OFFICE OF ADMINISTRATIVE LAW JUDGES

WASHINGTON, D.C. 20424-0001

ONIZUKA SATELLITE CONTROL FACILITY, ONIZUKA AIR FORCE BASE, CALIFORNIA

Respondent

and

Case No. SF-CA-20606

NATIONAL FEDERATION OF FEDERAL EMPLOYEES, LOCAL 2090

Charging Party

Captain Steven A. Johnson

For the Respondent

Gary J. Lieberman, Esq.

For the General Counsel

Before: ELI NASH, JR.

Administrative Law Judge

DECISION

Statement of the Case

This proceeding arose under the Federal Service Labor-Management Relations Statute, 5 U.S.C. § 7101 et seq., herein called the Statute, and the Rules and Regulations of the Authority, 5 C.F.R. § 2411, et seq., herein called the Regulations. The proceeding was initiated by an unfair labor practice charge filed against the Onizuka Satellite Control Facility, Onizuka Air Force Base, California (Respondent) by the National Federation of Federal Employees, Local 2090 (Union). The amended Complaint alleges that Respondent has engaged in unfair labor practices within the meaning of section 7116(a)(1), (5) and (8) of the Statute by failing and refusing to furnish data requested by the Union on April 30, 1992, and failing and refusing to respond to the Union's data request of May 6, 1992.(1)

A hearing was held before the undersigned in San Francisco, California at which all parties were afforded full opportunity to adduce evidence, call, examine and cross-examine witnesses and argue orally. Briefs were filed by Respondent and the General Counsel and have been carefully considered.(2)

Upon the entire record in this matter, my observation of the witnesses and their demeanor and from my evaluation of the evidence I make the following:

Findings of Fact

1. The Union is the certified exclusive representative of an appropriate unit of employees at Respondent's facilities.

2. Article 8 of the parties' collective bargaining agreement contains the parties' negotiated grievance procedure. Section 2(c) of Article 8 of the collective bargaining agreement provides that allegations of discrimination can be raised either by filing an Equal Employment Opportunity complaint or a negotiated grievance, but not both.

3. Jack Epes is employed at Respondent's 21 SOPS/DOS as a planner, responsible for scheduling the flight patterns for satellites. There are approximately 20 planners in the section. In March 1992(3), Epes sought assistance from Union President Hildman Richard Gallo, concerning his non-selection for a promotion in his section. Epes thought that he had been unfairly bypassed in the promotion process for the position of ranking certified planner, in favor of another employee, Robert McNeill. Epes theorized that the bypass was a result of discrimination based on either nepotism, cronyism or racism.(4) The testimony of Union Chief Steward William Hale disclosed that the bulk of the Union did not work in Epes' area, and therefore, were unfamiliar with the position of ranking certified planner. Lacking sufficient knowledge of the position of ranking certified planner, or the validity of Epes' accusations of discrimination, the Union sought to investigate the allegations.

4. Around March 30, in investigating Epes' assertion that he had been unfairly bypassed for the ranking certified planner position, Gallo drafted an informal inquiry, for Epes' signature, to Wong, the supervisory planner. The purpose of the inquiry was to gain a better understanding of the ranking certified planner position, and to determine whether the selection process was valid.

5. Wong responded to Epes' inquiry by letter, dated April 10, in which he said the following:

> The current staff of engineers and planners is being combined under a new planner position description. To accomplish this change, Civilian Personnel will conduct a survey of all civilian positions in the work area. It is management's intention to establish four (4) lead or otherwise positions during the survey. In the interim these four positions will be filled on a temporary detail pending survey results. Appropriate personnel actions will be taken at that time.

Wong then testified that the temporary details had not been established, but there was a chance that they will be accomplished in the future. Wong also testified that the position in question was termed "ranking certified planner". Contrary to Wong's testimony Ron Grayum, Respondent's labor relations officer, asserted that there was "no such position as a ranking certified planner." This apparent contradiction between Respondent's witnesses reveals that it also was uncertain about the position, thereby strengthening the Union's view that it needed to have information related to the position, and the selection process, in order to properly perform its representational functions.

