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

MEMORANDUM DATE:
July 28, 2006

TO: The Federal Labor Relations Authority

FROM: CHARLES R. CENTER
Chief Administrative Law Judge

SUBJECT: FEDERAL AVIATION ADMINISTRATION
WINDSOR LOCKS, CONNECTICUT

Respondent

and Case No. BN-CA-05-0201

NATIONAL AIR TRAFFIC CONTROLLERS ASSOCIATION, LOCAL Y90

Charging Party

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

Enclosures

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

FEDERAL AVIATION ADMINISTRATION
WINDSOR LOCKS, CONNECTICUT

Respondent

and Case No. BN-CA-05-0201

NATIONAL AIR TRAFFIC CONTROLLERS
ASSOCIATION, LOCAL Y90

Charging Party

NOTICE OF TRANSMITTAL OF DECISION

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

PLEASE BE ADVISED that the filing of exceptions to the attached Decision is governed by 5 ∋∋2423.40[illegible]1, 2429.12, 2429.21[illegible]2429.22, 2429.24[illegible]2429.25, and 2429.27.

Any such exceptions must be filed on or before **AUGUST 28, 2006**, and addressed to:

Office of Case Control
Federal Labor Relations Authority
1400 K Street, NW, 2nd Floor
Washington, DC 20005

CHARLES R. CENTER
Chief Administrative Law Judge

Dated: July 28, 2006
Washington, DC

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

FEDERAL AVIATION ADMINISTRATION
WINDSOR LOCKS, CONNECTICUT

Respondent

and Case No. BN-CA-05-0201

NATIONAL AIR TRAFFIC CONTROLLERS
ASSOCIATION, LOCAL Y90

Charging Party

Laurie R. Houle, Esq.
Philip T. Roberts, Esq.
For the General Counsel

Kurt Comisky, Labor Relations Specialist
Irma Field, Labor Relations Specialist
Jerry Essenmacher
For the Respondent

Mark Shapiro, Esq.
For the Charging Party

Before: CHARLES R. CENTER
Chief Administrative Law Judge

DECISION

Statement of the Case

/ The General Counsel filed a motion to amend the complaint on April 24, 2006, and the Respondent filed an answer to the amended complaint on May 9, 2006. At the hearing in this case, however, the General Counsel withdrew the motion. Tr. 9.

This case arose under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the U.S. Code, 5 U.S.C. ∋7101, *et seq.*, (the Statute). The National Air Traffic Controllers Association, Local Y90 (Union or Charging Party) filed an unfair labor practice charge against the Federal Aviation Administration, Windsor Locks, Connecticut, (Agency or Respondent) on February 23, 2005. After investigation, the Regional Director for the Boston Region of the Federal Labor Relations Authority issued a Complaint and Notice of Hearing on March 13, 2006, alleging that the Respondent violated section 7116(a)(1), (5) and (8) of the Statute by failing to provide information sought by the Union under section 7114(b)(4) of the Statute.

On April 5, 2006, the Respondent filed an answer to the Complaint admitting some of the factual allegations but denying that it failed to provide the requested information and violated the Statute.[/]

A hearing was held in Hartford, Connecticut, on May 17, 2006, at which all parties were represented and afforded the opportunity to be heard, to introduce relevant evidence, and to examine and cross-examine witnesses. The General Counsel (GC) and counsel for the Respondent subsequently filed timely post-hearing briefs, which were fully considered.

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

FINDINGS OF FACT

Background

The Respondent is an agency within the meaning of Section 7103(a)(3) of the Statute. G.C. Exh. 1(b) and (c). The National Air Traffic Controllers Association (NATCA) is a labor organization within the meaning of section 7103(a)(4) of the Statute and is the exclusive representative of a unit of employees appropriate for collective bargaining within the Federal Aviation Administration (FAA). G.C. Exh. 1(b) and (c). The Charging Party is an agent of NATCA for purposes of representing certain employees of the Respondent who are in that bargaining unit. G.C. Exh. 1(b) and (c).

