



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

OALJ 16-42

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-15-0167

Katie N. Smith  
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**

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 January 17, 2015, the American Federation of Government Employees, Local 1547, AFL-CIO (Union/Local 1547) 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 July 27, 2015, the Acting 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(c)). The Respondent timely filed an Answer to the Complaint in which it admitted certain factual allegations, but denied that it violated the Statute. (G.C. Ex. 1(d)).

On January 21, 2016, a hearing in this matter was held in Phoenix, Arizona. The parties were afforded a full opportunity to be represented and heard, examine witnesses, introduce relevant evidence, and make oral arguments. The General Counsel and Respondent filed post-hearing briefs that were fully considered.

### FINDINGS OF FACT

The Department of the Air Force is an agency under § 7103(a) (3). (G.C. Exs. 1(c), 1(d)). At all times material, Kathleen Brocksmitth, occupied the position of Human Resources Officer for Non-Appropriated Fund (NAF) employees at Luke Air Force Base, Arizona. (G.C. Exs. 1(c), 1(d)). Brocksmitth acted on behalf of the Respondent at all material times. (G.C. Exs. 1(c), 1(d)).

The American Federation of Government Employees (AFGE) is a labor organization under § 7103(a) (4). The AFGE is the exclusive representative of a unit of employees appropriate for collective bargaining at Luke AFB. (G.C. Exs. 1(c), 1(d)). Local 1574 is an agent of AFGE for the purpose of representing employees at Luke AFB. (G.C. Exs. 1(c), 1(d)).

On September 4, 2014, Harley Hembd, President, Local 1547, sent Brocksmitth an information request after several employees from the Child Development Center complained to him that an employee had received a better award. (Tr. 13, 14; G.C. Ex. 3(d)).

Hembd requested three different lists from the Respondent. First, Hembd requested a list of all the performance awards received by NAF bargaining unit employees for the 2014 appraisal year. (G.C. Ex. 3(d), (e)). Hembd said that the list must include each employee's name, grade, job series, job title, appraisal rating, award type, and award amount. Also, he wanted the list to include who proposed the award and the name and office of the official that approved the award. Second, Hembd requested a list that shows how the awards for NAF employees were distributed by race and national origin. Third, he requested a list of any other incentive awards received by NAF employees between August 31, 2013 and September 1, 2014, along with each employee's name, grade, job series, job title, award type, and award amount. Also, he wanted to know who proposed the award and the name and office of the official that approved the award.<sup>1</sup>

---

<sup>1</sup> The first part and the third part of the information request are similar, but there are some notable differences. First, in part 1, Hembd sought performance award information, but he requested information for other incentive awards in part 3. Second, Hembd only requested appraisal ratings in part 1. Third, in part 1, Hembd sought the performance awards received for their 2014 appraisal rating. In part 3, he requested information on any incentive awards issued between August 31, 2013 and September 1, 2014. Presumably, the 2014 appraisal year starts on August 31, 2013 and ends on September 1, 2014.

Hembd identified a number of reasons why the Union needed this information. (G.C. Ex. 3). He wanted to verify that the Respondent was complying with its contractual obligation to recommend and approve awards fairly and equitably. He also stated that he wanted to make sure that the Respondent was not discriminating against union officials, employees that filed complaints, or employees that cooperated with the Union in unfair labor practice cases. Further, he wanted to know if an employee's work location or grade had an impact on the amount or type of award received. Hembd stated that the Union would use this information to determine whether to file a grievance or other type of complaint alleging disparate treatment.

Hembd also attached instructions on how to respond. (Tr. 16, 17; G.C. Ex. 4). In the instructions, Hembd stated that the Respondent could sanitize "personal identifiers" but that the Respondent must code the information using numbers or letters so that the Union could compare the information. (G.C. Ex. 4). Hembd regularly attaches these instructions to his information requests. (Tr. 16-17).

Later that day, Brocksmith replied that she would review the information and respond as soon as possible. (G.C. Ex. 3). The following day, Brocksmith responded that she would provide the information once the Union provided a written authorization<sup>2</sup> from each employee permitting the disclosure of personal information as required by Article 32 of the collective bargaining agreement (CBA). Hembd replied that he did not ask for any personnel records. (G.C. Ex. 3).

On September 16, 2014, Hembd sent an e-mail to Brocksmith stating that he had not received a response. (G.C. Ex. 3). He asked her if she needed more time or if she would continue to claim that the Union had waived its right to the employees' ratings and awards.<sup>3</sup> On September 17, 2014, Brocksmith replied that the Respondent was waiting to see what would happen with the "2014 performance pay out." (G.C. Ex. 3(b)). She promised to provide the information once she received it. She then requested an additional ten days to respond.

On November 18, 2014, Hembd sent an e-mail asking for an update on the information request. On November 19, Brocksmith replied that employees that were rated 20 or above and worked 1040 hours received \$200. (G.C. Ex. 3). She also asked to meet with him one-on-one. Hembd responded that he appreciated the information she provided but he needed more detailed information. He asked her when it would be ready.