6. Wong's response did not allay the Union's concerns about possible discrimination in the selection for the position of ranking certified planner, and possibly raised added concerns about the position. Subsequently, Gallo drafted a series of questions and a request for information for Hale to present to Linda Rand, Civilian Personnel Officer, concerning a possible grievance on Epes' behalf.

7. On April 30, Hale met with Rand in the civilian personnel office and asked her the series of questions concerning the possible grievance. Hale requested from Rand that Respondent provide the Union with the information listed on the second page of the questionnaire within 10 days and also handed her a copy of the questionnaire/information request. The Union requested the following information of McNeill and Epes in the investigation of the potential grievance:

- Training received in the last (1) year, paid for by the employer.
- Temporary (TDY) within the last one year.
- Performance appraisals received in 1990 and 1991.
- Performance plans received since 1991.

8. Rand allegedly told Hale that she would consider the request, and she also asked Hale if a grievance had been filed. According to Hale's uncontroverted testimony, Rand was suggesting that since no grievance had been filed, she would only "consider" the request for information. This would be Respondent's only "response" to the Union's information request. The Union did not receive any of the information it requested on April 30, nor did Respondent ask the Union to clarify, or explain why the Union needed the information in the investigation of Epes' potential grievance.

9. On May 5, Epes filed a grievance, drafted by Gallo, even though the Union had not received any of the information it had requested. The grievance specifically alleged that the selection process for the position of ranking certified planner was based on racism, nepotism, and cronyism.

10. After filing the grievance, on May 6, Gallo sent Rand a second information request "[i]n order to assess all facts available regarding Mr. Epes' grievance." The information request stated that it was important in pursuing Epes' grievance that the Union compare his records with the records of his coworkers. Specifically, the Union requested Epes and McNeill's SF-52 and AF-971 forms recorded within the last year, performance appraisals for 1991 and training records. The Union also requested the performance appraisals of all of Epes' co-workers who are planners.

11. Although Respondent never requested that the Union elaborate or clarify the necessity of the information request beyond the reasons readily apparent in their correspondence, the Union's witnesses demonstrated the necessity of the information at hearing. An SF-52, a form to record any official personnel action, was necessary in the investigation and processing of Epes' grievance in order to determine if the position of ranking certified planner was a promotion position, or a detail. AF-971 forms are documents which a supervisor would annotate any type of an employee at the work area, including training, directly affecting an employee's appraisal. The Union was investigating whether the assignment given to McNeill was reflected on the AF-971 form, and not Epes' AF-971 forms, directly influencing McNeill's appraisal.

12. The Union requested the training records of the two employees to assist in determining if there was any evidence of discrimination with respect to the amount of training each employee received, and to determine the validity of Epes' assertion that he was more qualified for the position. The performance appraisals of the employees, including Epes, McNeill, and the other planners in the section were needed in order to assess where Epes was rated compared to his coworkers to determine the validity of his allegations of discrimination, and to determine whether other employees in the section also may have experienced any discrimination with respect to promotion actions. In this framework, the Union needed an unsanitized version of the performance appraisals, including the names of the employees, in order to attach the names with the ethnicity of the planners.

13. The Union never received a response to either of the two information requests.(5) Furthermore, Respondent did not explain or clarify the necessity of the information request to the Union. Wong denied the grievance at the first step because McNeill was neither promoted nor detailed to the position. Respondent's witnesses testified that some of the information did not exist for the particular position of ranking certified planner, and Grayum "thought" the Union was told this through Wong's grievance response.(6)

Conclusions

Section 7114(b)(4) of the Statute requires an Agency to provide, upon request of the exclusive representative, data which is normally maintained by the agency in the regular course of business; which is reasonably available and necessary for full and proper discussion of subjects within the scope of collective bargaining; which does not constitute guidance, advice, counsel or training relating to collective bargaining; and which is not prohibited by law.