The dispute in this case revolves around the Union=s request for copies of AY90 TRACON Position Logs (FAA Form 7230-10).≅/ Jt. Exh. 18. A separate log is kept for each position on a daily basis and essentially provides a record of how the position is covered. In particular, the log shows the periods during which the position is open or closed or if it is combined with another position at particular times, the log shows the identity of the other position that is responsible for its functions. Tr. 22-25, Jt. Exhs. 10 and 11. For periods when a position is open, the log shows the sign-on/off times for the personnel assigned to it as well as their capacity, *e.g.*, controller or supervisor. Tr. 22-25, Jt. Exhs. 10 and 11. Thus, the position logs are the official record that identifies which employees are responsible for each position at all times the facility is in operation. Jt. Exh. 12, 4-6-3; Tr. 19; Tr. 62.

The logs are used for a number of purposes. For example, during aircraft accident investigations, they are relied on to determine which air traffic controller was responsible for the relevant position at the time of the accident. Tr. 62. The logs also serve as the sole-source record for On-the-Job Training (OJT) instructor and evaluator time and premium pay and as a supporting document for time and attendance. Jt. Exh. 12, 4-6-3.

In the past, paper logs were used but at some point prior to September 2004, the Respondent instituted an electronic log to replace the paper logs. Tr. 25, 61-62. During the course of the events involved in this case, the software used by the Respondent to generate the electronic logs was evolving in response to needs to address shortcomings and correct problems as they became evident. Tr. 106. More specifically, a version of software referred to as ACRU-OPS≅ was in effect until September 5, 2004, when it was replaced by a version referred to as AART-1.0.≅ Tr. 83, 107-09. On November 18, 2004, AART 2.0≅ replaced AART 1.0.≅ Tr. 83. Although the information contained in the data system remained the same

/ TRACON is an acronym for Aterminal radar approach control.@ Jt. Exh. 12, 1-2-5. The TRACON facility involved in this case services Bradley International Airport. Tr. 18, 58. The position log is also referred to as the Adash 10@ log. Tr. 25.

throughout this evolution, different versions of the software changed the database structure. Tr. 97-98, 125, 129-30. Consequently, once a new version was adopted, finding and retrieving data that had been placed in the database using a prior version of the software was difficult. Tr. 97-98, 130. For example, as one witness testified, different versions of the software would not necessarily look for the same information in the same place. Tr. 130.

The Information Request

By memorandum dated December 15, 2004, Bruce Means, who served as the local facility representative for the Charging Party, filed a grievance in which he alleged the position logs continually showed gaps and did not accurately reflect controller assignments to positions. Jt. Exh. 3. In the grievance, Means asserted that the gaps could affect records applying to, among others, pay-related matters and accident investigations. Jt. Exh. 3. Means also stated it was his understanding that sign-on/off times were being entered manually in an effort to correct the logs. Jt. Exh. 3. By memorandum of the same date, Means submitted a request to Mark Guiod, the Air Traffic Manager of Bradley International Airport, for AY90 TRACON Position Logs (FAA Form 7230-10) for all positions beginning on September 5, 2004.≅ Jt. Exh. 2. Means requested copies of the logs as they were both before and after manuel changes/corrections were made in them. Jt. Exh. 2. In support of his need for the information, Means cited the grievance and his desire to determine whether bargaining unit employees were receiving proper pay and credit for assignments. Jt. Exh. 2. Means requested the information be provided by December 22, 2004, and in the event not all of it was available by that date, he be provided what was and informed when he could expect to receive the rest. Jt. Exh. 2.

When Means did not receive a response by January 11, 2005, he sent another memorandum essentially reminding Guiod of the request. Jt. Exh. 4. By memorandum dated January 14, 2005, Guiod referenced information requests made on four different dates, including December 15, and advised they were being processed and Means could expect responses within the next 7 days. Jt. Exh. 5. Subsequently, in a memorandum dated January 20, 2005, Guiod informed Means that the Respondent did

not maintain printed logs and did not have the capability to print logs for the period Means requested. Jt. Exh. 6. Guiod=s memorandum further stated that the logs for the requested period could be viewed and he would make them available for Means to do so. Jt. Exh. 6. Guiod requested that Means contact him to schedule a time during which Means could view the logs for the period of September 5 through December 15, 2004. Jt. Exh. 6. According to Guiod, he asked one of his employees to set up a computer in a room where Means could view the logs privately. Tr. 64.

