FEDERAL LABOR RELATIONS AUTHORITY OALJ 12-08
Office of Administrative Law Judges
WASHINGTON, D.C.

DEPARTMENT OF THE ARMY U.S. ARMY CORPS OF ENGINEERS HUNTINGTON, WEST VIRGINIA RESPONDENT AND AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 3729, AFL-CIO CHARGING PARTY	Case No. WA-CA-10-0515

Alicia E. Weber, Esq.
For the General Counsel

Rayetta W. Waldo, Esq.
For the Respondent

Charlotte L. Hazelett
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 (Authority), Part 2423.

Based upon an unfair labor practice charge filed by the American Federation of Government Employees, Local 3729, AFL-CIO (Union), a Complaint was issued by the Regional Director of the Washington Regional Office. The complaint alleges that the Department of the Army, U.S. Army Corps of Engineers, Huntington, West Virginia (Respondent) violated § 7116(a)(1), (5) and (8) of the Statute when it failed to furnish information requested pursuant to § 7114(b)(4) of the Statute. (Jt. Ex. A2). The

Respondent timely filed an Answer denying the allegations of the complaint. (Jt. Ex. A4). On November 12, 2010, pursuant to § 2423.26(b) of the Authority's rules and regulations for unfair labor practice proceedings, the General Counsel with the concurrence of the Respondent, filed a motion requesting consideration based on stipulation of fact and joint exhibits in lieu of a hearing.

As the relevant language of that provision uses the permissive term "may" rather than the compulsory "must" to describe a joint motion, I find that while less than an ideal practice, the General Counsel's submission of such a motion without the signatures of the other parties is not a procedural error fatal to the motion because the Respondent and Charging Party were properly served and neither party filed an objection to the motion. Thus, I conclude that all parties were in accord with the motion to decide the matter upon stipulated facts and the joint exhibits without a hearing. Furthermore, the General Counsel's motion stated that the Respondent was in agreement and the Respondent signed the stipulation of fact submitted with the motion. As the Charging Party filed no opposition to the motion and did not submit a brief upon the matter, I conclude that such inaction indicated that the Charging Party concurred with the actions of the General Counsel in prosecuting the charge and determined that its interests were adequately represented. Therefore, the Charging Party felt no need for direct involvement in the matter.

The General Counsel and Respondent filed timely briefs and the Respondent's brief, which was signed, provided further indication of its acquiescence to ". . . a decision on the record based upon Stipulations of Fact and joint exhibits in lieu of a hearing." (Resp. Br. at 1). Upon consideration of the motion, including the stipulation of fact and joint exhibits attached thereto, I conclude that the record adequately addresses the material facts required to decide the issues presented, therefore, the motion is granted. No hearing was held upon this matter and this Decision on the merits is based upon consideration of the stipulation of facts, the parties' joint exhibits, and briefs submitted by the General Counsel and Respondent.

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

FINDINGS OF FACT

The Department of Army, U.S. Army Corps of Engineers, Huntington, West Virginia (Respondent/COE), is an agency within the meaning of 5 U.S.C. § 7103(a)(3). (Jt. Ex. A2, A4).

The American Federation of Government Employees, Local 3729, AFL-CIO (Charging Party/Union) is a labor organization under 5 U.S.C. § 7103(a)(4) and is the exclusive representative of a unit of employees appropriate for collective bargaining. (Jt. Ex. A2, A4).

Charlotte L. Hazelett, is a Hydrologic Technician assigned to the Engineering and Construction Division, Water Resources Engineering Branch, Water Management Section at the Respondent's Huntington, West Virginia, facility. (Stip.).

As the only non-professional employee assigned to the Water Management Section, Ms. Hazelett is the only bargaining unit employee at that individual unit and she works with nine professional employees who are not in the bargaining unit represented by the Union. (Stip.). Ms. Hazelett also serves as chief union steward at that location. (*Id.*).