In the instant matter, the Union's information request included the 1991 performance appraisals, training records, SF-52 and AF-971 forms of employees Epes and McNeill, and the 1991 performance appraisals of employees who held the position of planner. Respondent admits that the information requested by the Union is normally maintained by the Agency in the regular course of business. The Union in this case sought information to ascertain more about the position of "ranking certified planner" and to determine whether Epes had a valid grievance. In line with its representational responsibilities, the Union sought the information to consider the validity of Epes' allegations of discrimination in order to decide whether or not to pursue the grievance.(7) Consequently, the issues to be resolved are whether the information requested by the Union was reasonably available, relevant and necessary within the meaning of section 7114(b)(4), does not constitute guidance, advise and counsel, and whether, as Respondents insists, its disclosure is prohibited by the Privacy Act.(8)

Respondent's main contention is that this case should be evaluated under a "particularized need" test. Respondent declares that the Union made no showing of a particularized need for the information prior to the hearing and that the need articulated by the Union at the hearing is inadequate to support its release. I disagree. There is little question that Respondent knew that the information was sought in connection with a grievance or possible grievance. In refusing to provide the information, it articulated no real reason at all for its failure to provide data for what appears to be a perfectly legitimate need i.e. to determine whether or not a grievance was warranted. See, Department of Justice, U.S. Immigration and Naturalization Service, U.S. Border Patrol, El Paso, Texas, 43 FLRA 697 (1991).

To require a union to establish the merits of a grievance before receiving information necessary to assess the merits of a grievance, defeats at least one of the overt statutory purposes behind the disclosure of information, the early resolution of potential grievances. See U.S. Department of Health and Human Services, Social Security Administration and Social Security Administration Field Operations, 43 FLRA 164 (1991).

Based on its actions in this case, Respondent can hardly argue that it sought to resolve the grievance herein. Instead, it could be seen as engaged in a dilatory effort to avoid any resolution of the matter. If Respondent really thought there was a real issue as to why the information was necessary, it seems to me, that it was incumbent on Respondent to raise the issue about which it is so concerned, at that time. Instead, Respondent said nothing and now is attempting to rely on its silence. The instant record is clear that Respondent failed to respond to both of the Union's information requests. The failure to respond to an information request has repeatedly been held to violate section 7116(a)(1), (5) and, (8) of the Statute. Social Security Administration, Baltimore, Maryland, 39 FLRA 650 (1991); U.S. Department of Justice, Office of Justice Programs, 45 FLRA 1022 (1991); U.S. Naval Supply Center, San Diego, California, 26 FLRA 324 (1987). Moreover, if the information requested by the Union did not exist, Respondent was obligated under the Statute to inform it that no documents existed. Thus, Respondent's failure to inform the Union that the requested information did not exist is itself violative of the Statute. The fact that the Authority has placed a requirement on respondent's to reply, even where the requested information is not available can lead only to a conclusion that it also would place an affirmative obligation on a respondent to tell the exclusive representative the reason why it is not providing information otherwise relevant and necessary under the Statute. This should happen in all cases where the agency recognizes that the exclusive representative, too, has a responsibility under the Statute. Had that been done in this case, the Union would have had the opportunity to outline its precise necessity prior to hearing. Since the Union had no opportunity to do so, I reject Respondent's argument that evidence at the hearing cannot be used to establish a "particularized need", if indeed it was ever required to do so.[(9)]

Respondent did not pursue at the hearing or in its brief the issue of whether the requested information was reasonably available. What is meant by the phrase "reasonably available" under section 7114(b)(4) has been defined. The term "available" refers to information which is accessible or obtainable, which "reasonably" refers to means that are not extreme or excessive. Department of Health and Human Services, Social Security Administration, 36 FLRA 943 (1990). Determining whether extreme or excessive means are required to retrieve available data requires case-by-case analyses of relevant facts and circumstances. Since there was no question raised in this regard by Respondent, it is found that the requested information was reasonably available within the meaning of section 7114(b)(4) of the Statute.