At the hearing in this case, the parties orally stipulated that as of the time of the information request on December 15, 2004, the Respondent was capable of printing position logs for the period November 18, 2004, through December 15, 2004. Tr. 11.

Guiod and Means provided conflicting testimony at the hearing concerning whether there were any communications between them regarding the information request other than the memoranda described above. Guiod testified that at some point

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/ According to Guiod=s testimony at the hearing, November 18 was the point at which the Respondent converted to AART 2.0@ and that affected its capability to print logs generated while AART 1.0@ was being used. Tr. 75, 79.

/ In his testimony, Guiod acknowledged that during the litigation leading up to the hearing in this case, he provided erroneous information regarding printing capabilities to the Respondent=s representative. Tr. 78-81. Guiod attributed this to his own incorrect recollections regarding chronology and capabilities of the various versions of the software. Tr. 78-81.

/ More specifically, on direct testimony, Guiod seemed to describe a single conversation that occurred at some point between Means= information request and Guiod=s written response. Tr. 63. According to Means= description, he explained to Means that although he could print logs for the period beginning November 18, he could not print them for the period that preceded that date. Tr. 63. On redirect examination, Guiod described two separate conversations. Tr. 79. In the first, he told Means only the Acurrent@ logs could be printed and in a second conversation that occurred after Guiod learned that logs could be printed back to November 18, he advised Means of that fact. Tr. 79.

during the period between December 15 and January 20, he orally informed Means that although logs could be printed for the period after November 18, 2004, there was no capability to print the logs for the period between September 5 and that date./ Tr. 63, 70, 79. Means, in contrast, testified that he had no communications or oral conversations with Guiod concerning the December 15 information request. I find that Means= testimony, rather than that of Guiod, is consistent with the written communications that occurred contemporaneously with the events involved in this case. Specifically, Guiod=s memorandums dated January 14 and January 21 made no reference to any conversations between Guiod and Means. Additionally, in those memoranda, Guiod did not suggest that printed information was available for part of the period encompassed by the request. Rather, Guiod=s January 21 memorandum categorically stated the Respondent lacked the capability to print logs for the period requested and offered to arrange for Means to view the logs for the period September 5 through December 15. It is also significant that in the response to the complaint in this case, the Respondent stated that at the time of the December 15 request, although the computer program in use on that date provided the capability to view the information, the print function was limited to the current day./ G.C. Exh. 1 (c). Additionally, I find Guiod=s account at the hearing of his one or more oral conversations with Means not entirely consistent./ Viewing Guiod=s less than solid account and comparing it against contemporaneous written documents, I find that Guiod=s claim that he had one or more conversations in which he advised Means that some of the logs could be printed unconvincing. Additionally, I find that Guiod=s grasp of what printing capabilities existed at various times was subject to considerable confusion on his part. I credit Means= testimony on the question of whether there were any oral communications between Means and Guiod rather than that of Guiod and find there weren=t any.

Means did not avail himself of Guiod=s offer to view the position logs and during the hearing in this case gave his reasons for not doing so. Tr. 29-30. Specifically, Means asserted he felt it would have been very time-consuming for him to write down the information contained in the logs; he did not believe hand-written notes would provide him with

something he could show employees for the purpose of verifying whether the records were accurate; and he doubted his notes would be acceptable evidence in the event the grievance went to hearing. Tr. 30.

