FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C. 20424

OALJ 16-41

DEPARTMENT OF THE AIR FORCE
LUKE AIR FORCE BASE, ARIZONA

RESPONDENT

AND

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1547, AFL-CIO

CHARGING PARTY

Case No. DE-CA-15-0363

Christopher A. Bowers
For the General Counsel

Phillip G. Tidmore
For the Respondent

Harley D. Hembd
For the Charging Party

Before: SUSAN E. JELEN
Administrative Law Judge

DECISION ON MOTION FOR SUMMARY JUDGMENT

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

On July 1, 2015, the American Federation of Government Employees, Local 1547, AFL-CIO (the Union) filed an unfair labor practice (ULP) charge against the Department of the Air Force, Luke Air Force Base, Arizona (Respondent/Luke AFB). (G.C. Ex. 1(a)). On December 9, 2015, the Regional Director of the Denver Region of the FLRA issued a Complaint and Notice of Hearing alleging that the Respondent violated § 7116(a)(1), (5), and (8) of the Statute by failing to provide the Union with information requested pursuant to § 7114(b)(4) of the Statute. (G.C. Ex. 1(b)). The Respondent filed its Answer to the Complaint on December 21, 2015, admitting some of the factual allegations, but denying that it violated the Statute. (G.C. Ex. 1(c)).

A hearing in this matter was originally scheduled for February 16, 2016, at a place to be determined in Phoenix, Arizona. On February 5, 2016, Counsel for the General Counsel filed a Motion for Summary Judgment (MSJ)[1] and a Motion to Indefinitely Postpone Hearing. On February 8, 2016, the Respondent submitted a Response to Motion for Summary Judgment and an Opposition to Indefinite Delay. After review of the parties' motions, I issued an Order Indefinitely Postponing Hearing on February 10, 2016. The Order further stated that all parties could file additional information by February 19, 2016. The Respondent filed a Supplemental Response to Motion for Summary Judgment with exhibits on February 17, 2016. The General Counsel did not submit a supplemental response.

SUMMARY JUDGMENT STANDARD

The Authority has held that motions for summary judgment filed under § 2423.27 of the Regulations serve the same purpose and are governed by the same principles as motions filed in the United States District Courts under Rule 56 of the Federal Rules of Civil Procedure. *Dep't of VA, VA Med. Ctr., Nashville, Tenn.*, 50 FLRA 220, 222 (1995). Summary judgment is appropriate when there is no "genuine dispute as to any material fact" and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

In this present case, the General Counsel asserts that there is no dispute as to any of the material facts. (G.C. Br. at 6-7). The Respondent refuses to provide information requested by the Union on June 22, 2015, and the Union identified a particularized need for the information. In addition, the Respondent's statements of countervailing interest were untimely and did not have any merit.

The Respondent asserts that there are several material facts in dispute which make this matter inappropriate for summary judgment under § 2423.27 of the Regulations. (R. Supp. Br. at 3-4). First, classification matters are handled at the Air Force Personnel Center (AFPC), not Luke AFB. Second, audits are pre-decisional, internal management documents. Third, the audits are not releasable under 5 U.S.C. § 7103(a)(14)(B). Also, the audits involve classification matters so the Union has no particularized need. Fourth, the Union has no need for desk audits and position reviews for non-bargaining unit employees. Fifth, the Memorandum of Understanding cited by the Union only covers bargaining unit employees. Sixth, the Respondent inadvertently disclosed information in the past due to an oversight. Finally, the Respondent did not raise its countervailing interests at the time of the request because the Union failed to respond to its request for clarification. In support, Respondent relies on declarations by Bryan Evans, the Civilian Personnel Officer, and George Amaya, Human Resources/Labor Relations Specialist.

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[1] The General Counsel's Motion for Summary Judgment included copies of several exhibits. Some of the exhibits, particularly the collective bargaining agreement, included redactions. (G.C. Exs. 2, 4, 6 & 7). However, the redactions do not appear to be material to this case. The Respondent did not object to the exhibits.