On July 12, 2010, Ms. Hazelett, as union steward, submitted via an email to Respondent's Labor Relations Specialist, Gregory R. Robinson (Jt. Ex. B1), a request for information pursuant to 5 U.S.C. § 7114(b)(4) asking for the following information:

> The Union is requesting a roster of overtime worked and refused of all employees within the individual unit of CELRH-EC-WM (Engineering and Construction Division, Water Resources Engineering Branch, Water Management Section) for the time period of 12 July 2009 to the present. The Union requests this information be provided by COB on July 16, 2010. (Jt. Ex. B2).

In support of this request, Ms. Hazelett stated that the Union's particularized need was as follows:

> The right to this requested information is substantiated in AFGE Basic Agreement, Article 11, Section 1, and will be used to determine whether the Employer is offering overtime fairly and equitably on a rotational basis. The information is further necessary for AFGE Local 3729 to determine whether or not it should file a grievance concerning overtime practices on behalf of a bargaining unit employee. (Jt. Ex. B2).

On August 3, 2010, Mr. Robinson responded to the Union's request with an email containing an attachment. (Jt. Ex. C1). The attachment was a one page memorandum addressed to the Union and dated August 2, 2010. (Jt. Ex. C2). The subject line of the memorandum was "Response to Information Request-Overtime Roster", and it contained four paragraphs. The first paragraph was a restatement of the Union's request. The second paragraph was a restatement of the particularized need the Union provided in its request. The third paragraph contained this:

> There is one bargaining unit employee in the individual unit of CELRH-EC-WM (Engineering and Construction Division, Water Resources Engineering Branch, Water Management Section). From the time period of 12 July 2009 to date of this request, this bargaining unit employee, the requester, Ms. Charlotte L. Hazelett, did not work overtime. Therefore, a

> roster, as identified in the AFGE Basic Agreement, Article 11, Section 1 does not exist. The District does not believe you have met the particularized need for any overtime information for nonbargaining unit employees. (Jt. Ex. C2).

The fourth paragraph contained a general discussion of the particularized need that a union must establish when information is requested under the Statute without providing any explanation or application of those requirements to the circumstances presented in this case. (Jt. Ex. C2).

Article 11, Section 1 of the AFGE Basic Agreement states the following:

> When overtime is deemed appropriate by the Employer, such overtime work will be offered by the immediate supervisor fairly and equitably on a rotational basis, within the individual unit involved consistent with skill requirements, availability of personnel, and continuity of operations. An individual unit is defined as the smallest identifiable organizational entity. A roster of overtime worked and refused must be maintained by supervisors for a period of one year to assure that each employee receives substantially the same consideration. An overtime roster and record may be reviewed and discussed with the assigned steward. (Jt. Ex. F at 15).

The Respondent's initial reply to the Union request dated August 2, 2010, indicated that there was no overtime roster for this unit as required by Article 11 because Ms. Hazelett had not worked any overtime during the period covered by the Union's request for information. (Jt. Ex. C2). However, in September 2010, the Union advised the Respondent that this declaration was incorrect because Ms. Hazelett had worked overtime during the relevant period. (Stip.). On September 13, 2010, Mr. Robinson confirmed by email that his earlier declaration that Ms. Hazelett had not worked any overtime during the relevant period was incorrect and disclosed that she had in fact worked 12.25 hours of overtime during the period. (Stip.; Jt. Ex. D1). Then, in response to the Union's earlier request, the Respondent provided the Union with nine time records for Ms. Hazelett. (Stip.; Jt. Ex. D1, E1-9). In admitting the error, Mr. Robinson claimed that the supervisor of the unit who failed to provide the overtime information when first asked, had misunderstood the original request. (Jt. Ex. D1).

