required by section 7114(b)(4)(A) of the Statute. In support of the second point, Respondent principally cites *U.S. Department of Transportation, Federal Aviation Administration, National Aviation Support Facility, Atlantic City Airport, New Jersey*, 43 FLRA 191 (1991).

The General Counsel concedes that the documents obtained from the Navy were not "normally maintained" by the Respondent prior to March 5, but it argues that once the FAA received the documents from the Navy on that date, the documents met the statutory requirement of being "normally maintained." Citing *Department of Veterans Affairs, Department of Veterans Affairs Medical Center, Fort Lyon, Colorado*, 41 FLRA 1091 (1991), the General Counsel asserts that all federal agencies maintain records concerning pending grievances and arbitrations as a regular course of their business, and that once the Navy documents came into the FAA's possession on March 5 in preparation for the arbitration hearing, the documents qualified as "normally maintained" by the FAA, within the ambit of section 7114(b)(4)(A). The General Counsel disputes the Respondent's argument that the Union had to make a new information request on March 5 in order for the Employer to be required to submit the documents it received on that date. According to the General Counsel, the Employer's continuing obligation to furnish the Union with the previously-requested documents is imposed by the Statute itself, as well as the Employer's express promise (in its March 2 letter) to do so, "[s]hould we obtain new documents . . . ."

B. Analysis

1. Respondent's March 2 Response

The Complaint alleges, at paragraph 27: "By the conduct described in paragraphs 17, 18, and 26, Respondent refused to comply with 5 U.S.C. § 7114(b)(4)." Paragraphs 17 and 18, in turn, allege that Mr. Taylor's letter of March 2 "denied the Union's request for . . . information," and that Mr. Taylor's phone conversation with Mr. Meachum that same day further withheld information from the Union. The evidence of record, however, does not substantiate these allegations.

As previously noted, on February 12 the Union had requested all information related to Roving Sands that the FAA intended to rely upon in its arbitration case, as well as MSDS sheets for jet fuel and other hazardous materials used during Roving Sands. The Respondent asked the Union on February 19 for a more specific explanation of the Union's

particularized need for the information, and after the Union provided a further explanation of the need and relevance of the information, Mr. Taylor replied on March 2. In this reply, Mr. Taylor did not "deny" the Union's request at all; rather, he indicated that the FAA did not have the MSDS material and that it had already given the Union all documents on Roving Sands that the FAA intended to use at the hearing. Mr. Meachum's testimony did not materially contradict Mr. Taylor's assertions: he confirmed that the Union had received a large amount of information prior to the submission of a stipulation to the FLRA in 1996, and he didn't identify any MSDS material that the Respondent possessed and failed to furnish the Union. Testimony concerning the telephone conversation between Mr. Meachum and Mr. Taylor similarly failed to identify any information in the possession of the FAA on March 2 that the Respondent was withholding from the Union.

Therefore, the evidence does not support the allegations of paragraphs 17 and 18 of the Complaint. As noted above, it appears that the General Counsel recognized this and abandoned those allegations at the hearing, but it did not expressly amend the Complaint to that effect. Regardless of whether the General Counsel has consciously abandoned those allegations, the evidence of record fails to establish any violation of the Statute in the Employer's actions on and before March 2, 1999, and I therefore recommend that those portions of the Complaint be dismissed.

2. <u>Respondent's Conduct On and After March 4</u>

March 4 was the fifth day prior to the arbitration hearing; therefore, pursuant to the parties' collective bargaining agreement (CBA), they were required to exchange lists of witnesses, and this was indeed done. However, this requirement under the CBA did not alter the Employer's obligations under section 7114(b)(4) of the Statute to furnish relevant information requested by the Union. In his March 2 letter to the Union, Mr. Taylor stated that the Employer had obtained no new documents responsive to the Union's earlier requests, other than those documents already given to the Union. He further promised to provide the Union with any such documents "no later than five (5) days before the hearing,"
if the Employer obtained any additional documents. Notwithstanding the effect of the CBA's pre-hearing procedures for exchanging information, the Statute's requirement to furnish information under section 7114(b)(4) does not terminate five days before the hearing. If the Union requested data which met the requirements of section

7114(b)(4), the Respondent was required to furnish it, even if there were fewer than five days before the hearing.