Based on the record as a whole, I find that there is no genuine dispute of material fact and that the record before me is sufficient to render a decision based on the MSJ, responses thereto, exhibits, and other pleadings filed by the parties. As such, a hearing in this matter is not necessary. I find that the Respondent violated § 7116(a)(1), (5), and (8) of the Statute by refusing to comply with § 7114(b)(4) of the Statute when it failed to furnish information requested by the Union.

FINDINGS OF FACT

The Department of the Air Force is an agency under 5 U.S.C. § 7103(a) (3). (G.C. Exs. 1(b) & 1(c)). At all times material, George Amaya occupied the position of Human Resources/Labor Relations Specialist at Luke AFB and acted on its behalf. (G.C. Exs. 1(b) & 1(c)).

The Union is a labor organization under § 7103(a)(4) of the Statue and the exclusive representative of a unit of employees appropriate for collective bargaining at Luke AFB. (G.C. Ex. 1(b)). The Respondent admitted this fact in its Answer. (G.C. Ex. 1(c)). However, according to the MSJ, the American Federation of Government Employees became the exclusive representative of the employees at Luke AFB in September of 2015 and AFGE, Local 1547 became an agent of AFGE. (G.C. Br. at 6). The Respondent did not object to this statement.

On April 25, 2012, the Union and the Respondent executed a Memorandum of Understanding (MOU) that created procedures for applying for bargaining unit positions at Luke AFB. (G.C. Ex. 3). In particular, the MOU provided that the Respondent will send an e-mail, every week, notifying employees of vacant positions and will post all vacancies, competitive or non-competitive, on the USAJobs website. Further, the Respondent agreed not to use "resume scores, resume rating systems, [or] resume filtering programs" to evaluate applications. In addition, the Respondent will not consider external applicants until it has considered bargaining unit employees.

On June 22, 2015, Harley Hembd, the Union president, requested the following information from the Respondent:

1. The Union is requesting a listing of all employees and positions (pay grade, job series) that have had a position review over the last two years. This would include, but not to be [sic] limited to, desk audits. A response to this must include the origin of the decision to conduct the audit (e.g. employee, management, higher command, etc.). The Union is also requesting the disposition of each of the respective position reviews/audits; that would

include if there was a management reassignment, RIF, upgrade, grade change, date of the change, etc. A response to this must include non-bargaining unit positions.

2. The Union is also requesting a listing of all employees and positions (pay grade, job series) that have had a classification change that resulted in an [sic] grade change. A response to this would include documents over the last two years. This would include, but not to be [sic] limited to, desk audits and the origin of the decision to conduct the audit (e.g. employee, management, higher command, etc.). The Union is also requesting the disposition of each of the respective reclassification; that would include if there was a management reassignment, RIF, upgrade, grade change for the employee, date of the change, etc. A response to this must include non-bargaining unit positions.

(G.C. Ex. 4 at 2).

Hembd offered numerous reasons for requesting this information. First, he wanted to learn how audits were performed, including whether an employee or manager had to make the request. (*Id.* at 2). Also, he wanted to know how the Respondent determined that certain positions, particularly non-bargaining unit positions, would be upgraded and what methods were used to upgrade employees. (*Id.* at 2, 3). Hembd wanted to use this information to investigate several concerns that he had. He suspected that the Respondent was creating new positions and then upgrading certain employees to avoid its obligation under the MOU to allow bargaining unit employees to bid for the positions. (*Id.* at 2). Further, he wanted to compare the number of non-bargaining unit positions to the number of bargaining unit positions that were promoted though position reviews and audits because he was concerned that the Respondent was treating non-bargaining positions more favorably. (*Id.* at 3). He also suspected that the Respondent may be wrongfully excluding certain positions from the bargaining unit. Next, he wanted to evaluate whether positions were more likely to be upgraded if a request came from a manager. (*Id.* at 2). Further, Hembd stated that he wanted to make sure that the Respondent was complying with its contractual obligation to give the Union notice of any reclassifications that changed an employee's title, grade, or job series. (*Id.* at 3).