In explaining that misunderstanding, Mr. Robinson indicated that within this unit, there were two types of overtime, "regular scheduled overtime" and "occasional overtime" and that Ms. Hazelett was not assigned any "occasional overtime" during the period covered by the request. (*Id.*). Mr. Robinson advised that "regular scheduled overtime" consisted of a rotation of eight employees and while the work was scheduled at the start of the calendar year and prior to the start of an administrative work week, those employees who were assigned overtime in any given week were allowed to trade dates or solicit a volunteer to work their overtime duty assignment. (*Id.*). His explanation also indicated that the duty performed
during this "regular scheduled overtime" was "to observe the hydrologic network every day

of the year to transmit river and lake observations." (*Id.*). According to Mr. Robinson, the initial declaration that Ms. Hazelett had not worked any overtime during the relevant period was made because she had only worked the rotating "regular scheduled overtime" and had not worked "occasional overtime", implying that the supervisor assumed that he was only being asked about "occasional overtime" worked by his section. (*Id.*).

Based upon the time records provided to the Union by the Respondent in response to the information request, Ms. Hazelett's 12.25 hours of overtime were spread over eleven different days, each a Saturday or Sunday, and the shift was usually for an hour, although there were two days when the shift lasted one and one-half hours and another where it was one and one-quarter hours in duration. (Jt. Ex. E 1-9). While the Respondent determined that the time records of Ms. Hazelett were responsive to the Union's request for overtime information, it continued to refuse to provide time records for the other employees assigned to the unit who were not in the bargaining unit. (Stip.).

POSITIONS OF THE PARTIES

General Counsel

The General Counsel asserts that the information requested by the Union met the statutory requirements of § 7114(b)(4) and that the Respondent's failure to furnish this information violated the Statute.

The General Counsel contends that the information requested by the Union was normally maintained by the Respondent in the regular course of business, reasonably available, and necessary for full and proper discussion, understanding and negotiation of subjects within the scope of collective bargaining. The General Counsel asserts that the Union stated a particularized need for the information it requested and that the Respondent's refusal to provide the information violated § 7116(a)(1)(5) and (8) of the Statute. As a remedy for the violations, the General Counsel requests that an order requiring the Respondent to produce the requested information be issued and that Respondent be required to post a notice to all employees.

Respondent

The Respondent argues that the refusal to provide information about the overtime worked by employees who were not in the bargaining unit was justified and not a violation of the Statute because the Union did not establish a particularized need for overtime information related to those section employees who were not in the bargaining unit. In support of this argument, the Respondent first asserts that in declaring its particularized need for the information requested, the Union provided nothing more than conclusory statements. The Respondent also contends that the article of the AFGE Basic Agreement cited by the Union as the basis for its particularized need for overtime information only applies to bargaining unit employees. Finally, the Respondent contends that the Union's failure to respond to its

declaration that the Union failed to state a particularized need for overtime information related to employees who were not in the bargaining unit was inadequate and should be taken into account when assessing particularized need because of the Union steward's experience and familiarity with the interactive nature used by Respondent to process information requests.

CONCLUSIONS OF LAW

Under the Statute, 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). In this case, the information requested by the Union was sought for the purpose of determining whether the Respondent was assigning overtime fairly and equitably on a rotational basis within the smallest identifiable organizational entity and whether a bargaining unit employee should file a grievance over the assignment of overtime within that individual unit. As the information was requested for possible use in the grievance process negotiated between the parties, it was certainly sought for a subject within the scope of collective bargaining, as required by the Statute. However, before an agency is required to come forward with counterveiling interests that would militate against furnishing such information, a union must demonstrate that the information requested is necessary for full and proper discussion, understanding and negotiation. *National Labor Relations Board*, 60 FLRA 576 (2005).