Additionally, Respondent raised no question regarding whether or not the requested information contained guidance, advice, counsel, or training for management officials relating specifically to the collective bargaining process and is exempted from disclosure to the exclusive representative under section

7114(b)(4)(C). U.S. Department of the Treasury, Internal Revenue Service, Washington, D.C., 40 FLRA 1070, 1084 (1989). Since the record contains no suggestion that the requested information related to guidance, advise or counsel to management in the collective bargaining process, it is found that the information sought herein is not exempt under section 7114(b)(4).

The investigation, evaluation and processing of potential grievances undoubtedly is a significant part of an exclusive representatives' responsibility in the work place. In acknowledging that significance, the Authority has consistently held that under section 7114(b)(4) the exclusive representative has a right to information that is necessary to enable it to fulfill its representational functions, including data which will assist in resolving potential grievances. Internal Revenue Service, 40 FLRA at 1083-84; U.S. Department of Justice, Immigration and Naturalization Service, Border Patrol, El Paso, Texas, 37 FLRA 1310, 1319 (1990) (INS); U.S. Department of the Air Force, Air Force Logistics Command, Sacramento Air Logistics Center, McClellan Air Force Base, California, 37 FLRA 987, 995 (1990). Furthermore, it is clear that an exclusive representative is entitled to information under the Statute to realistically assess the strengths or weaknesses of a potential grievant's position. See U.S. Department of Transportation, Federal Aviation Administration, National Aviation Support Facility, Atlantic City Airport, New Jersey, 43 FLRA 191, 195-97 (1991).

Prior to the filing of Epes' grievance, and even after filing the grievance, the requested information was necessary and relevant for the exclusive representative to assess the validity of Epes' allegations, and to fully understand the issues involved in the grievance. The record evidence reveals that the Union requested information to ascertain more about the position of ranking certified planner in the investigation and processing of Epes' grievance, a position which it knew little or nothing about. The Union's request for the 1991 training records of Epes and McNeill, and the other planners, was predicated on Epes' allegation that the selection process for the position of ranking certified planner was the result of discrimination. Regarding whether the SF-52 and AF-971 forms were relevant and necessary, the Union professed that it needed these forms to determine whether the position of ranking certified planner was an actual promotion, or merely a detail, or neither. In addition the training records of Epes and McNeill were needed to compare whether one employee was more qualified than the other for the position. Ultimately, the information would be used to either dispel the notion that the selection was motivated by discrimination or to provide evidence of discrimination.

The evidence discloses that Respondent was clearly apprised that the Union was requesting the information in order to compare Epes' training record with McNeill's to determine who was more qualified, to compare Epes' appraisal with all the other planners in order to determine whether Epes had been treated in a discriminatory manner in the selection process, and finally to determine whether other employees in the section experienced discriminatory treatment in promotion actions. Performance appraisal data requested for the purposes of making comparisons among similarly situated employees has already been found to be necessary within the meaning of section 7114(b)(4). Immigration and Naturalization Service, supra; see, also, Department of Transportation, Federal Aviation Administration, New England Region, Boston, Massachusetts, 38 FLRA 1623, 1629 (1988).

Since the Union was engaged in investigating whether Epes' non-selection for the position of ranking certified planner was the result of racial discrimination, and whether other planners in the section were also affected by such discrimination, the appraisal data was needed in an unsanitized form, which identified the planners by name, in order to compare the appraisals with the ethnicity of the employees. Thus, it was shown that the appraisal data was necessary in an unsanitized form to allow the Union to carry out its representational function.

Respondent's failure to respond to the Union's initial information request of April 30, left the Union with no course other than to file the grievance "blindly" without the information necessary to make an informed judgment concerning the grievance. Thereafter, the Union was forced to make a second information request, after it filed the grievance, in order to gain a full and proper understanding of the issues it would be arguing in the grievance. Once again, Respondent did not respond to the Union's information request.