Hembd also explained that he would use this information to determine if the Respondent violated the CBA or MOU or some other statutory right. (*Id.*). If so, he would file a grievance or a statutory appeal. Also, Hembd said he wanted to negotiate over the procedures for audits. (*Id.* at 2). Finally, if non-bargaining unit employees were receiving promotions without competition, he would try to negotiate similar favorable treatment for bargaining unit employees. (*Id.* at 3).

Hembd stated that the Respondent may sanitize personal identifiers but each employee must be identified with a particular designation so that he could compare it to other records. (*Id.* at 6). He also asked the Respondent to describe any objections it had to providing the information.

On June 24, 2015, Amaya requested clarification of the information request. (G.C. Ex. 5 at 3). He also reiterated the particularized need standard and cited *U.S. Dep't of the Air Force, AFMC, Kirtland AFB, Albuquerque, N.M.*, 60 FLRA 791 (2005) (*Kirtland*).

On June 29, 2015, Hembd responded that he provided sufficient information to establish a particularized need and that he wanted confirmation that the Respondent was refusing to provide the information. (G.C. Ex. 5 at 2). Later that day, Amaya responded that he was not refusing to provide the information. He was only requesting clarification so that he could make a "reasoned judgment on the matter." (*Id.*). Amaya accused Hembd of refusing to cooperate and advised him to do whatever he needed to do to represent the bargaining unit. Later that day, Hembd responded that he had read the *Kirtland* decision and accused Amaya of using the case to avoid providing the data. (G.C. Ex. 5 at 1). He said that the Union had provided enough information for the Respondent to make a decision.[2]

Over a year earlier, on April 17, 2014, Hembd submitted an information request that was very similar to the one he submitted on June 22, 2015. (G.C. Ex. 7).[3] On April 22, 2014, Pamela Nichols, an Employee/Labor Relations Assistant, provided the requested

[2] On July 6, 2015, the Respondent sent the Union a regular report of outstanding data requests. (G.C. Ex. 6). It included this data request with a note that the Respondent had requested clarification from the Union regarding the information request. Later that day, Hembd responded that there were no legitimate questions about the information request that needed clarification.

[3] There was only one minor difference in the information requested in the first and second information request. The June 2015 request seeks two years of information. The April 2014 request sought information from July 23, 2013, to the date the request was filled (April 22, 2014). There were more differences in the particularized need statement. The Union requested the information in 2014, primarily, to determine if the Respondent had discriminated against employees for cooperating with the Union. The Union did not identify any specific employees or incidents. However, the Union also expressed concerns that the Respondent was promoting non-bargaining unit employees over bargaining unit employees. In the June 2015 information request, the Union did not mention any concerns about retaliation against employees for cooperating with the Union. Instead, it was more focused on determining whether there was discrimination against bargaining unit employees in general. Furthermore, in the April 2014 request, the Union did not mention the MOU; however, it did mention that it wanted to determine if the Respondent was reclassifying positions to avoid posting vacancy announcements. In the June 2015 information request, the Union specifically mentioned the MOU.

information. (G.C. Ex. 8). According to Evans, this information was erroneously disclosed. (Evans Decl. at 1-2).[4]

POSITIONS OF THE PARTIES

General Counsel

The General Counsel contends that the Respondent violated the Statute by refusing to provide the information requested by the Union. In support, the General Counsel asserts that the Union established a particularized need for the information and the Respondent's request for clarification was made in bad faith. (G.C. Br. at 12-14, 16).