Although the parties' dispute concerning HPD had been festering for seven years by the time of the arbitration hearing, events started moving much more quickly in the week leading up to March 9. A series of fax transmissions and phone conversations occurred on March 4 and 5, and the precise time of some of these events is more clear than others. Some of the fax transmission sheets specify the date and time they were sent, but they do not indicate when the faxes were received or read by the recipients. Absent specific testimony by a recipient or other evidence to the contrary, however, I consider fax transmissions to have been received at the time they were sent. Both Mr. Taylor and Mr. Meachum were at the hearing and available to testify; if they did not receive or become aware of the documents faxed to them within a matter of minutes after they were sent, it was incumbent on them to testify accordingly. Since neither Mr. Taylor nor Mr. Meachum denied prompt receipt of the other's faxes, the only logical conclusion is that they received the faxed documents within minutes of their transmission.3

The time of receipt of these documents is important here, because of the brief time remaining before the March 9 arbitration hearing. Since March 5 was a Friday, the next two days were not work days. In his March 4 fax to Mr. Taylor, Mr. Meachum had clearly expressed the urgency of his need to review Roving Sands-related documents in advance of the hearing, and he further stated his willingness to come to Mr. Taylor's office personally on the 5th to pick up any newly-obtained information. And since most parties would be traveling from Texas to New Mexico on the 8th for the hearing, any documents not received by Mr. Meachum by the 5th would likely not be seen by him until the day of the hearing.

The evidence establishes that the Employer possessed and withheld from the Union two documents (Resp. Exhibit D and G.C. Exhibit 7) that were directly responsive to the Union's data requests. Resp. Exhibit D (Lt. Jaeger's memo in support of Mr. Taylor's request to use a Navy witness at the arbitration) was received by Mr. Taylor's office shortly

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Mr. Meachum did testify, for instance, that he never received the Employer's letter dated February 19, prompting him to ask Mr. Taylor to fax it on February 25. Neither party made any such claims regarding any of the faxed documents, however.

before 4:00 p.m. CST on March 4, and it was directly responsive to Mr. Meachum's expanded data request received by Mr. Taylor approximately 15 minutes later.[4] That expanded request sought any information related to the Employer's basis for denying hazard pay to the controllers, whether or not the Employer intended to introduce it at the arbitration. The Employer did not use the Jaeger memo at the arbitration, but the memo listed the types of explosives used at Roving Sands and demonstrated the factual basis for the FAA's denial of hazard pay. G.C. Exhibit 7 (the actual Navy documents from the 1992 Roving Sands exercises) contained a much more detailed description of the ammunition and other materials used in Roving Sands, and it was received by the Employer at 3:01 p.m. on March 5. Since these documents were actually introduced by the Employer at the arbitration hearing, they were covered by the Union's data requests of February 12 and 25, as well as the expanded request of March 4. Mr. Taylor sent his witness and exhibit list to the Union at about 4:30 p.m. on the 4th and spoke with Mr. Meachum on the phone sometime on March 5 about the impending hearing, and there is no evidence that Mr. Taylor advised the Union on either occasion that he had the Jaeger memo. And although it is not clear whether this phone conversation occurred before or after Mr. Taylor's 3:01 p.m. receipt of the additional 15 pages of Navy documents, it is quite clear that Mr. Taylor made no effort to inform the Union, by telephone, by fax or by any other means, that these documents were now available.

On the other hand, Mr. Taylor did furnish the Union with the February 27, 1992 memo from the Navy to the Roswell airport manager, in its March 4, 1999 witness and exhibit list. This memo, like the more detailed March 11, 1992 memo that was withheld from the Union until the day of the arbitration, identified the ammunition to be used at Roving Sands and the explosive classification of each. The receipt of this document on March 4, 1999 should have alerted the Union that the Employer had specific evidence that the only explosives used at Roving Sands were of categories 1.3 and 1.4, yet there is no indication from Mr. Meachum's testimony that he questioned Mr. Taylor about this issue when they spoke on March 5. Moreover, the receipt of this document obviously did not dissuade the Union from pursuing its arbitration case.