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)(*IRS*). 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. The union is also required to explain the scope of its request, including the temporal aspects of its request. *U.S. Customs Serv., S. Cent. Region, New Orleans Dist., New Orleans, L.A.*, 53 FLRA 789, 799 (1997)(*Customs Service*). Thus, if a union requests information from multiple years and fails to articulate with requisite specificity why it needs information relating to that extended period, then the Authority will not find a violation of the Statute for failure to provide the information. *See U.S. Dep't of Labor, Wash., D.C.*, 51 FLRA 462, 476-77 (1995)(*DOL*). Similarly, the number and union status of employees for whom the information is sought and the number of locations where they work can be temporal aspects that must be explained to properly demonstrate a particularized need for the information. *U.S. Dep't of the Air Force, Randolph AFB, San Antonio, Tex.*, 60 FLRA 261 (2004)(particularized need for information from multiple locations not established); *U.S. Dep't of the Treasury, Internal Revenue Serv., Wash., D.C.*, 51 FLRA 1391 (1996)(*DOT-IRS*)(particularized need for information about employees working different positions not established); *U.S. Dep't of Transp., FAA, New England Region, Bradley ATCT, Windsor Locks, Conn.*, 51 FLRA 1054 (1996)(*DOT*) (particularized need for information about employees not in the bargaining unit established).

In this case, the Union only sought a roster of overtime worked and refused by the ten employees assigned to the Respondent's Water Management Section in Huntington, West Virginia, over a one year period. In accordance with Article 11 of the AFGE Basic Agreement (BA), the provision for which the Union wanted to assess compliance, the Water Management Section was the appropriate individual unit, defined as the smallest identifiable organizational entity within the Respondent's organization and the one year period was what the parties previously negotiated. As the Union's request utilized the parameters set forth in the BA, the only issue of scope presented by the request was that it sought information for all employees assigned to that individual unit, which included professional employees who were not in the bargaining unit.

In support of its request for a roster of overtime worked and refused by all employees assigned to Water Management Section, the Union indicated that it needed the information to determine if the Respondent was offering overtime fairly and equitably on a rotational basis so it could file a grievance on behalf of a bargaining unit employee if the Respondent was not complying with that contractual obligation. In assessing a union's declaration of particularized need, one should not confuse short, clear and concise with conclusory. "We think we might want to file a grievance" is conclusory, whereas "We want to ascertain if Article X is being followed, and if it is not, we intend to file a grievance on behalf of the bargaining unit," is not conclusory. Given the limited scope placed upon the information requested by the Union (one year of overtime information for this individual unit of 10 employees), along with stating why it was needed (to assess the Respondent's distribution of overtime); how it would use that information (to determine if said distribution was done fairly, equitably and in rotation); and identifying the connection between that use and the Union's representational responsibilities (filing a grievance for a bargaining unit employee), while short, clear and concise, the Union's request was not conclusory. Furthermore, it gave the Respondent the ability to make a reasoned judgment as to whether the disclosure of the information was required under the Statute. *IRS*, 50 FLRA at 670.

The Respondent's reliance on *U.S. Dep't of the Air Force, AFMC, Kirtland AFB, N.M.*, 60 FLRA 791 (2005)(*Kirtland*), to argue that a particularized need was not established is misguided. In that case, the Authority reviewed multiple requests for information that sought fifteen different categories of documents from the Agency with a single explanation offered for all of the documents requested. (*Id.* at 792, 795). The union representative did not know what the some documents were, did not explain how they would be used, and made no attempt to offer an explanation for why they were needed when the agency requested for clarification. (*Id*. at 793). The fact that a short and succinct explanation did not establish a particular need in a case involving multiple requests for over a dozen different types of documents does not mean that every short and succinct explanation of particularized need must fail.

Furthermore, the Respondent's behavior in this case demonstrates that succinct as it was, the request made by the Union was sufficient to establish a particularized need because the Respondent provided information about overtime used by bargaining unit employees. While the Respondent initially denied that overtime records existed for the bargain unit employee during the relevant period, once it recognized that such information existed and was reasonably available in the form of a time card rather than the overtime roster required by the BA, it provided the overtime information for the bargaining unit employee in the unit. Thus, the Respondent acknowledged that the Union made a valid statement of particularized need and recognized that the absence of an overtime roster did not obviate the requirement to provide information related to overtime use when it existed in a different format. *U.S. Dep't of the Air Force, AFLC, Sacramento Air Logistics Ctr., McClellan AFB, Cal*., 37 FRLA 987, 993 (1990).