At some point between December 15, 2004, and February 23, 2005, the date on which he filed the unfair labor practice charge in this case, Means learned from employee Maureen Cragen that position logs for the period between September 5 and December 15 could be printed. Tr. 28-29. In fact, Cragen provided him with printed copies of logs for September 10 and December 1. Tr. 28, Jt. Exhs. 9 and 11. Cragen=s responsibilities require that she work with position logs. Tr. 43. Among other things, Cragen is responsible for preparing reports of accident investigations that typically include copies of relevant position logs as attachments. Tr. 45-46, Jt. Exh. 15. According to Cragen, she submits the accident investigation reports through her supervisor, who is Guiod, for his review. Tr. 53-54. Cragen testified that one accident report she prepared included copies of position logs for October 11, 2004, and that she printed them out the week following that date. Tr. 46, Jt. Exh. 15. During the hearing, Cragen stated she remained able to print position logs regardless of the changes in software. Tr. 48-49. The testimony of Means and Cragen reveals that Cragen remained able to print logs that were created by earlier versions of the software even after it had been supplanted by another version. Although Cragen=s testimony shows that Guiod knew, or should have known, that her work required her to print copies of position logs, it does not establish that she submitted anything for his review that demonstrated she had printed logs after November 18 for a point prior to that date. Nevertheless, it appears that had Guiod consulted with Cragen, he might have learned that subsequent to the Union=s information request it remained possible to print logs that were generated during the entire period encompassed by the request.

At the hearing in this case, another witness, Gary Fiske, who was responsible for, among other things, installing software at the Respondent=s facility, provided a

/ Krug characterized ACRU-X@ as an Aumbrella name@ for a suite of software that included CRU-OPS and the various versions of ART. Tr. 123-24.

demonstration of retrieving and printing position logs. Fiske initially testified that although it was possible to access position logs predating November 18, there was no Afunctionality≅ to print them. Tr. 97-99. During cross-examination, however, Fiske, following instructions from Counsel for the General Counsel that involved a different approach than that demonstrated by him during direct examination, was able to print a screen capture copy of a position log for September 10, 2004. Tr. 102-03.

Testimony at the hearing also revealed a second, alternative method available to the Respondent at the time of the request that could have been used to obtain and print the data contained in the logs. One of the witnesses who testified was John Krug, who served a two-year detail as a ACRU-X≅ technical representative for the New England region beginning in February 2003, during which he remained physically located at the Bradley facility./ Tr. 119-20. During Krug=s testimony, it emerged he was familiar with and had access to a program referred to as ATOAD≅ that he conceded would have allowed the Respondent to quickly retrieve and print the data contained in the position logs for the period September 5 though November 17. Tr. 128-29, 131-32. Krug acknowledged that questions regarding the ability to access the database would have come within the normal scope of his duties during the period relevant to the information request. Tr. 136-37. Krug testified he was never approached about the ability of the Respondent to access the data in order to respond to the information request. Tr. 136. Guiod, on the other hand, testified he was sure he talked to Krug about the request for information but didn=t have a specific recollection of asking how logs that predated November 18 could be printed although he would not be surprised if he did. Tr. 74. In view of the absence of any concrete evidence that Guiod queried Krug about possible ways to print the logs or

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/ Although I found earlier that Guiod failed to inform Means that the logs for the period beginning November 18, 2004, could be printed, I find his testimony nevertheless shows he knew that they could. Moreover, a finding that Guiod knew those logs could be printed is consistent with the

the data contained therein for the period prior to November 18, I find that he did not do so.

To summarize, I find that in response to Means= request for the position logs, Guiod informed him that they couldn=t be printed despite the fact that Guiod knew at the time that the logs could be printed for the period beginning November 18, 2004.[/] Instead of offering to provide those he knew could be printed, Guiod instead simply offered to make the electronic logs available for Means to view. I also find that although Guiod may not have been aware of them, alternative means existed to print the logs or the data contained therein for the period preceding November 18. Additionally, I find Guiod did not seek Krug=s assistance prior to responding to Means= request.