---

<sup>2</sup> The parties repeatedly stated that the Union can get information if it has written authorization. (G.C. Ex. 3; Tr. 62-63, 70-71, 77, 79). However, Article 32 actually states that the Union can get the information if it is designated as the representative of the employee in the matter. (R. Ex. 1).

<sup>3</sup> Hembd's response to Brocksmith suggests that the Respondent had raised this argument previously; however, there is no evidence in the record of such discussion.

On December 11, 2014, Hembd sent another e-mail asking for an update. Brocksmitth did not respond. (Tr. 21). Hembd did not have any other conversations with the Respondent regarding the information request. He never provided the written authorization from the employees. (Tr. 24).<sup>4</sup>

### Negotiations

The parties negotiated the CBA for NAF employees between January of 2008 and January of 2013. (Tr. 40). The parties started negotiations over Article 32 around January 12, 2011. (Tr. 42). Brock Henderson, a national representative for AFGE, was the Union's chief negotiator during the negotiations. (Tr. 12, 41). Cassandra Oakley assisted Henderson. (Tr. 50). James Abrusci, the Respondent's chief negotiator, and Deborah Ann Iverson represented the Respondent. (Tr. 50). Before the negotiations started, Henderson submitted his proposal for Article 32 and it reads:

**Section 1.** As required by law, 5 USC 7114, the Employer will cooperate in providing information or data to the union which is reasonably available and necessary for the union to carry out its representational duties. Requests for information will be made to the appropriate management official, identified to the Union upon request. Wherever possible, problems with such requests will be worked out at the level from which the information is being requested. Management will furnish data in a reasonably timely manner. Personal records on an employee will not be released unless the request is accompanied by a written designation of the union as the employee's representative in the matter described.

(G.C. Ex. 5).<sup>5</sup> The parties concluded negotiations on January 12, 2011, and signed a tentative agreement. (Tr. 48; G.C. Ex. 7). The tentative agreement was incorporated into the final CBA without any changes. The final version of Article 32 states:

As required by law, 5 USC 7114, the Employer will cooperate in providing information or data to the union which is reasonably available and necessary for the union to carry out its representational duties. Requests for information will be made to the NAF Labor Relations Specialist, or designee.

---

<sup>4</sup> The Respondent discloses similar information for appropriated fund employees every year. (Tr. 13, 27). Although Hembd testified that the NAF and appropriated fund agreements are different (Tr. 28), it is not clear whether the appropriated fund agreement has a different version of Article 32. Also, Hembd requested the appraisal ratings for NAF employees in 2008. (Tr. 14, 32, 102). The Respondent provided the information without objection. (Tr. 14). However, the NAF agreement was negotiated after this disclosure. (Tr. 40). Finally, every month, the Respondent provides the Union with a list of the name, grade, job series, job title, and office code of every NAF employee in the bargaining unit (Tr. 25, 30).

<sup>5</sup> The proposal also included two more sections but they are not material to this case.

Management will furnish data in a reasonably timely manner. Personal records on an employee will not be released unless the request is accompanied by a written designation of the union as the employee's representative in the matter described.

(R. Ex. 1). The parties dispute what happened during the negotiations and the significance of the last sentence of Article 32.

Brock Henderson

At the time of the hearing in this case, Henderson had negotiated eleven CBAs. (Tr. 34). Also, Henderson had been the Union president at Luke AFB for nine years before he became a national representative in 2006. (Tr. 34-35). As the Union president, he submitted requests for information about awards and appraisals every year. (Tr. 35). He stated that such information is very important to ensuring that appraisals and awards were given fairly. (Tr. 35-36).

According to Henderson, on January 12, 2011, the Respondent gave Henderson its counterproposal. (Tr. 42, 44). Henderson then drafted a copy of the Respondent's counterproposal which the General Counsel introduced as G.C. Exhibit 6. (Tr. 43). The counterproposal included several changes; in particular, it removed the last sentence of the Union's proposal. (G.C. Ex. 6).

Henderson also testified that, during the negotiations, the parties discussed concerns about the disclosure of personal information such as "EEO stuff . . . doctor-patient relationships and . . . [s]ocial [s]ecurity [n]umbers . . ." (Tr. 46). He insisted that the parties never mentioned that personal records included appraisals and award information and that he never contemplated that including this provision would restrict the Union's access to appraisal and award information. (Tr. 47). He thought award and appraisal information was employment information, not personal information. (Tr. 39).

Henderson said that the Respondent's counterproposal confused him because the Respondent claimed that it wanted to protect employee privacy but, in its counterproposal, it had removed the last sentence of Section 1 which he thought protected the employee's privacy interests. (Tr. 46). Eventually, the parties agreed to reinstate that sentence. (Tr. 46; G.C. Ex. 7). Henderson insisted that there was no "horse trading" during the negotiations and the Union did not receive anything in exchange for reinstating the last sentence of Section 1. (Tr. 47).