The Respondent's brief also indicates that the assertion of no particularized need was related only "to the non-bargaining unit employees of the section." (Resp. Br. at 2). Therefore, the issue in this case is not whether or not the Union's request set forth a particularized need, the question is whether the Union stated a particularized need for information concerning the use and refusal of overtime by employees assigned to the Water Management Section who were not in the bargaining unit.

While the Respondent's reply to the information request indicated that the Union failed to establish a particularized need for overtime information related to employees not in the bargaining unit, it should be noted that the reply did not request further clarification or discussion. The reply simply and incorrectly stated that the agency had no overtime information for the bargaining unit employee assigned to the Section and claimed that a particularized need for the overtime records of other Section employees not in the bargaining unit was not provided. Because, this outright denial did not invite further clarification or discussion, contrary to the Respondent's argument, any Union failure to further engage in dialog is not fatal to the Union's initial request. *Social Security Admin.*, 64 FLRA 293, 297 (2009)(*SSA*).

The analytical framework set forth in *IRS*, 50 FLRA 661, requires parties to articulate and exchange their respective interests in disclosing information for several important purposes. (*Id.* at 670). It "facilitates and encourages the amicable settlements of disputes[]" and, thereby, effectuates the purposes and policies of the Statute. *Id.* (quoting 5 U.S.C. § 7101(a)(1)(C)). It also facilitates the exchange of information, which enhances the parties' abilities to effectively and timely discharge their collective bargaining responsibilities under the Statute. *Id*. In addition, it permits the parties to consider and, as appropriate, accommodate their respective interests and attempt to reach agreement on the extent to which requested information is disclosed. (*Id.* at 670-71). While the Respondent's brief argues that the Union's failure to engage in further dialog is reason to find the request lacking, the more telling observation is that the Respondent's reply offer no explanation for why it concluded the Union had not "met the particularized need for any overtime information for nonbargaining unit employees."

After considering the Union's request and the Respondent's reply, it is clear that the Union made a good faith effort to comply with the requirements of *IRS* when seeking information related to a potential grievance over the distribution of overtime on behalf of bargaining unit employees. In reply, the Respondent incorrectly denied the existence of overtime information related to the bargaining unit employee and refused to provide overtime information related to employees assigned to the section who were not in the bargaining unit because it felt the Union had not established a particularized need for those employees.

While the Union's request explained why it needed the overtime information, how it would use the information, and the connection between that use and its representational responsibilities, the Respondent now asserts that the purpose and use established by the Union did not apply to information about overtime worked by professional employees who were not in the bargaining unit because the Article from the BA cited by the Union only applies to overtime worked by bargaining unit employees. For the reasons set forth below, I find that this justification is inconsistent with Authority precedent given the way overtime was assigned by the Respondent within this individual unit. Therefore, the Union did not fail to establish a particularized need for information regarding overtime worked and refused by the eight professional employees assigned to the Water Management Section who were not bargaining unit employees.

Article 11 of the AFGE Basic Agreement requires the immediate supervisor of an individual unit to offer overtime on a fair and equitable rotation consistent with skill requirements, availability of personnel, and continuity of operations. In this case, the individual unit was the Water Management Section, which consisted of one bargaining unit employee, eight professional employees who were not in the bargaining unit and a supervisor. Basically, the Respondent argues that because eight of the ten employees assigned to the Water Management Section are professional employees, it would be inappropriate to compare the overtime used and refused by them to that used by the single bargaining unit employee to determine if overtime was assigned fairly and equitably on a rotational basis. The Respondent asserts that by virtue of their positions as professional employees, the overtime worked or refused by those eight cannot be compared to overtime used or refused by a bargaining unit employee, because such a comparison would not be "apples to apples". Therefore, the Respondent argues that the article of the BA cited by the Union as the reason information about the overtime worked by those professional employees was necessary is inapplicable.