DISCUSSION AND CONCLUSIONS

Issues and Positions of the Parties

The parties entered into a number of stipulations at the hearing that pertain to the elements set forth in section 7114 (b)(4) of the Statute and substantially narrows the scope of the dispute before me for resolution. The stipulations are as follows:

> 1. On or about December 15, 2004, the Charging Party submitted a request for information for copies of Y90 TRACON Position Logs (FAA Form 7230-10) for the period of September 5, 2004, through December 15, 2004. The requested information is normally maintained within the meaning of ∋7114(b)(4) of the Statute by the Respondent during the regular course of business in electronic format.
>
> 2. The requested information was necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of bargaining within the meaning of ∋7114(b)(4) of the Statute.
>
> 3. The requested information does not

constitute guidance, advice, counsel, or training provided for management officials or supervisors relating to collective bargaining.

4. The requested information is not prohibited from disclosure by law.

5. The Respondent still maintains the requested information in electronic format.

The issue that remains is whether the Respondent was required by section 7114(b)(4) to provide the Union with printed copies of the position logs for the period September 5, 2004, through December 15, 2004. The General Counsel asserts Respondent did not do so and its failure in that regard constituted a violation of section 7116(a)(1), (5) and (8) of the Statute.

The Respondent acknowledges that Authority precedent indicates agencies are required by section 7114(b)(4) to provide information encompassed by that section even if it is necessary for them to write a new computer program in order to retrieve the information or hand record material from official files. The Respondent maintains, however, that the circumstances here are distinguishable from those involved in that precedent. In particular, the Respondent avers that unlike the respondents in other cases, it conceded the requested information was necessary and from the beginning desired to provide the information sought.

The Respondent contends the General Counsel failed to establish that Guiod=s belief, which prior to the hearing, was shared by Fiske and Krug, that the logs predating November 18, 2004, could not be printed or his actions based on that belief were unreasonable. The Respondent argues there is no showing it acted unreasonably or with malice. The Respondent states it is willing to provide the copies of the logs to the Union and asserts that under the circumstances a remedial order requiring it to post such a notice to employees is unnecessary and unwarranted.

In the General Counsel=s view, the only issue that

/ Department of Justice v. FLRA, 991 F.2d 285, 291 (5th Cir. 1993).

remains is whether the information was reasonably available. The General Counsel notes that the standard historically relied on by the Authority to determine what is reasonably available within the meaning of section 7114(b)(4), *i.e.*, accessible or attainable through means that are not extreme or excessive, has been criticized by one court that suggested the standard should fall somewhere midway between readily available and available only through extreme or excessive means.[/] The General Counsel contends that regardless of whether the standard historically used by the Authority or suggested by the court is applied, the evidence in this case shows the logs were reasonably available. In support of this contention, the General Counsel maintains the record shows there were methods available to the Respondent that would have allowed it to print the information contained in the logs with a minimal amount of effort. According to the General Counsel, one method would have produced an exact image of the logs and the other would have produced the exact information albeit in a different format. Noting that the Authority=s precedent holds alternative means of disclosure may satisfy the statutory obligations of section 7114(b)(4), the General Counsel maintains any claim that the difference in format would render the disclosure inadequate should be rejected.

The General Counsel asserts Respondent=s obligation under the Statute was to furnish copies of the logs to the Union and its offer to allow the Union to view the data did not satisfy its obligation. The General Counsel further argues that even if the Union had the ability to print the information itself, this did not release the Respondent from its obligation to furnish the data.

As remedy, the General Counsel requests the issuance of an order requiring the Respondent to cease and desist, provide the requested information, and post a notice to employees.

Analysis

The duty to bargain under the Statute includes the obligation on the part of an agency to furnish upon request of the exclusive representative data that meets the elements set forth in section 7114(b)(4). *See, e.g., U.S. Department of Transportation, Federal Aviation Administration, National Aviation Support Facility, Atlantic City Airport, New Jersey*,

43 FLRA 191, 195 (1991) (*FAA, Atlantic City*). Specifically, an agency must furnish information to an exclusive representative, upon request and to the extent not prohibited by law, that is normally maintained by the agency in the regular course of business; reasonably available and necessary for discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and does not constitute guidance, advice, counsel, or training provided for management officials or supervisors relating to collective bargaining. *See, e.g., id.*

The parties have stipulated and, thus, it is not in dispute that disclosure of the position logs that the Union requested on December 15 was not prohibited by law and they were normally maintained in electronic format and were Anecessary≅ within the meaning of section 7114(b)(4). They have also stipulated that the logs did not constitute guidance, advice and counsel within the meaning of that section.