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[4] My finding that Mr. Taylor received the Jaeger memo and Mr. Meachum's expanded data request promptly on the afternoon of March 4 is further supported by the fact that Mr. Taylor was in his office at 4:28 p.m. that day, when he sent the Employer's witness and exhibit list to the Union.

Notwithstanding the fact that the Employer furnished the Union with the February 27, 1992 memo prior to the arbitration hearing, the Employer withheld Lt. Jaeger's March 4, 1999 memo and the additional 15 pages of documents sent by Lt. Jaeger to Mr. Taylor on March 5. The latter documents were particularly authoritative evidence regarding the explosives used at Roving Sands, and they went into much more detail than the brief memo to the airport manager. Thus the Employer's furnishing of the 1-page memo to the Union on March 4 did not absolve the Employer of its responsibility to provide the Union with all information it possessed that related to the Employer's denial of HPD. The two memos sent by Lt. Jaeger on March 4 and 5 both fit within the Union's information requests, but the Employer concealed them from the Union until at least March 9. Moreover, while the delay from March 4 or 5 until March 9 constituted a delay of only a few days, these were crucial days in the preparation of the Union's case. Mr. Meachum made it clear to Mr. Taylor that time was of the essence and that he needed the documents to prepare his case, and Mr. Taylor's delay can only be interpreted as a conscious intent to hinder the Union in the arbitration.

Having found that the Employer intentionally withheld important information from the Union for a significant period of time, I must analyze the information in terms of section 7114(b)(4) of the Statute. In other words, was the Employer required by section 7114(b)(4) to furnish the March 4 and March 5 memos to the Union prior to the arbitration?

Section 7114 provides, in pertinent part:

> (b) The duty of an agency and an exclusive representative to negotiate in good faith under subsection (a) of this section shall include the obligation -
>
> . . . .
>
> (4) in the case of an agency, to furnish to the exclusive representative involved, or its authorized representative, upon request and, to the extent not prohibited by law, data -
>
> (A) which is normally maintained by the agency in the regular course of business;
>
> (B) which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and
>
> (C) which does not constitute guidance, advice, counsel, or training provided for management officials or

> supervisors, relating to collective bargaining;

The Authority has long held that the duty to furnish information to a union "applies not only to information needed to negotiate an agreement, but also to data relevant to its administration." *Department of Health and Human Services, Social Security Administration*, 36 FLRA 943, 947 (1990), quoting *American Federation of Government Employees, AFL-CIO, Local 1345 v. FLRA*, 793 F.2d 1360, 1363 (D.C. Cir. 1986). It is also well settled that "A data request filed under section 7114(b)(4) must meet all the requirements set forth in the three subsections of section 7114(b)(4)." *Social Security Administration, Baltimore, Maryland and Social Security Administration Area II, Boston Region, Boston, Massachusetts*, 39 FLRA 650, 656 (1991).

In this case, there is no dispute that the documents requested by the Union on February 12 and 25 and March 4 were "necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining." The Union had filed a grievance claiming that the Roswell controllers were entitled to the hazard pay differential mandated by statute, based on their exposure to hazardous materials, including explosive military ammunition and volatile fuel. Since the FAA itself did not maintain information concerning the ammunition and other materials used during the military exercises, obtaining that information from the Navy was crucial to determining whether the controllers were indeed entitled by law to the hazard pay.

A review of the arbitrator's ultimate decision on the Union's grievance further demonstrates the necessity and importance of the Navy documents to the grievance. The Union's case in support of HPD was based primarily on the visual and oral observations of participants in the Roving Sands exercises: visual sightings of bombs with markings of various colors and of fuel bladders, and statements by military planners to controllers that the tower was within the "kill zone" of the aircraft. While these observations may have led the controllers to believe that they had been exposed to "explosive or incendiary materials which are unstable and highly sensitive," they were found by the arbitrator to be speculative in nature and less authoritative than the actual 1992 Roving Sands documents (quoted at length in the award) that specified the ammunition used in the exercises and the level of explosiveness of each type of ammunition. In other words, it was precisely those documents requested by the Union that

the Employer used at the arbitration to show (persuasively) that the controllers were not entitled to HPD.