It is suggested by Respondent that Wong's first step grievance response, which stated that McNeill was neither promoted nor detailed to the position, somehow satisfies its statutory obligation to reply to the information request. Respondent also argued at the hearing that because the initial grievance filed by Epes' with the assistance of the Union was arguably untimely, and potentially non-meritorious, the information was not necessary. The defect in this argument is revealed by Wong's candid admission that the sole purpose behind the grievance response was to respond to the grievance, and that he had never seen the Union's information request prior to responding to the grievance. Just as important, however, whether or not the Epes' grievance is meritorious or not, is not of itself relevant in assessing whether the information sought here was necessary for the full and proper discussion and understanding in the Union's representational function under section 7114(b)(4). The merits of the grievance, and questions of arbitrability should be resolved through the parties grievance procedure, not evaluated in this unfair labor practice matter.

The law is already clear that an assertion that a grievance is not grievable does not relieve an agency's obligation to provide information relating to that grievance under section 7114(b)(4). Internal Revenue Service, Washington, D.C. and Internal Revenue Service, Omaha District, Omaha, Nebraska, 25 FLRA 181, 185 (1987); Immigration and Naturalization Service, supra. Accepting Respondent's opinion of its responsibilities under section 7114(b)(4), that where an agency contends that a grievance is not grievable, the Union must then demonstrate that a viable grievance exists before obtaining any data leads to a conspicuously unacceptable result. Requiring an exclusive representative to prove the merits of a grievance before receiving information necessary to assess those merits is preposterous and, as previously stated defeats the Statutory sense behind the disclosure of information, the early resolution of potential grievances. Social Security Administration and Social Security Administration Field Operations, supra.

Accordingly, since the information requested by the Union was necessary within the meaning of section 7114(b)(4) of the Statute, Respondent's failure and refusal to provide the data is found to have violated section 7116(a)(1), (5) and (8) of the Statute.

Finally, Respondent argues that the release of the information is "prohibited by law" within the meaning of section 7114(b)(4). This assertion was not communicated to the Union following the information requests, but only revealed in Respondent's Answer to the Complaint, and at the hearing. Even if some of the requested information were subject to the Privacy Act, 5 U.S.C. § 552a, it is difficult to support Respondent's blanket denial of all the information requested in this case.

5 U.S.C. § 552a is the Privacy Act which regulates disclosure of information in an agency record within a system of records retrievable by reference to an individual's name or other personal identifier. Such records are generally prohibited from disclosure unless one of the specific Privacy Act exceptions under 5 U.S.C. § 552a(b) is applicable. Section 552a(b)(2) permits disclosure of Privacy Act protected information to the extent such information is required to be released under the Freedom of Information Act (FOIA) provides that all records in the possession of the federal government agencies must be disclosed upon request unless subject

to a specific FOIA exemption. Section (b)(6) of the FOIA provides that information contained in personnel files may be withheld if disclosure of the information would constitute a "clearly unwarranted invasion of personal privacy." See generally, U.S. Department of the Navy, Portsmouth Naval Shipyard, Portsmouth, New Hampshire, 37 FLRA 515 (1990), enforcement denied sub nom. FLRA v. U.S. Department of the Navy, Portsmouth Naval Shipyard, Portsmouth, New Hampshire, No. 90-1949 (1st. Cir. August 13, 1991).

In making a determination as to whether requested information falls within the (b)(6) exemption, it is necessary to balance the competing interest of the employees' privacy against the public interest in disclosure. Moreover, the public interest to be examined when applying the balancing test required by exemption (b)(6), is that embodied in the Statute.

Here, there are serious public interests favoring the disclosure of the information in unsanitized form for there is minimal intrusion into the employees' privacy interests. In this case, the only documents arguably within the purview of the Privacy Act are the performance appraisals. However, the disclosure of unsanitized performance appraisals appear essential to aid the Union in assessing Epes' allegation, that promotions in the power plant have been granted on a discriminatory basis. The disclosure of the names of the employees on the performance appraisals would serve the public interest because it would assist the Union in determining whether Respondent is promoting employees in an equitable fashion. See e.g., U.S. Department of Treasury, Internal Revenue Service, Washington, D.C. and Internal Revenue Service, Helena District, Montana, 39 FLRA 241 (1991).