The General Counsel also asserts that the Respondent's countervailing interests should not be considered since they were not raised in a timely manner. (*Id.* at 14). Further, the countervailing interests have no merit. The parties can negotiate over the procedures for classification; therefore, the information can be disclosed. (*Id.* at 17). The Respondent failed to offer any evidence to support its position that the information was not reasonably available and the Respondent has provided this information in the past. (*Id.* at 18). Further, the Respondent failed to offer any evidence of a privacy interest; therefore, it is not prohibited from disclosure by law. (*Id.* at 19). Finally, the Respondent failed to offer evidence that the documents contain information regarding the bargaining process; therefore, it is not prohibited from disclosure under § 7114(b)(4)(C). (*Id.* at 20).

For a remedy, the General Counsel requests an Order directing the Respondent to disclose the information requested by the Union. (*Id.* at 22). Also, it seeks a notice, signed by the Commander, and posted on bulletin boards and e-mailed to bargaining unit employees at Luke AFB.

Respondent

The Respondent contends that it did not violate the Statue by refusing to disclose the information. In support, it asserts that the Union failed to establish a particularized need because "audit[s] of positions are typically preliminary internal working documents upon

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[4] According to Evans' declaration, the Union also requested this information in 2013. There is no other evidence regarding the 2013 request or whether the Respondent responded to the 2013 request (although the Respondent's Supplement Brief suggested the information was disclosed in 2013). Disclosure of the information in 2013 and 2014 is not particularly relevant to this case. The GC mentioned the 2014 disclosure to argue that the information is reasonably available (basically, the Respondent provided it before so it could do it again). The Respondent stated that it erroneously provided the information and that this was a material issue in dispute. The GC did not respond to this factual statement (it did not submit a supplement brief). This information might be relevant if the Respondent claimed that the information was not normally maintained or reasonably available. However, in its Answer, the Respondent admitted the information was normally maintained. It denied that the information was "reasonably available" but it did not mention whether the information was reasonably available in its briefs.

which no decision has been made" and that "Classification decisions are generally precluded from release under 5 U.S.C. § 7103(a)(14)(B)." (R. Br. at 10). Further, the Union did not explain why it needed information about non-bargaining unit positions since the MOU only covers bargaining unit positions.

Further, the Respondent asserts that the Union's refusal to clarify its request prevented the Respondent from raising its concerns about disclosure. (R. Br. at 11; R. Supp. Br. at 4, 5). In particular, it would have mentioned its concerns about the Union's lack of a particularized need. Also, it would have told the Union that Luke AFB does not perform desk audits or position reviews; instead, these matters are handled by the Air Force Personnel Center at Randolph AFB, Texas (AFPC). (R. Br. at 11; R. Supp. Br. at 3). Finally, the Respondent states that the previous release of information was "erroneous"; therefore, it cannot be construed as a waiver. (R. Supp. Br. at 5).

ANALYSIS AND CONCLUSIONS

Section 7114(b)(4) of the Statute requires an agency to furnish to the exclusive representative involved, or its authorized representative, upon request and, to the extent not prohibited by law, information: (1) which is normally maintained by the agency in the regular course of business; (2) which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and (3) which does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining.

In *IRS*, the Authority set forth the analysis for determining whether information is "necessary" under § 7114(b) (4) of the Statute. *IRS, Wash., D.C.*, 50 FLRA 661, 669-71 (1995) (*IRS*). To demonstrate that 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." *Id.* at 669-70 (footnote omitted). The scope of the union's representational responsibilities includes determining whether to file a grievance. *U.S. DOJ, Fed. BOP, FCI Ray Brook, Ray Brook, N.Y.*, 68 FLRA 492, 495 (2015) (*FCI*). Also, a union may be entitled to information about non-bargaining unit employees if it establishes a particularized need for that information. *Dep't of HHS, SSA, Balt., Md.*, 39 FLRA 298, 309 (1991) (*SSA*). A union's responsibility for articulating its interests requires more than a conclusory or bare assertion. *IRS*, 50 FLRA at 670. The request must be sufficient to permit an agency to make a reasoned judgment as to whether information must be disclosed under the Statute. (*Id.*).