Furthermore, the Employer does not assert here that the information requested by the Union constituted guidance or advice to management officials relating to collective bargaining. Instead, the Employer argues that the requested information was neither "normally maintained" by the FAA nor "reasonably available," and that its compliance with the Union's information requests must be evaluated as of the time it responded to the Union's last request (i.e., March 4), regardless of whether it subsequently obtained and concealed relevant information from the Union (i.e., the documents it obtained March 5).

The Employer's argument that the Navy documents were not "normally maintained . . . in the regular course of business" has a certain attractiveness, since it is undisputed that the FAA does not "normally" maintain documents concerning the types of weapons carried by aircraft at FAA-controlled airports, and keeping track of such weapons information is not part of the FAA's regular course of business. These were Navy documents related to military matters, and there is no evidence that the FAA possessed them prior to March 1999.[5] However, it is also clear that the FAA obtained the documents on March 4 and 5, in response to the Union's filing of the HPD grievance and in preparation for the arbitration hearing on that grievance. Thus, while the FAA does not normally maintain such information, it did obtain the information here in the regular course of its grievance processing.

Although the Authority does not appear to have decided a case with facts precisely like these, the case law strongly suggests that the Navy documents here in question were "normally maintained" by the FAA once they were received in Mr. Taylor's office on March 4 and 5. An oft-repeated refrain was stated in *U.S. Department of Justice, Washington, D.C., and U.S. Immigration and Naturalization Service, Northern Region, Twin Cities, Minnesota and Office of Inspector General, Washington, D.C. and Office of Professional Responsibility, Washington, D.C.*, 46 FLRA 1526, 1537 (1993)("*INS Twin Cities*"): "In determining whether information is normally maintained by an agency, the Authority examines whether the information is within the control of the agency." This principle has been cited by the Authority in a variety of contexts; *see, e.g., U.S.*

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5 While it is indeed strange that the HPD dispute simmered for seven years before the FAA obtained the Navy documents, the current record does not answer that mystery.

Department of Commerce, National Oceanic and Atmospheric Administration, National Weather Service, Silver Spring, Maryland, 38 FLRA 120, 129 (1990)("*NOAA*"); *Department of Health and Human Services, Social Security Administration, Baltimore, Maryland and Social Security Administration, New Bedford District Office, New Bedford, Massachusetts*, 37 FLRA 1277, 1284-85 (1990)("*SSA New Bedford*"). In *INS Twin Cities*, the Authority went on to hold: "In determining whether information is reasonably available to an agency, the Authority determines whether the information is accessible or obtainable through means which are not extreme or excessive. . . . The physical location of requested information is not relevant, provided the information is subject to the agency's control or can be retrieved and provided to the agency at its request." 46 FLRA at 1537.

Accordingly, the Authority has required agencies to provide documents that are maintained by other components of the same executive department (*NOAA*, *supra*; *U.S. Department of Transportation, Federal Aviation Administration, National Aviation Support Facility, Atlantic City Airport, New Jersey*, 43 FLRA 191 (1991)); personal notes made by supervisors about a contested incident (*SSA New Bedford*); and consolidated reports of an employee survey conducted by an outside contractor and distributed to agency managers (*U.S. Food and Drug Administration and U.S. Food and Drug Administration Region VII, Kansas City, Missouri*, 19 FLRA 555 (1985)("*FDA Kansas City*"). Almost none of the above-cited documents were official agency records or forms regularly prepared or maintained by the respondent agencies; many of the documents were unique and created for a specific event or purpose. Notwithstanding their "irregular" nature, the documents were either in the possession of the respondent agency or within that agency's control, and therefore the Authority found them to fit within the mandate of section 7114(b)(4)(A).

The Respondent correctly argues that documents in the possession of a third party are not subject to the production requirements of 7114(b)(4) unless the respondent has the ability to demand their retrieval, and that the FAA here did not have the ability to demand the documents from the Navy. As noted in Resp. Exhibit D, 32 C.F.R. Part 725 sets forth procedures for the Navy to release its documents for use in court or governmental proceedings, and the FAA followed those procedures to obtain the documents it used in the arbitration. The FAA did not have the right to demand those documents, and the Navy could have refused to provide them. As long as the FAA didn't possess the disputed documents, it did not "normally maintain" them; on the other

hand, once the Navy gave the documents to the FAA, they immediately fit within the ambit of section 7114(b)(4)(A).