Of particular note, Respondent has not articulated how, or in what manner, the disclosure of the requested information would constitute a clearly unwarranted invasion of employees' privacy interests to either the exclusive representative or to this forum. Respondent, in fact, has never stated how disclosure of the information implicates any privacy interests of the affected bargaining unit employees, or how the employees would be stigmatized by the release of the data. Furthermore, there is no evidence in the record or any reason to believe that the Union was going to publicize the information, or carelessly circulate the information. See, e.g., Internal Revenue Service, Omaha District, Omaha, Nebraska, supra. Last, there are no privacy concerns for documents in Epes' own file, as he is being represented by the Union in this grievance.

The central purpose of FOIA is to ensure that the Government's activities be opened to the sharp eye of public scrutiny. U.S. Dep't of Justice v. Reporters Committee, 109 S. Ct. 1468, 1482 (1989). (Reporters Committee). Additionally, official information that sheds light on an agency's performance of its statutory duties falls squarely within that statutory purpose. The Union, without the names of the employees, would be unable to discern whether promotion actions were made on a discriminatory basis.

Under these circumstances, the balancing of the employees' privacy interests against the Charging Party's need for the information would not result in a "clearly unwarranted" invasion of personal privacy.

Having rejected all of Respondent's arguments in this matter, it is found that by failing and refusing to respond to the Union's information requests of May 6, 1992 and by refusing to furnish data requested by the Union on April 30, 1992, Respondent violated section 7116(a)(1), (5) and (8) of the Statute.

Therefore, it is recommended that the Authority adopt the following:

ORDER

Pursuant to section 2423.29 of the Federal Labor Relations Authority's Rules and Regulations and section 7118 of the Statute, it is hereby ordered that the Onizuka Satellite Control Facility, Onizuka Air Force Base, California, shall:

1. Cease and desist from:

(a) Failing and refusing to furnish the National Federation of Federal Employees, Local 2090, the exclusive representative of its employees, necessary and relevant information which was requested in connection with a grievance.

(b) Failing and refusing to respond to requests for information by the National Federation of Federal Employees, Local 2090, the exclusive representative of its employees.

(c) In any like or related manner interfering with, restraining or coercing its employees in the exercise of their rights assured by the Federal Service Labor-Management Relations Statute.

2. Take the following affirmative action in order to effectuate the purposes and policies of the Federal Service Labor-Management Relations Statute:

(a) Upon request, furnish to the National Federation of Federal Employees, Local 2090, the information requested on April 30, 1992 and May 6, 1992, respectively, including copies of the SF-52 and AF-971 forms recorded in 1991 with respect to two bargaining unit employees; the 1991 training records of these same employees, and unsanitized copies of the 1991 performance appraisals of employees who hold the position of planner, which the National Federation of Federal Employees, Local 2090, requested in connection with the processing of a grievance.

(b) Post at its facilities in Onizuka Satellite Control Facility, Onizuka Air Force Base, California, where bargaining unit members represented by the National Federation of Federal Employees, Local 2090, 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 Commanding Officer, 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 insure that such Notices are not altered, defaced, or covered by any other material.

(c) Pursuant to section 2423.30 of the Authority's Rules and Regulations, notify the Regional Director of the San Francisco Region, 901 Market Street, Suite 220, San Francisco, California 94103, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

Issued, Washington, DC, December 29, 1993

ELI NASH, JR.

Administrative Law Judge

NOTICE TO ALL EMPLOYEES

AS ORDERED BY THE FEDERAL LABOR RELATIONS AUTHORITY

AND TO EFFECTUATE THE POLICIES OF THE

FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS STATUTE

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT fail and refuse to furnish the National Federation of Federal Employees, Local 2090, the exclusive representative of our employees, necessary and relevant information which it requested in connection with a grievance.