The agency must raise any countervailing interests at or near the time of the union's request, not for the first time during an unfair labor practice proceeding. *U.S. DOJ, INS, N. Region, Twin Cities, Minn.*, 51 FLRA 1467, 1472 (1996) (*INS*). Also, it has a burden to support these countervailing interests and, like the union, it cannot rely on bare or conclusory statements. *IRS*, 50 FLRA at 670.

If the parties cannot agree on disclosure, the agency will have committed a ULP if the union established a particularized need for the requested information and either: (1) the agency has not established a countervailing interest; or (2) the agency has established such an interest but it does not outweigh the union's demonstration of a particularized need. (*Id.* at 671).

In *NLRB v. FLRA*, the D.C. Circuit stated that parties have a presumptive countervailing interest in restricting the other party's access to internal guidance, advice, or counsel. 952 F.2d 523, 532 (D.C. Cir. 1992) (*NLRB*).[5] Therefore, if a union requests intra-management guidance, it must establish a particularized need that outweighs the agency's interest in protecting the information from disclosure. In particular, the union has an obligation to show that it has a "grievable complaint covering the information." The Authority adopted this standard in *Nat'l Park Serv.*, 48 FLRA 1151, 1160 (1993) (*Park Service*).

Hembd provided an extensive list of reasons why the Union needed this information. He primarily wanted to learn what procedures were used to audit and upgrade positions and what methods were used to upgrade certain positions, primarily non-bargaining unit positions. He planned to use this information to negotiate with the Respondent over how audits are performed and to ensure that bargaining unit employees had the same opportunities for non-competitive upgrades as non-bargaining unit employees. Further, he wanted this information to investigate his suspicion that the Respondent was violating the MOU by upgrading certain employees to new positions to avoid competitive bidding. He was also concerned that non-bargaining unit employees were receiving unique opportunities for promotion without competition and that positions were being wrongfully excluded from the unit. Additionally, Hembd wanted to monitor the Respondent's compliance with the collective bargaining agreement. According to Article XI, Section C, the Respondent is required to notify the Union of any change in a position description that results in a "change in classification (pay plan, series, grade, or title) . . . ." (G.C. Ex. 2 at 17). Hembd stated that he would use this information to determine whether to file grievances or other types of complaints.

The Respondent contends that the Union failed to establish a particularized need for information about non-bargaining unit positions because the MOU only covers bargaining unit positions. There is no dispute that the MOU only covers "positions covered by the parties' collective bargaining agreement." (G.C. Ex. 3 at 1). However, Hembd was not solely focused on determining whether the Respondent violated the MOU. He also indicated

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[5] This is not the same type of guidance, advice, or counsel that is exempt from disclosure under 5 U.S.C. § 7114(b)(4)(C). According to § 7114(b)(4)(C), the union is not entitled to "guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining." The courts apply this heightened standard when evaluating whether the union established a particularized need for information that is *not* guidance, advice, counsel, or training "relating to collective bargaining . . . ." *NLRB*, 952 F.2d. at 532; *IRS*, 50 FLRA at 667, n.10.

that he wanted this information to determine whether the Respondent was wrongfully excluding positions from the unit and discriminating in favor of non-bargaining unit employees by granting them more upgrades. Furthermore, Hembd also wanted to learn more about the procedures for conducting audits and upgrades so that he could negotiate with the Respondent. He believed that position reviews and audits were "very rare" for bargaining unit employees but more common for non-bargaining unit employees. (G.C. Ex. 4 at 3). Obviously, Hembd will get a better picture of how and why positions are upgraded by evaluating the more numerous upgrades of non-bargaining unit positions than limiting his investigation to the "very rare" cases of upgrades of bargaining unit positions. Therefore, Hembd offered several reasons, other than enforcing the MOU, to justify his request for non-bargaining unit information.[6]

