



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

OALJ 14-21

DEPARTMENT OF THE AIR FORCE  
20TH FIGHTER WING/CC  
SHAW AFB, SOUTH CAROLINA

RESPONDENT

AND

AMERICAN FEDERATION OF GOVERNMENT  
EMPLOYEES, LOCAL 1872

CHARGING PARTY

Case Nos. AT-CA-12-0493  
AT-CA-12-0494

Brian R. Locke  
For the General Counsel

Phillip G. Tidmore  
For the Respondent

Joyce Cartner  
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.

On June 13, 2012, the American Federation of Government Employees (AFGE), Local 1872 (Union) filed an unfair labor practice (ULP) charge with the Atlanta Regional Office of the Authority, against the Department of the Air Force, 20th Fighter Wing/CC, Shaw AFB, South Carolina (Respondent/Agency) in Case No. AT-CA-12-0493, alleging that the Respondent failed to provide information pursuant to § 7114(b)(4) of the Statute in

response to a request submitted on May 23, 2012. The Union filed a second unfair labor practice charge on June 13, 2012, in Case No. AT-CA-12-0494, alleging that the Respondent failed to provide information pursuant to § 7114(b)(4) of the Statute in response to a request submitted on May 29, 2012. Based upon the charges, a Consolidated Complaint was issued by the Regional Director of the Atlanta Regional Office on January 25, 2013. The complaint alleges that the Respondent violated §§ 7116(a)(1), (5) and (8) of the Statute when it failed to respond and furnish information requested pursuant to § 7114(b)(4) of the Statute. (G.C. Ex. 1(c)). The Respondent filed an Answer denying the allegations of the complaint. (G.C. Ex. 1(d)).

A hearing was held on April 2, 2013, in Columbia, South Carolina at which time the parties were afforded a full opportunity to be represented and heard, to examine and cross-examine witnesses, introduce evidence and make oral arguments. The General Counsel and the Respondent filed timely post-hearing briefs that have been fully considered.

Based upon the record, 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, I make the following findings of fact, conclusions of law, and recommendations.

### **FINDINGS OF FACT**

The American Federation of Government Employees (AFGE), Local 1872 (Union), is the exclusive collective bargaining representative of certain employees at the Department of the Air Force, 20th Fighter Wing/CC, Shaw Air Force Base, and is a labor organization within the meaning of § 7103(a)(4) of the Statute. (G.C. Exs. 1(c) & (d)). The Union serves as the agent of AFGE for purposes of representing bargaining unit employees at Shaw Air Force Base. (*Id.*). The Respondent is an agency within the meaning of § 7103(a)(3) of the Statute. (G.C. Ex. 1(c)).

John Sammons, Union president, submitted information requests to Suzanne Brooks, the Civilian Personnel and Labor Relations Officer at Shaw Air Force Base on May 23 and May 29, 2012. (G.C. Exs. 2 & 3; Tr. 32-33, 79). The May 23 request asked for, "all DOD/AF policies, procedures, rules, regulations, or documentation supporting the reclassification of the (GS-0802-11) vacant position to a (GS-0819-11) that occurred during RMD 703." (G.C. Ex. 2). It also requested, "all DOD/AF policies, procedures, rules, regulations, or documentation supporting the management reassignment of the affected employee . . . to the newly classified position (GS-0819-11)." (G.C. Ex. 2).

In the May 29, 2012, request, Sammons asked for copies of an employee's previous GS-0819-11 Environmental Engineer position description as well as his current position description. (G.C. Ex. 3). Sammons additionally requested information on any pending changes to the current position description. (G.C. Ex. 3). In support of the second request, the Union stated that its particularized need was to "compare both core documents to ascertain whether or not the new position was not changed to the degree that it should have been properly announced through USA Jobs and not improperly used as a management reassignment." (G.C. Ex. 3). Between the May 29 information request and the filing of the

unfair labor practice (ULP) on June, 13, 2012, Sammons and Brooks had a conversation via telephone and Sammons asked if the information was going to be provided. (Tr. 57). While Brooks indicated that she was still gathering information for the request (Tr. 57, 89), she did not ask for additional time or affirmatively indicate that the information would ultimately be provided. (Tr. 57, 89). There was no further communication between the parties regarding the Union's requests prior to the filing of the ULP charges on June 13, 2012. (Tr. 32-33, 45-46, 56-57, 89-90).