This principle is further illustrated by two cases in which the Authority held that documents were not "normally maintained." In *U.S. Department of Justice, Office of the Inspector General, Washington, D.C. and U.S. Immigration and Naturalization Service, U.S. Border Patrol, El Paso, Texas*, 45 FLRA 1355 (1992), the Union sought files of investigations undertaken by the agency's Office of Inspector General (OIG). Despite the fact that OIG was a component of the INS's parent Department of Justice, the Authority noted that the INS did not control access to OIG files, and OIG's policy was not to make such investigative documents available to INS "or anybody else." Therefore, the Authority held that such documents were not normally maintained by, or reasonably available to, the INS. In *INS Twin Cities*, *supra*, 46 FLRA at 1534-38, the Union similarly requested the entire investigative file maintained by OIG concerning an alleged theft by an employee, but in this case OIG furnished INS with a report of its investigation and with exhibits it deemed relevant, while omitting other exhibits. The INS, in turn, gave the Union the OIG report but refused to furnish the exhibits. The Authority held that the OIG report and the exhibits given by OIG to INS were "normally maintained by" and "reasonably available to" INS, but that the exhibits withheld by OIG were beyond INS's control and not within the ambit of section 7114(b)(4)(A). Even though INS had no control over OIG's decision as to which exhibits to release, those exhibits received by INS were then considered to be "normally maintained" by INS.

Applying these principles, I agree with the Respondent that until March 4, when it received Resp. Exhibit D from the Department of the Navy, and March 5, when it received G.C. Exhibit 7, the FAA had no documents in its possession or control that were responsive to the Union's information requests. However, on receipt of these two documents, the Respondent possessed information that was necessary for the Union to process its grievance, and from that time on, this information was "normally maintained by the agency in the regular course of business." The information was received from the Navy by Mr. Taylor, the Manager of the Respondent's Labor and Employee Relations Branch, for the express purpose of preparing the Respondent's case in the impending arbitration hearing. As the Authority noted in *Department of Veterans Affairs, Department of Veterans Affairs Medical Center, Fort Lyon, Colorado*, 41 FLRA 1091, 1097 (1991), "the maintenance of records regarding the processing of a grievance pursuant to the parties' collective bargaining

agreement is, by its nature, part of an agency's regular course of business."

The Respondent also argues that because Mr. Meachum was the only witness to testify, the General Counsel failed to prove the technical aspects of the allegation that the withheld information was "normally maintained by the agency in the regular course of business." The Respondent doesn't articulate precisely what elements of proof it believes to be missing, but the Respondent seems to argue that the custodian of an agency's records must testify as to the circumstances in which the disputed documents are "maintained." At least one Administrative Law Judge has considered the "possibility that the drafters of [section 7114(b)(4)(A)] had in mind a labor relations counterpart to the hearsay exception in the law of evidence for records kept in the regular course of business." *SSA New Bedford*, 37 FLRA at 1297. Rejecting that contention, partly because a union in a 7114(b)(4) case is not the custodian of the documents it seeks, the Judge (whose conclusions and findings were approved by the Authority) stated that the General Counsel simply must prove "that the agency actually maintains the requested data" in order to make a prima facie case. *Id.*

It does not require the testimony of an FAA official to demonstrate that the Respondent came into possession of the disputed documents, and therefore "actually maintained" them, on March 4 and 5. The Union President testified that he was given a copy of G.C. Exhibit 7 for the first time at the arbitration hearing, at which time a Navy employee identified the document and the Employer introduced it into evidence. On its face, G.C. Exhibit 7 is addressed to Mr. Taylor and his assistant, and is dated March 5. Similarly, Respondent itself introduced Resp. Exhibit D, which is dated March 4 and addressed to Mr. Taylor, among other people. Although the Employer didn't use this latter document at the arbitration, it is quite clear from the contents of the document that its summary of the types of explosives used in Roving Sands was responsive to the Union's information request. The failure of any FAA official to contradict the plain meaning of these documents and the testimony of the Union President leads to the inescapable conclusion that the Respondent came into possession of these documents on March 4 (Resp. Exhibit D) and 5 (G.C. Exhibit 7) in preparing its arbitration case, and accordingly that the Respondent "maintained" them within the meaning of section 7114(b)(4)(A).