The Respondent also contends that the Union failed to establish a particularized need for the documents because the "audit[s] of positions are typically preliminary internal working documents upon which no decision has been made[]" and that "Classification decisions are generally precluded from release under 5 U.S.C. § 7103(a)(14)(B)." (R. Br. at 10).[7] The Respondent's argument is almost identical to the agency's argument in *U.S. Army Armament Research, Dev. & Eng'g Ctr., Picatinny Arsenal, N.J.*, 49 FLRA 77 (1994) (*Picatinny*). In that case, the union requested a report of desk audits[8] prepared by the agency to determine if positions were properly classified. (*Id.* at 78). The agency refused to disclose the report because the "audits of these positions are preliminary internal management working documents upon which no decision has been made. Even when a reclassification decision has been made, it is precluded from release pursuant to 5 U.S.C. [§] 7103(a)(14)(B)." (*Id.* at 79). The Authority held that the report constituted "guidance, advice, and counsel provided for management officials." (*Id.* at 83). Therefore, the union needed to prove that it had a "grievable complaint . . . ." *Id.* at 82-83.[9]

A union cannot file a grievance regarding "the classification of any position which does not result in the reduction in grade or pay of an employee." 5 U.S.C. § 7121(c)(5). Hembd indicated that he would file a grievance if he determined that the Respondent was not informing the Union of reclassification as required by Article XI, Section C. Furthermore, he

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[6] The Respondent also asserts that the MOU does not cover classification matters. The General Counsel did not challenge this assertion. There is no evidence that the Union planned to file a grievance alleging that the Respondent violated a provision regarding classification contained in the MOU. Therefore, there is no "dispute" about a "material fact."

[7] The GC didn't challenge the Respondent's statement (more accurately Evans and Amaya's statement) that this information constituted deliberative internal guidance. However, the Union only asked for a list of the employees and positions that were audited/reviewed, the results, and who originated the request (management or employee). It is not asking for the Respondent's rationale ("advice, guidance, or counsel") for its actions. This is readily distinguishable from *Picatinny* (discussed below).

[8] Basically, the agency audited its classification procedure by conducting 80 desk audits.

[9] The Authority then remanded the case to the ALJ to allow the union to identify a particularized need that was consistent with the heightened standard described in *Park Service*. The Authority gave the union this opportunity because *Park Service* was decided after the hearing.

would file a grievance if the Respondent was discriminating in favor of non-bargaining unit employees by giving them more upgrades than bargaining unit employees or if the Respondent was violating the MOU. There is no evidence that Hembd intends to file a grievance challenging the classification of a particular position or employee. Therefore, the Union has provided sufficient information to establish that it has "grievable complaints . . . ."

Furthermore, Hembd sought this information to prepare for negotiations. Clearly, the "grievability" standard would not be applicable to requests for information that would be used to prepare for negotiations. The Respondent argues that parties cannot negotiate over classification matters since they are not "conditions of employment" under § 7103(a)(14)(B). A union cannot bargain over classification matters such as the title, series, or pay system of a particular position. *IFPTE, Local 49*, 52 FLRA 665, 667-68 (1996). However, the Authority has recognized that certain procedures, such as representation during desk audits, are not "classification matters" because they do not address the "substance" of the classification. *AFSCME, AFL–CIO, Local 2027*, 12 FLRA 643, 644-45 (1983).[10] Hembd did not identify any specific proposals[11]; however, he did say that he wanted to negotiate over the procedures used for desk audits. Also, he stated he wanted to use this information to find out whether non-bargaining unit employees had unique opportunities for promotion and then negotiate similar arrangements for bargaining unit employees. Furthermore, the disclosure of this information does not mean that the Respondent is required to negotiate over non-negotiable proposals offered by the Union. By refusing to provide this information, the Respondent has prematurely closed the door to bargaining based on an unwarranted presumption that the Union will not be able to develop a single negotiable proposal.