Initially, it should be noted that bargaining unit status does not render information about employees who are not in the bargain unit off limits when an exclusive representative requests information for the purpose of representing employees who are in the bargaining unit. The Federal courts and the Authority have repeatedly held that information about employees who are not in the bargaining unit could be necessary for a union to investigate an allegation on behalf of a bargaining unit employee. *U.S. Dep't of the Navy, Naval Air Depot, Jacksonville, Fla.*, 63 FLRA 455 (2009); *Health Care Financing Admin.*, 56 FLRA 503 (2000); *DOT*, 51 FLRA 1054; (*Dep't of HHS, SSA, Baltimore, Md.*, 39 FLRA 298 (1991);

Dep't of Defense Dependents Schools, Wash., D.C., 28 FLRA 202 (1987)(*DODDS*) on remand from *North Germany Area Council, Overseas Education Assoc. v. F.L.R.A.*, 805 F.2d 1044 (D.C. Cir. 1986). However, when a Union requests information about employees who are not in the bargaining unit, there is no presumption of relevance and the burden is upon the Union to establish relevance under a liberal assessment. (*DODDS*, 28 FLRA at 204).

In assessing relevance when a Union wishes to compare information for bargaining unit employees to that of information for employees not in the bargaining unit to assess discrimination, the key issue is whether or not the employees are similarly situated. If they are, then such a comparison would be meaningful and a particularized need would be established, but if they are not, the relevance of the comparison would be meaningless and the information would not be necessary. Although the Authority has, on more than one occasion, determined that comparing work schedules of employees who were not performing similar functions rendered the information irrelevant and thus unnecessary, those determinations were fact specific and involved situations where the employees were not similarly situated. *DOT-IRS*, 51 FLRA 1391; (*SSA, Ne. Program Serv. Ctr.*, 18 FLRA 490 (1985); *Dept. of the Air Force, Scott AFB, Ill.*, 18 FLRA 629 (1985).

Given the inherent distinction between professional and non-professional employees, it would appear that one could assume that a case of not being similarly situated would be present in this case. However, as the Respondent's explanation for why it initially failed to report Ms. Hazelett's overtime work makes clear, such an assumption would be invalid within this individual unit. (Jt. Ex. D1). Within the Respondent's Water Management Section, Ms. Hazelett was one of eight employees who worked "regular schedule overtime" and whether the employee working the hour or so of regular scheduled overtime that was required each Saturday, Sunday or Federal holiday was a professional or non-professional employee, the work required of them was the same, they had "to observe the hydrologic network . . . to transmit river and lake observations." (Jt. Ex. D1). Because the Respondent included the non-professional bargaining unit employee in the group of employees to whom it assigned "regular schedule overtime", the Respondent deemed the non-professional employee just as qualified and capable of performing the "regular scheduled overtime" work as the professional employees who were not in the bargaining unit. Thus, contrary to the Respondent's argument, it would be appropriate to compare the amount of overtime work by each of the employees assigned to work "regular scheduled overtime" to see if the immediate supervisor was complying with the contractual obligation to assign overtime "fairly and equitably on a rotational basis", because there was no skill requirement upon which the Respondent could base a distinction. While the Article mandating that overtime be offered fairly and equitably also indicated that overtime offerings had to be "consistent with skill requirements", the record in this case provides no evidence that the skills needed to work "regular scheduled overtime" justified a distribution of overtime so disparate that providing information about the overtime worked by professional employees was not necessary.

In fact, the evidence in the record demonstrates that comparing the overtime worked by bargaining unit employees to that worked by employees not in the bargaining unit was a legitimate way to assess the Respondent's compliance with the obligation it accepted in negotiating Article 11 because the Respondent admitted assigning "regular scheduled overtime" to professional and non-professional employees. Thus, the explanation offered by the Union in its request for information established a particularized need for the information in order to carry out its representational duties was sufficient and the Respondent's refusal to provide information about the overtime worked by professional employees within that individual unit was contrary to its obligation under § 7114(b)(4) of the Statute.