## **POSITIONS OF THE PARTIES**

### **General Counsel**

The General Counsel asserts that the information requested on May 29 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 also contends that the Respondent violated the Statute by failing to respond to either the May 23 or May 29 requests.

The General Counsel contends that the information requested by the Union on May 29 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 and that the Respondent's failure to provide the information violated §§ 7116(a)(1), (5) and (8) of the Statute.<sup>1</sup>

As a remedy for the violations, the General Counsel requests that an order requiring the Respondent to produce the requested information be issued. It also requests that a notice of the unfair labor practice be posted on bulletin boards at the facility and sent by email to all bargaining unit employees. The General Counsel justifies the use of electronic mail for the notice, because that is the method that the Agency most commonly uses to communicate with its employees.

### **Respondent**

The Respondent points out the well-established case law that the General Counsel bears the burden of proving the allegations made in the complaint by a preponderance of the evidence to establish a violation. The Respondent notes that the General Counsel admitted during the hearing that the request submitted on May 23 did not state an adequate particularized need. (Tr. 79-80). The Respondent contends that it actually provided the information requested on May 29 after the ULP charge was filed. Thus, the Respondent asserts that the traditional remedy of requiring the agency to provide the requested information is not necessary.

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<sup>1</sup> The General Counsel does not assert that the May 23 information request stated a particularized need and only asserts a violation for failure to respond to the May 23 information request. (Tr. 79-80; G.C. Br. at 7).

Finally, the Respondent argues that any notice posting should be limited to bulletin boards because the General Counsel has not established that the facts and circumstances of this case require a nontraditional remedy of email dissemination.

### CONCLUSIONS OF LAW

The General Counsel contends that the Respondent violated the Statute because it failed to respond to both information requests in a timely manner. The Authority has distinguished between the failure to respond to the information request and the failure to provide the requested information. *Dep't of HHS, SSA, N.Y. Region, N.Y., N.Y.*, 52 FLRA 1133, 1149-50 (1997) (*SSA, New York*). The duty to respond is independent of the union's right to information. *Soc. Sec. Admin., Balt., Md.*, 60 FLRA 674, 679 (2005) (*SSA, Balt.*) The agency has a duty to respond to a union's information request even if the union fails to identify a particularized need for the information. *See e.g., Id.* at 679; *SSA, New York*, 52 FLRA at 1148-50; *U.S. Dep't of the Treasury, IRS v. NTEU*, 64 FLRA 972, 978 (2010).

The Authority has interpreted § 7114(b)(4) to require an agency to affirmatively respond to a union's request for information, even if the requested information does not exist or its disclosure is prohibited by law. *SSA, New York*, 52 FLRA at 1148-50; *U.S. Naval Supply Ctr., San Diego, Cal.*, 26 FLRA 324, 326-27 (1987). The failure to respond to an information request in a timely manner is an independent violation of §§ 7116(a)(1), (5) and (8) of the Statute. *SSA, Balt.*, 60 FLRA at 679.

The evidence in this case indicates that the Respondent replied to the May 23 information request, therefore, the General Counsel failed to establish a violation in Case No. AT-CA-12-0493, when limited to a failure to respond allegation. Brooks testified that she responded to Sammons after receiving the May 23 request and told him that the particularized need for the request was not clear. (Tr. 81, 89). Brooks explained that RMD 703, referenced in the request was unrelated to the particular position review for which the Union was requesting information. (Tr. 81, 89). The fact that Sammons submitted a second information request shortly thereafter asking for essentially the same information in a more clear and concise manner and without the reference to RMD 703 (G.C. Ex. 3), suggests this conversation did in fact take place. It is unlikely that Sammons would have filed a second request had there not been guidance from Brooks that the first request was deficient in some manner. The General Counsel's own acknowledgment that the May 23 request failed to state a particularized need (Tr. 79-80), in agreement with Brooks' assessment, is further evidence that this conversation occurred, contrary to the recollection of Sammons. As I find that Brooks affirmatively and independently replied to the Union's first information request submitted on May 23, and that the request failed to state a particularized need, I find the Respondent met its obligation under the Statute to properly respond to this request by contacting the Union and advising it of that determination.