The Respondent also argues that the documents requested by the Union were not "reasonably available" within the

meaning of section 7114(b)(4)(B), but this argument seems indistinguishable from its claim that the documents were not "normally maintained." Certainly, if documents are in the possession of a third party and are beyond the control of the Respondent, they may not be "reasonably available." Prior to March 4 and 5, therefore, this may have been a legitimate basis for the FAA's refusal to furnish them to the Union. But once the FAA received them from the Navy, it was a simple matter to furnish them to the Union. In *Department of Health and Human Services, Social Security Administration*, 36 FLRA 943, 950 (1990), the Authority explained that "'available' referred to information which is accessible or obtainable, while 'reasonable' referred to means that are not extreme or excessive." Mr. Meachum had expressly stated in his March 4 letter that he was willing to come to Mr. Taylor's office any time the following day to pick up any relevant documents. It is obvious here that the Employer could have easily furnished the two pertinent documents to the Union once the FAA received them on March 4 and 5, respectively.

The Respondent's final argument is that its obligation to furnish information to the Union is a static, rather than a continuing, one. Specifically, it argues that by responding to the Union's information requests on March 2 and 4, it had no further obligation to furnish the Union with the information it received from the Navy on March 5. There are several defects in this argument. First, the Employer's response to the Union on March 4 was not complete, in that it withheld from the Union the March 4 memo sent to Mr. Taylor by Lt. Jaeger (Resp. Exhibit D), which summarized the types and categories of explosives used at Roving Sands and the expected testimony of Mr. Kratovil. Mr. Meachum's March 4 letter to Mr. Taylor asked for "material or information . . . that would help the Union ascertain whether the agency made the correct decision to deny controllers hazardous duty differential." Resp. Exhibit A. Mr. Taylor responded to this memo 15 minutes later by sending G.C. Exhibit 6, but he withheld the memo from Lt. Jaeger that he had received only 30 minutes previously. Therefore, even if an agency's obligation under section 7114(b)(4) were static, the Respondent's actions on March 4 did not satisfy that obligation.

More fundamentally, however, the Respondent cannot evade responsibility for its failure to furnish the Union with the documents it received on March 5, because an agency's obligation under section 7114(b)(4) is as dynamic as its collective bargaining relationship with its union. The duty to furnish information to a union is contained in section 7114(b), which outlines the duties of a good faith

bargaining relationship between an agency and an exclusive representative. These are not static responsibilities, but guidelines for an ongoing relationship. Similarly, the duty to furnish information to a union is considered essential to enable the union to carry out its bargaining responsiblities, both in negotiating agreements and in enforcing them through the grievance procedure. In this case, the FAA and NATCA had been fighting over the HPD issue from 1992 to 1999, and the grievance over HPD had been pending since 1997, culminating in the March 1999 arbitration. The Union had made specific information requests at least as early as February 12, 1999. As noted in its March 2 answer, the FAA had given the Union documents related to Roving Sands in the 1996 ULP proceedings, and it acknowledged in the March 2 letter that it was continuing to seek additional documents from the Navy; it further acknowledged that it would promptly furnish the Union with any such documents. Although the Respondent may have accurately stated in its March 2 response that it had given the Union all relevant information it possessed at that time, it had a continuing obligation to turn over any additional documents it might obtain at a later time. From the language of his March 2 letter, Mr. Taylor clearly recognized that obligation, and the FAA cannot evade it now.

Authority case law also makes clear this continuing obligation to respond to a lawful information request. In *Bureau of Prisons, Lewisburg Penitentiary, Lewisburg, Pennsylvania*, 11 FLRA 639, 650-51 (1983), the Administrative Law Judge found that although the employer had furnished the union with most of the documents it requested, it unreasonably delayed in obtaining other documents and furnishing them to the union. The Authority agreed with the Judge that section 7114(b)(4) requires an agency to furnish relevant information "in a timely manner," but it found that the employer had made "diligent searches" to obtain information not contained in its records and that it ultimately supplied that information to the union; therefore, the Authority held that the employer's delayed response was reasonable "under these circumstances." 11 FLRA at 642. The language of the Authority's decision makes it clear that it believed the agency had a continuing obligation to furnish the union with responsive documents when it obtained them subsequent to its initial response.