Insofar as the elements identified in section 7114(b)(4), the question that remains is whether printed copies of the log met the criteria of normally maintained and reasonably available. In addressing this question, it is important to note that it is well established that merely allowing a union to review or look at requested data does not satisfy an agency=s obligation under section 7114(b)(4) to **furnish** information encompassed by that section of the Statute. *See, e.g., U.S. Department of Housing and Urban Development*, 42 FLRA 1002, 1003 n.2, 1014 (1991) (HUD). Rather, the agency is obligated to provide the union with a copy of necessary and reasonably available information requested. *See, e.g., Veterans Administration, Washington, D.C.*, 28 FLRA 260, 266 (1987). The obligation of the agency to provide a copy of requested information applies even where the union has received a copy of the information from another source. *See FAA, Atlantic City*, 43 FLRA at 197.

Here, it is undisputed that the Respondent maintained the position logs in electronic format. Under Authority precedent, an agency=s obligation under section 7114(b)(4) to provide information includes extracting information from its various records and files. *See, e.g., 22nd Combat Support Group (SAC), March Air Force Base, California*, 30 FLRA 582, 584 (1987), *rev=d as to other matters*, No. 88-1128 (D.C. Cir. Aug. 9, 1990); *Lowry Air Force Base, Denver, Colorado*, 29 FLRA 294, 303 (1987), *rev=d as to other matters*, No. 87-1714 (D.C.

Cir. Aug. 9, 1990).

The Authority=s precedent with respect to furnishing information requested indicates that an agency has the obligation to make more than minimal efforts to provide copies of material that satisfies the union=s request for data that comes within the scope of section 7114(b)(4). An agency=s obligation under section 7114(b)(4) is to furnish copies of requested data and its efforts to do so should be commensurate with that obligation.

Here, it became clear at the hearing that the logs for the entire period covered by the request could be printed or their substance reproduced in printed form without much effort and that knowledge of this capability could have been available to Guiod had he pursued the matter.

I find that although the position logs were normally maintained by the Respondent in the regular course of business in electronic format, they or, alternatively, their substance were readily convertible to printed format. To find that because an agency maintains information in computer databases rather than in printed format, the information is construed as normally maintained only in electronic format would seriously undermine the obligation of the agency to furnish copies of the information to the union as the Authority has interpreted section 7114(b)(4) as requiring./

/ Of course, there would be nothing to prevent parties from agreeing that information could be transmitted to the union electronically with the understanding that the union was capable of printing copies and free to do so. There is, however, no evidence that such an understanding was reached in this case. Significantly, Guiod did not offer to transmit the data to whatever computer Means= may regularly have used but merely offered to allow him to view the data via computer. By his own testimony, Guiod envisioned doing this by giving Means access to a computer where the material could be viewed. Moreover, at the time he made this offer, Guiod was also laboring under the misunderstanding that some of the information could not be printed. Thus, Guiod=s offer did not amount to a satisfactory alternative to providing printed copies.

By the same token, I find that whether in electronic or printed form, the position logs were reasonably available. As demonstrated at the hearing in this case, printing of the logs or the substance of them could be accomplished by means available to the Respondent and with relative ease. I would find that they were reasonably available under both the standard that the Authority has historically applied, *i.e.*, excluding data that is available only through extreme or excessive means, or one such as that suggested by the Fifth Circuit, *i.e.*, something near the middle of a spectrum between readily available and available only through extreme or excessive means. *See Federal Bureau of Prisons, Washington, D.C.*, 55 FLRA 1250, 1254-55 (2000) (Then-member Cabaniss dissenting). Here, printing the position logs or, alternatively, the data contained there in required very little effort and printed copies could reasonably be characterized as readily available.