However, the Respondent did not fulfill its duty to properly respond to the May 29 information request. Sammons testified that after filing the second request, and prior to filing the ULPs, he called Brooks and asked whether the Respondent was going to provide the requested information. (Tr. 56-57). The reply he received from her was a vague indication that she was still looking for the information and was having a hard time getting it from another employee. (Tr. 57). Such a reply did not constitute the response required by the Statute and I do not find Brooks' claim that she sought further clarification of the second request credible for the reasons discussed below.

Brooks had the obligation to affirmatively and independently respond to the information request. Rather than being an independent response from Brooks, this conversation was one of the Union contacting the Respondent one final time to inquire whether and when it would receive a response. It was, one futile, final attempt to avert the filing of ULP charges made by the Union and not a response issued by the Respondent. (Tr. 56-57). In her testimony, Brooks admitted that she did not request additional time to respond to the request. (Tr. 89). Instead she gave a vague answer which left open the question of whether or when the Union would get a response. As the Respondent failed to affirmatively and independently communicate a proper reply to the Union, the Respondent failed to meet its obligation under § 7114(b)(4) of the Statute.

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 a bargaining unit employee was properly reassigned so the Union could determine what options to pursue if any irregularity was present. Thus, the information was for a subject within the scope of collective bargaining. However, before an agency is required to come forward with countervailing interests that militate against furnishing such information, a union must demonstrate that the information requested is necessary for full and proper discussion, understanding, and negotiation. *Nat'l Labor Relations Bd.*, 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). 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. Like the union, the agency cannot respond by making conclusory or bare assertions; "its burden extends beyond simply saying 'no'." *Id.*

In the May 29 information request, the Union stated that it wanted to compare both position descriptions to determine whether the Respondent properly reassigned the affected employee. (G.C. Ex. 3). The Union made a concise request for two specific position descriptions. The Union's request explained why it needed the position descriptions, which was to determine if the Respondent properly reassigned the affected employee instead of posting a vacancy. It described how it would use the information to compare the two position descriptions. Finally, the Union stated the connection to its representational responsibilities by explaining that the information would allow it to determine whether the Respondent committed any violations and if so, what options the Union might have to address them. In this case, the Union provided the Respondent with ample basis for making a reasoned judgment as to whether the disclosure of the information was required under the Statute.

As the Union sufficiently established a particularized need for the requested information, the burden was on the Respondent to provide a valid reason why the information could not be disclosed. As a preliminary matter, I do not find Brooks' testimony that she requested clarification on the May 29 request to be credible. Brooks failed to explain what was unclear about the second request and the claim that she asked for clarification is at odds with her indicating that she was in the process of gathering the information when the ULPs were filed, and that she eventually provided the requested information. (Tr. 87, 89). In this case, the Respondent raised no basis at or near the time of the second request as to why the information should not be disclosed. (Tr. 89).

Furthermore, the Respondent's subsequent behavior demonstrates that the request made by the Union was sufficient to establish a particularized need because the Respondent asserts that it ultimately provided information in response to the May 29 request. (Tr. 87, 91). In its post-hearing brief, the Respondent did not contend that it had valid justification for failing to provide the requested information, instead acknowledging that the requested information was provided after the ULPs were filed. (Tr. 87, 91; Resp. Br. at 8). The Respondent's assertion that it provided the information is an implicit admission that the Union's request met the particularized need standard and that further clarification of the request was not necessary. The Respondent cannot use its contention that it provided the information after the charge was filed as a defense.<sup>2</sup> An agency violates the statute if it denies a union's properly supported request for information, even where it later provides the requested information. *Soc. Sec. Admin.*, 64 FLRA 293, 297 (2009).