WE WILL NOT fail and refuse to respond to requests for information submitted by the National Federation of Federal Employees, Local 2090, the exclusive representative of our employees.

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

WE WILL furnish to the National Federation of Federal Employees, Local 2090, the information requested on April 30, 1992 and May 6, 1992, respectively, including copies of the SF-52 and AF-971 forms recorded in 1991 with respect to two bargaining unit employees; the 1991 training records of these same employees, and unsanitized copies of the 1991 performance appraisals of employees who hold the position of planner, which

the National Federation of Federal Employees, Local 2090, requested in connection with the processing of a grievance.

_____

(Activity)

Date: _____ By: _____

(Signature) (Title)

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

If employees have any questions concerning this Notice or compliance with any of its provisions, they may communicate directly with the Regional Director of the Federal Labor Relations Authority, San Francisco aRegion, 901 Market Street, Suite 220, San Francisco, CA 94103, and whose telephone number is: (415) 744-4000.

Dated: December 29, 1993

Washington, DC

1. The amendments to the Complaint did not change the sub-stantive nature of the case and were granted at hearing with no objection by Respondent. As reflected in the amendments to the Complaint at hearing, with respect to this information request, only Respondent's failure and refusal to furnish the Union the 1991 performance appraisals and the 1991 training records were alleged as violations.

2. At the hearing, Respondent requested that the record remain open until it had an opportunity to have the testimony of its witness, Linda Rand, who was ill at the time. On December 17, 1992, Respondent filed a motion to leave the record open in this matter until March 15, 1992. Respondent, in support of its motion, submitted a letter from Rand's physician and psychologist. Counsel for the General Counsel opposed that motion on December 18, 1993. In all the circumstances, it appeared to the undersigned that Rand might never be available for testimony in this matter, therefore the record was closed.

3. All dates are 1992 unless otherwise noted.

4. Francis Wong, Epes' supervisor, testified that McNeill was given the position of ranking certified planner in October or November 1991. Epes filed a grievance with the assistance of the Union on May 5, 1992. Any assertion by Respondent that the grievance was meritless because it was untimely under the Agreement is not

relevant in assessing Respondent's statutory obligation to respond and furnish information under section 7114 of the Statute.

5. About four months after the unfair labor practice charge was filed in this matter, Respondent made its only direct "response" to the information requests. That response was made in an August 1992 training program conducted by the FLRA which was designed to settle, if possible, outstanding unfair labor practices. Obviously, those settlement efforts failed. In any event, a response in such circumstances hardly satisfies Respondent's statutory obligation to "provide" information to the Union.

6. Although Respondent suggests that Wong's response to the grievance was a reply to the Union's information request, its own witness disproves that assertion. Thus, Wong positively stated that the sole purpose behind the grievance response was to reply to the grievance, and when he drafted the grievance response he had never seen the Union's information requests.

7. Article 5, § 3(c) of the collective bargaining agreement defines the Union representative's responsibility to determine the merits of an employee's complaint through investigation and consideration of the facts.

8. Respondent also argues that the administrative law judge made several errors in his rulings during the course of the hearing. Since, Respondent has an automatic exception to any rulings it feels are adverse to its case, the undersigned deems it unnecessary to again rule on those matters in the instant decision.

9. 9/ Although the United States Court of Appeals for the District of Columbia Circuit in Department of the Air Force, Scott Air Force Base v. FLRA, 956 F.2d 1223 (D.C. Cir. 1992) remanded a case to the Authority on the basis that an agency need not disclose certain requested information unless the union has a "particularized need" for such information, and advised the Authority to consider the "interest of postponing disclosure until the grievability decision is resolved," the Authority has not adopted the Court's decision. With regard to Respondent's "particularized need" argument in the case, it is my opinion that the Union herein showed a "precise" and "particularized need" for the requested information and even if that standard is clearly the law, the Union met the standard in this case.