In view of Guiod=s acknowledgment that he knew at the time of the Union=s request that the Respondent had the capability to print the logs that related to the period beginning November 18, the Respondent cannot legitimately point to his lack of awareness in an effort to defend its failure to provide those logs to the Charging Party. To the extent that Guiod may have genuinely lacked awareness that the capability existed to print the logs, or the data contained in them, that predated November 18, I find that Guiod=s attempts to find a way to print the logs came up short. For example, he made no inquiry to Krug who had some expertise in the matter and as demonstrated at the hearing, should have been able to assist Guiod in satisfying the Union=s request.

I find that the evidence establishes that printed copies of the logs or, alternatively, the information contained in them, for the period September 5 through December 15, 2004, were reasonably available. To the extent that Guiod knew that the logs for the period beginning November 18 could be printed, his offer to make them available for the Union to review failed to fulfill the Agency=s obligations under the Statute. *See, e.g., HUD*, 42 FLRA at 1003 n.2. Additionally, insofar as the logs that predated November 18, I find Guiod=s apparent lack of knowledge that either copies of the logs themselves or the information contained in them could be

printed does not excuse the Respondent=s failure to provide the copies to the Union. Cf. *Social Security Administration, Baltimore, Maryland and Social Security Administration, Area II, Boston Region, Boston, Massachusetts*, 39 FLRA 650, 656 (1991) (fact that an inexperienced and uninformed labor relations officer may have served as the respondent=s agent does not excuse respondent=s failure to discharge its obligation under section 7114(b)(4)).

I find that the Respondent failed to comply with section 7114(b)(4) and violated section 7116(a)(1), (5), and (8) of the Statute.

Accordingly, I recommend that the Authority issue the following Order:

ORDER

Pursuant to ∋2423.41(c) of the Rules and Regulations of the Federal Labor Relations Authority and ∋7118 of the Federal Service Labor-Management Relations Statute (Statute), it is hereby ordered that the Federal Aviation Administration, Windsor Locks, Connecticut, shall:

1. Cease and desist from:

(a) Failing or refusing to furnish the National Association of Air Traffic Controllers, Local Y90 (the Union) with copies of the position logs requested by the Union on December 15, 2004.

(b) In any like or related manner, restraining or coercing its employees in the exercise of their rights assured by the Statute.

2. Take the following affirmative action:

(a) Furnish the Union copies of the position logs for September 5, 2004, through December 15, 2004, requested by the Union on December 15, 2004.

(b) Post at its facility in Windsor Locks, Connecticut, where bargaining unit employees are located, copies of the attached Notice on forms to be furnished by the Authority. Upon receipt of such forms they shall be signed by the Air Traffic Manager at Windsor Locks, Connecticut, 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) Pursuant to ∋2423.41(e) of the Rules and Regulations of the Authority, notify the Regional Director of the Boston 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, DC, July 28, 2006

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 Federal Aviation Administration, Windsor Locks, Connecticut, violated the Federal Service Labor-Management Relations Statute and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT fail or refuse to furnish the National Association of Air Traffic Controllers, Local Y90, copies of position logs requested on December 15, 2004.

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 Association of Air Traffic Controllers, Local Y90, copies of the position logs for September 5, 2004, through December 15, 2004.

_____
(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, Boston Regional Office, whose address is: Federal Labor Relations Authority, Thomas P. O=Neill Federal Building, 10 Causeway Street, Suite 472, Boston, MA 02222, and whose telephone number is: 617-565-5100.

CERTIFICATE OF SERVICE

I hereby certify that copies of the **DECISION** issued by CHARLES R. CENTER, Chief Administrative Law Judge, in Case No. BN-CA-05-0201, were sent to the following parties:

_____

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

Laurie R. Houle, Esq. and **7004 2510 0004 2351 0408**
Philip T. Roberts, Esq.
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DATED: July 28, 2006

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