In *FDA Kansas City*, 19 FLRA at 556-57, the Authority went further by explicitly holding that a union does not have to make repeated requests for information that comes into the agency's possession subsequent to the initial request. Indeed, the facts of the *FDA Kansas City* case are

remarkably close to those of the current case. In the former case, the union requested copies of a survey conducted by an outside contractor, and union-management discussion of this issue continued for several months. When the union initially requested the reports in March 1983, the agency did not have copies of the reports; although the agency obtained copies in June or July of 1983, it didn't provide the union with copies until December of that year. The Authority wrote: ". . . the Union did not waive its statutory right to the timely furnishing of the roll-up reports . . . by failing to request that such reports be furnished separately when the Respondent received them from the contractor in June." 19 FLRA at 557. Similarly, in *U.S. Patent and Trademark Office*, 45 FLRA 1090, 1113-14 (1992), the Judge held that 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 cites no case precedent for its argument that its responses to the Union on March 2 and 4 relieved it of any further obligation to give the Union the March 5 documents. None of the cases cited by the Respondent support its claim, and in fact the *FDA Kansas City* case, *supra*, directly contradicts it.

For all the reasons stated above, I conclude that the March 4 memo from Lt. Jaeger and the documents sent to the Respondent on March 5 were (1) necessary for the Union to evaluate the merits of the HPD grievance; (2) normally maintained by the FAA in the regular course of business upon their receipt; (3) reasonably available as of the date of their receipt; and (4) not guidance, advice, counsel or training related to collective bargaining. Therefore, the Respondent was required by section 7114(b)(4) to furnish these documents to the Union in a timely manner.

As to the timeliness of the Respondent's response, it seems manifest, in the circumstances of this case, that the delay from March 4 or 5 to March 9 was unreasonable. The underlying principle here is that "such information must be furnished in a timely manner under the circumstances in order to effectuate the purposes and policies of the Statute." *Bureau of Prisons, Lewisburg Penitentiary, Lewisburg, Pennsylvania*, 11 FLRA 639 at 642. As the Judge noted in *U.S. Patent and Trademark Office*, *supra*, 45 FLRA at 1114, "[t]here is no strict rule regarding whether a delay . . . constitutes a failure to comply." In many circumstances, a four- or five-day delay would be quite reasonable and timely. But in this case, it was clear to all parties that every day was crucial in making final

preparations for the arbitration hearing. A dispute that had been waged over seven years was about to reach its climax in a few days, and the Respondent's March 2 letter to the Union reiterated that the FAA was still trying to obtain crucial documents from the Navy. When the Union made its final information request to the Employer on March 4, Mr. Meachum re-emphasized the urgency of an immediate response and offered to come to Mr. Taylor's office personally to pick up the documents. It was therefore incumbent on the Respondent, when it received the 15-page set of Navy documents the following day (a Friday), to contact the Union and try to give Mr. Meachum the information immediately, so that the Union would have the opportunity to review the information before everyone left Texas to travel to the New Mexico hearing. The difference between the Union receiving the documents on the 5th as opposed to the 9th was the difference between being prepared and being surprised.

In *Lewisburg*, the Authority spoke of timeliness "in order to effectuate the purposes and policies of the Statute." 11 FLRA at 642. The purposes and policies served by furnishing the Union with the March 5 documents were to enable the Union to evaluate the merits of its grievance and to prepare for the arbitration hearing. Withholding the documents for four days here put the Union at a significant disadvantage, and it made preparation for the hearing impossible. It follows, therefore, that the Respondent did not furnish the documents in a timely or reasonable manner, and I conclude that it violated sections 7114(b)(4) and 7116 (a)(1), (5) and (8) of the Statute. Moreover, since the Respondent withheld the information for the express purpose of hindering the Union's preparation for the arbitration hearing, I conclude that it acted in bad faith, in violation of sections 7116(a)(1) and (5) of the Statute.