In conclusion, I find that the Union established a particularized need for the requested information, specifically the two position descriptions, and that the Respondent failed to raise any countervailing, anti-disclosure interests that outweighed the particularized need stated by the Union. Consequently, I find that the Respondent failed to comply with § 7114(b)(4) of the Statute and violated §§ 7116(a)(1), (5) and (8) of the Statute by failing to respond and not furnishing in a timely manner, the information requested on May 29, 2012. Further, I find that the Respondent provided a response to the information request submitted by the Union on May 21, 2012, and the allegation in Case No. AT-CA-12-0493 is dismissed.

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<sup>2</sup> It is unclear whether the Respondent has provided all the information requested.

## REMEDY

The General Counsel seeks a posting and electronic dissemination of the Notice in this matter. In accordance with the Authority's recent decision that unfair labor practice notices should, as a matter of course, be posted on bulletin boards and electronically whenever an agency uses such methods to communicate with bargaining unit employees, such postings are ordered. *See U.S. Dep't of Justice, Fed. BOP, Fed. Transfer Ctr., Okla. City, Okla.*, 67 FLRA 221 (2014).

It is therefore recommended that the Authority adopt the following Order:

## ORDER

Pursuant to § 2423.41(c) of the Authority's Rules and Regulations and § 7118 of the Federal Service Labor-Management Relations Statute (Statute), the Department of the Air Force, 20th Fighter Wing/CC, Shaw AFB, South Carolina, shall:

1. Cease and desist from:

(a) Failing or refusing to furnish the American Federation of Government Employees, Local 1872 (Union/AFGE Local 1872), with copies of Raymond Mulholland's current and previous position descriptions for the GS-0819-11 Environment Engineer position and any pending changes to the position descriptions.

(b) Refusing to respond to the May 29, 2012, information request from the Union.

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

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

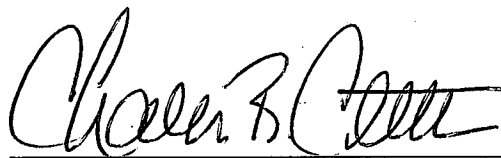
(a) Furnish the Union with copies of Raymond Mulholland's current and previous position descriptions for the GS-0819-11 Environment Engineer position and any pending changes to the position descriptions.

(b) Post at its facilities where bargaining unit employees represented by the Union are located, copies of the attached Notice on forms to be furnished by the Federal Labor Relations Authority. Upon receipt of such forms, they shall be signed by the Commander, 20th Flight Wing Mission Support Group, Shaw Air Force Base, 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.

(c) Distribute a copy of the Notice signed by the Commander, through the Respondent's email system to all AFGE Local 1872 bargaining unit employees at Shaw Air Force Base. The Notice will be posted by email on the same day that the Notice is physically posted.

(d) Pursuant to § 2423.41(e) of the Authority's Rules and Regulations, notify the Regional Director of the Atlanta 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.

Issued Washington, D.C., August 19, 2014

A handwritten signature in black ink, appearing to read "Charles R. Center". The signature is written in a cursive style with a horizontal line underneath it.

CHARLES R. CENTER  
Chief Administrative Law Judge



**NOTICE TO ALL EMPLOYEES**

**POSTED BY ORDER OF**

**THE FEDERAL LABOR RELATIONS AUTHORITY**

The Federal Labor Relations Authority has found that the Department of the Air Force, 20th Fighter Wing/CC, Shaw AFB, South Carolina, 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 position descriptions requested by the American Federation of Government Employees, Local 1872 (Union).

**WE WILL NOT** fail or refuse to respond to information requests made by the Union.

**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.

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(Agency/Respondent)

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 its provisions, they may communicate directly with the Regional Director, Atlanta Regional Office, Federal Labor Relations Authority, whose address is: 225 Peachtree Street, Suite 1950, Atlanta, GA 30303, and whose telephone number is: (404) 331-5300.