The Respondent asserts that the Union's failure to respond to its request for clarification prevented it from evaluating whether it had an obligation to provide the information and from raising its countervailing interests. The Authority considers a union's failure to respond to a good faith request for clarification when it determines whether the union established a particularized need. *Kirtland*, 60 FLRA at 794. Specifically, it may refuse to consider whether the union's need for the information was "reasonably obvious . . . ." (*Id.* at 795) (*quoting U.S. Dep't of the Treasury, IRS, Wash., D.C.*, 51 FLRA 1391, 1396 (1996)). In *Kirtland*, the Authority noted that the union relied on a single vague statement of need to justify its request for several categories of information. 60 FLRA at 795. Further, it found that the agency's requests for clarification were "detailed" and "provided some elaboration as to why it did not understand how all of the items would be necessary . . . ." (*Id.*).

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[10] The Authority in *Picatinny* also rejected this argument for similar reasons although it noted that the union did not request the information to bargain. 49 FLRA at 81-82.

[11] It is possible, if not likely, that the Union does not know what proposals it will make until it sees the information. When evaluating the specificity of a request, the Authority considers the fact that the union may not know the contents of the information it requested. *Health Care Fin. Admin.*, 56 FLRA 156, 170, n.13 (2000). Moreover, even if the Union did have some idea of what it planned to propose, it is not required to reveal bargaining strategies. *FCI*, 68 FLRA at 495.

The Respondent contends that the Union's failure to clarify the information request prevented it from questioning the Union's need for information about non-bargaining unit employees and classification matters. (R. Supp. Br. at 5). Also, it did not have an opportunity to raise any countervailing interests. However, the Respondent's argument fails for several reasons. First, unlike *Kirtland*, Hembd did not rely on a generalized statement of need to justify his request for numerous pieces of information. Instead, as discussed above, Hembd provided several specific reasons why he needed the information and how he would use this information in connection with his representational responsibilities. Therefore, the Respondent had enough information to determine whether it had to disclose the information. Second, Amaya's response to Hembd's extensive statement of particularized need was inexplicably vague. Amaya did not mention his concerns about releasing information about non-bargaining unit employees or classification matters. Instead, he merely requested clarification and then mechanically recited the particularized need standard. (G.C. Ex. 5 at 3). The Respondent did not explain why it needed clarification from the Union to raise these interests. Further, even if Amaya had identified these concerns, Hembd could have pointed to the areas of the information request that addressed Amaya's concerns.

The Respondent failed to properly raise or substantiate any other countervailing interests. In its Answer, it denied the General Counsel's allegation that the information was reasonably available and that it was not exempt from disclosure under 5 U.S.C. § 7114(b)(4)(C) or prohibited from disclosure under the law. (G.C. Exs. 1(b) & (c)).[12] However, the Respondent did not raise any of these defenses at or near the time of the information request. Although the Respondent claims that the Union's failure to clarify its request prevented it from raising these defenses, it did not explain how. In order to raise these defenses, the Respondent only needs to know "what" information the Union needs, not "why" it needs it or "how" it would be used. For example, information does not become "reasonably available" because the union has a good reason for it. Although, in some cases, the union's need for the information can override a countervailing interest; there is nothing to prevent an agency from raising the countervailing interest at or near the time of the information request. Moreover, the Respondent did not mention any of these defenses in its briefs; much less satisfy its burden of supporting these claims.[13]

Finally, it is possible that the Union will learn, after review of the information, that it will be unable to offer any proposals that are negotiable or file a grievance that has any merit. Regardless, I am only obliged to determine whether the Union was entitled to the information; not whether the information will yield the results sought by the Union. *IRS*, 50 FLRA at 673.

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[12] The Respondent admitted the information was normally maintained. (*Id.*).