REMEDY

In addition to the normal remedies of a cease and desist order and the posting of a notice, the General Counsel requests that the Respondent be required to pay the Union's costs of holding the arbitration hearing, a total of $5858.90. The logic of the request is speculative at best, but it contains a thread of reason: Mr. Meachum, the Union President, testified that he would have dropped the HPD grievance and canceled the arbitration hearing if he had received the 15 pages of Navy documents on March 5. The Navy documents clearly demonstrated that the grievance lacked merit, he confesses, and it would have been pointless to pursue the grievance to arbitration. Therefore, the Respondent should be made to pay the full costs of the arbitration. While this reasoning may have merit in some

cases, I cannot accept either Mr. Meachum's testimony or the General Counsel's proposed remedy here.

I agree with Mr. Meachum that the 15 pages of documents sent by the Navy to the FAA on March 5 were convincing evidence that the Union's grievance lacked merit. The documents describe in detail all types of ammunition authorized for the Roving Sands exercises and the explosive level of each. The arbitrator certainly found the documents persuasive, as his award decision quoted these documents at length. However, the Respondent had furnished to the Union on March 4 a copy of the Memorandum of Agreement for Ammunition Handling at Roswell I.A.C., dated February 27, 1992, which also specified the types and explosive levels of all ammunition to be used at Roving Sands (G.C. Exhibit 6, p.4). While this document was not as lengthy or detailed as the full set of documents introduced at the arbitration hearing, it demonstrated the fatal shortcomings in the Union's grievance and should have made it clear to the Union that it was likely to lose the arbitration. If this document, which the Union received on March 4, didn't convince the Union to cancel the arbitration, neither would the additional documents obtained by the FAA on March 5. By March 4 and 5, the parties had been fighting over HPD for seven years, and the arbitrator's summary of the evidence presented at the hearing reflects that air traffic controllers had become convinced that live bombs and hazardous chemicals had been used in the Roving Sands exercises. While the Union was certainly entitled to prompt receipt of the additional Navy documents in order to better prepare for the arbitration, I do not accept the assertion that such receipt would have caused the Union to cancel the hearing.

Based on the foregoing, I recommend that the Authority issue the following Order:

ORDER

Pursuant to section 2423.41(c) of the Authority's Rules and Regulations and section 7118 of the Statute, it is hereby ordered that the U.S. Department of Transportation, Federal Aviation Administration, Fort Worth, Texas, shall:

1. Cease and desist from:

(a) Failing or refusing to furnish the National Air Traffic Controllers Association with information requested under section 7114(b)(4) of the Statute, when the information is necessary for the Union to discharge its

obligation as the exclusive representative of unit employees.

(b) Acting in bad faith by withholding for an unreasonable period of time such necessary information requested under section 7114(b)(4) of the Statute.

(c) In any like or related manner interfering with, restraining or coercing 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) Post at its facilities copies of the attached Notice on forms to be furnished by the Federal Labor Relations Authority. Upon receipt of such forms, they shall be signed by the Regional Administrator of the FAA's Southwestern Region 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 ensure that such Notices are not altered, defaced, or covered by any other material.

(b) Pursuant to section 2423.41(e) of the Authority's rules and Regulations, notify the Regional Director of the Dallas Region, Federal Labor Relations Authority, in writing, within 30 days of the date of this Order, as to what steps have been taken to comply herewith.

The allegations of paragraphs 17 and 18 of the Complaint are dismissed.

Issued, Washington, DC, March 16, 2001

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RICHARD PEARSON
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 U.S. Department of Transportation, Federal Aviation Administration, Fort Worth, Texas, violated the Federal Service Labor-Relations 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 furnish the National Air Traffic Controllers Association (the Union) with information requested under section 7114(b)(4) of the Statute, when the information is necessary for the Union to discharge its obligation as the exclusive representative of unit employees.

WE WILL NOT act in bad faith by withholding for an unreasonable period of time such necessary information requested under section 7114(b)(4) of the Statute.

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

(Activity)

Date: 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, Dallas Region, whose address is: 525 Griffin Street, Suite 926, LB 107, Dallas, Texas 75202-1906, and whose telephone number is (214) 767-4996.

CERTIFICATE OF SERVICE

I hereby certify that copies of the **DECISION** issued by RICHARD PEARSON, Administrative Law Judge, in Case No. DA-CA-90788, were sent to the following parties:

_____

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CERTIFIED MAIL & RETURN RECEIPT **CERTIFIED NOS:**

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DATED: March 16, 2001
Washington, DC