RECOMMENDATION

I find that the Union's request made pursuant to 5 U.S.C. § 7114(b)(4) established a particularized need for the information about overtime worked by all employees assigned to the Water Management Section and the Respondent's refusal to provide information about overtime worked by employees who were not in the bargaining unit was not justified given the language of Article 11 of the AFGE Basic Agreement, and the method it used to assign overtime to employees working in that section. Thus, the Respondent violated § 7116(a)(1), (5) and (8) of the Statute by not providing the information requested by the Union on July 12, 2010.

In its brief, the General Counsel requested that I order the Respondent to refrain from raising the lack of timeliness as a defense in a grievance and/or arbitration related to the overtime information the Respondent refused to provide in violation of the Statute. This is a nontraditional remedy and the Authority's approach in evaluating such remedies was discussed in *F.E. Warren Air Force Base, Cheyenne, Wyo.*, 52 FLRA 149, 160-62 (1996). As the Respondent's brief raised no legal or public policy objections to such a remedy, I find that while the Union could have filed a grievance over the overtime distribution within this individual unit without the requested information, a release of the information would have enabled the Union to make a decision upon the matter in an informed manner. In light of the circumstances of these, I find that the remedy requested by the General Counsel is appropriate. *Health Care Financing Admin.*, 56 FLRA 503 (2000).

Based upon my findings of fact and conclusions of law, I recommend that the Authority issue 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), it is hereby ordered that the Department of the Army, U.S. Army Corps of Engineers, Huntington, West Virginia, shall:

1. Cease and desist from:

(a) Failing or refusing to furnish the American Federation of Government Employees, Local 3729, AFL-CIO (Local 3729), with data it requested on July 12, 2010, in connection with overtime offered to and worked by all employees assigned to the Water Management Section.

(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 action in order to effectuate the purposes and policies of the Statute:

(a) Furnish Local 3729 the data it requested on July 12, 2010, in connection with overtime offered to and worked by all employees assigned to the Water Management Section.

(b) Waive any defense based upon a failure to timely file a grievance and/or arbitration based in whole or in part upon information provided in response to the Union's July 12, 2010, request for information about overtime worked by employees assigned to the Water Management Section, unless the full period of time permitted elapses after the requested information is received by the Union.

(c) Post at its facilities where bargaining unit employees represented by Local 3729 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 of the United States Army Corps of Engineers, Huntington, West Virginia, 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.

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

Issued Washington, D.C., February 3, 2012.

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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 United States Army Corps of Engineers in Huntington, West Virginia, 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 furnish the American Federation of Government Employees, Local 3729, AFL-CIO, the exclusive representative of bargaining unit employees, with information it is entitled to under the Statute.

WE WILL NOT fail or refuse to furnish the American Federation of Government Employees, Local 3729 with information it requested on July 12, 2010, in connection with overtime offered to and worked by all employees in the Water Management Section.

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.

WE WILL furnish the American Federation of Government Employees, Local 3729 with the information it requested on July 12, 2010, in connection with overtime offered to and worked by all employees in the Water Management Section.

WE WILL refrain from alleging as a defense, in any subsequent grievance and/or arbitration filed in connection with information about overtime offered to and worked by all employees of the Water Management Section, that the grievance or arbitration was not timely as long as the grievance and/or arbitration is timely filed from the date the Union receives the information requested on July 12, 2010.

_____

(Agency/Activity)

Dated: _____ By: _____

(Signature) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

If employees have any questions concerning this Notice or compliance with any of its provisions, they may communicate directly with the Regional Director, Washington Regional Office, Federal Labor Relations Authority, whose address is: 1400 K Street N.W., 2nd Floor, Washington, D.C. 20424, and whose telephone number is: (202) 357-6029.