[13] The Respondent stated that audits are done in AFPC not Luke AFB and that it erroneously provided this same information in 2014. (R. Br. at 11; R. Supp. Br. at 5). The Respondent asserts that these are material facts in dispute that must be resolved at the hearing. (R. Supp. Br. at 3, 4). However, there is no evidence that the General Counsel disputes these facts. Furthermore, they are not material to this case.

REMEDY

As requested by the General Counsel, I will order the Respondent to furnish the information requested by the Union. Further, I will incorporate the electronic dissemination of the Notice into the Order in accordance with the Authority's decision that ULP notices should, as a matter of course, be posted both on bulletin boards and electronically. *See U.S. DOJ, Fed. BOP, Fed. Transfer Ctr., Okla. City, Okla.*, 67 FLRA 221 (2014).

CONCLUSION

The Union established a particularized need for the information concerning the position reviews, desk audits, and grade changes from June 22, 2013 to June 22, 2015. The Respondent failed to raise any countervailing interests in a timely manner or to substantiate those interests. Therefore, I find that the Respondent violated § 7116(a) (1), (5), and (8) of the Statute. The General Counsel's Motion for Summary Judgment is Granted.

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

ORDER

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

1. Cease and desist from:

(a) Failing or refusing to furnish the American Federation of Government Employees, Local 1547, AFL-CIO (Union), with information about position reviews and desk audits and classification changes that resulted in grade changes for the period of June 22, 2013 to June 22, 2015.

(b) In any like or related manner, interfering with, restraining, or coercing bargaining unit employees in the exercise of the 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 a list of all employees (including non-bargaining unit employees) and positions (pay grade, job series) that had a position review or desk audit between June 22, 2013 and June 22, 2015. The information must include the origin of the decision to conduct the audit and the disposition of each review.

(b) Furnish the Union with a list of all employees (including non-bargaining unit employees) and positions (pay grade, job series) that had a classification change that resulted in a grade change between June 22, 2013 and June 22, 2015. The information must include the origin of the decision to conduct the audit and the disposition of each reclassification.

(c) In addition to physical posting of the paper Notices, Notices shall be distributed electronically, on the same day, such as by email, posting on an intranet or an internet site, or other electronic means if such is customarily used to communicate with bargaining unit employees.

(d) 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, Luke Air Force Base, Arizona, and shall be posted and maintained for sixty (60) consecutive days thereafter, in conspicuous places, including all bulletin boards and other places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that such Notices are not altered, defaced, or covered by any other material.

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

Issued, Washington, D.C., August 31, 2016

Susan E. Jelen

SUSAN E. JELEN
Administrative Law Judge

NOTICE TO ALL EMPLOYEES

POSTED BY ORDER OF

THE FEDERAL LABOR RELATIONS AUTHORITY

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

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT fail and refuse to furnish the American Federation of Government Employees, Local 1574, AFL-CIO (Union) with information requested on June 22, 2015, regarding position reviews, desk audits, and reclassifications.

WE WILL NOT fail and refuse to furnish the Union with information it is entitled to under § 7114(b)(4).

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

WE WILL furnish the Union with a list of all employees (including non-bargaining unit employees) and positions (including the pay grade and job series) that had a position review or desk audit between June 22, 2013 and June 22, 2015. The information must include the origin of the decision to conduct the audit and the disposition of each audit, position review, or reclassification.

WE WILL furnish the Union with a list of all employees (including non-bargaining unit employees) and positions (pay grade, job series) that had a classification change that resulted in a grade change between June 22, 2013 and June 22, 2015. The information must include the origin of the decision to conduct the audit and the disposition of each reclassification.

_____
(Respondent/Agency)

Dated: _____ By: _____
(Signature) (Title)

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

If employees have any questions concerning this Notice or compliance with any of its provisions, they may communicate directly with the Regional Director, Denver Region, Federal Labor Relations Authority, whose address is: 1244 Speer Boulevard, Suite 446, Denver, CO 80204, and whose telephone number is: (303) 844-5224.