James Abrusci

According to Abrusci, during the negotiations, his goal was to make sure that Article 32 "mirror[ed] the 5 U.S.C. [§] 7114[(b)(4)] as much as possible . . ." (Tr. 55). Also, he stated that several employees complained to Iverson and him that their co-workers had obtained information about their awards. (Tr. 55-56). They did not want the Respondent to disclose information about their awards to their co-workers or to the Union. (Tr. 56). The

parties discussed the employees' concerns during the negotiations. (Tr. 57). Based on the employees' concerns, the parties agreed to language that would ensure that information that would "tie" an employee's name to an "award amount" would not be disclosed to the Union unless the Union represented the employee or the employee was aware of the disclosure.

Abrusci opined that the Union would not be entitled to information about an employee's race, ethnicity, gender, or job series if the Union requested it "by name" or if the Union could identify the employee based on other information provided. (Tr. 62, 68). Abrusci specifically mentioned that sometimes only one employee is in a particular job series; therefore, the Union would be able to identify an individual. (Tr. 68). However, he acknowledged that this does not happen very often. Abrusci suggested that the Respondent could disclose aggregate award information or in a "list" format<sup>6</sup> as long as the Union could not "tie" the award information to a particular employee. (Tr. 69, 71).

Furthermore, Abrusci denied that G.C. Exhibit 6 represented the Respondent's counterproposal. (Tr. 67). Instead, he stated that it was a product of the discussion between the parties. (Tr. 57, 67). Also, he acknowledged that this was the first time he negotiated a collective bargaining agreement. (Tr. 64).

#### Deborah Ann Iverson

Iverson participated in the negotiations over Article 32. She stated that Henderson was always accompanied by either Sam Stokes or Cassandra Oakley. (Tr. 75). At times, Henderson, Stokes, and Oakley all participated in the negotiations.

Iverson confirmed that several NAF employees, at various times, told her that they did not want her to disclose their personal information to the Union. (Tr. 74-75). She did not say when the employees spoke to her or if the parties discussed the employees' concerns during the negotiations.

Iverson stated that it was the Respondent's intention, during negotiations, to balance the Union's right to receive information with the employee's privacy interests. (Tr. 74). She said that the parties did not dispute the fact that the union needed authorization to receive personal information about employees. (Tr. 77). They discussed that "personal information" meant names, social security numbers, and other information that specifically identified individuals.

Iverson also explained that the last sentence of Section 1 was initially redacted because Henderson thought that it might be more appropriate in another article of the CBA. (Tr. 95-96). However, she could not remember where Henderson considered placing it.

---

<sup>6</sup> According to Abrusci, the list format has the employee's name, job title, job series, rating, etc. on the same line. (Tr. 69-70).

Iverson testified that she thought that the Respondent could release information about gender, ethnicity, grade, job series, awards, and appraisal ratings as long as the disclosure did not include the employee's name or otherwise identify a particular individual. (Tr. 80, 90). Like Abrusci, she stated that the Respondent would not be able to disclose information about an employee's job series if there is only one employee in that job series. (Tr. 77-78). She thought it was not uncommon for employees to be the only person in a job series. (Tr. 86).

Abrusci and Iverson retired from the Respondent before the information request was submitted. (Tr. 71, 73). Therefore, they were not involved in the Respondent's response to the information request. (Tr. 71, 93-94). However, they both reviewed the information request at the hearing and concluded that the Union was not entitled to the information. (Tr. 61-62, 80-81).

## POSITIONS OF THE PARTIES

### General Counsel

The General Counsel (GC) contends that the Respondent violated § 7116(a)(1), (5), and (8) of the Statute when it failed to disclose the information requested on September 4, 2014.

First, the GC states that the Union established a particularized need for the information because the Union referred to language in the CBA requiring fair and equitable treatment of employees with regard to performance appraisals and awards. (*Id.* at 11). It also stated that the Union would use this information to determine how management officials determined award amounts and types. Furthermore, the GC noted that the Respondent did not question the Union's particularized need. (*Id.* at 12).

Second, the General Counsel states that the Respondent did not tell the Union that the information was not reasonably available or that disclosure would violate the Privacy Act until the Answer. (*Id.*). Therefore, these countervailing interests should not be considered. The Respondent did not support its assertion that the information was not reasonably available. (*Id.* at 13). The General Counsel acknowledged that the Privacy Act prohibits the disclosure of award and appraisal information but this information can be disclosed if it is sanitized. (*Id.* at 10 n.5). The Union requested sanitized information; therefore, the Privacy Act does not prohibit disclosure.

Third, the GC asserts that the Union did not waive its right to this information. It contends that the only privacy concerns addressed by the parties during negotiations involved "EEO-type" information, doctor-patient relationship information, and social security numbers, not appraisal ratings and award information. (*Id.* at 14). Also, Henderson stated that he would not have waived the Union's right to this information.

The GC also questioned Iverson's and Abrusci's claim that employees complained to them about the disclosure of the performance information and notes that the Union received this information in 2008, three years before negotiations even started. Also, Iverson did not

confirm Abrusci's statement that they discussed performance information during the negotiations. Additionally, the General Counsel stated that Henderson had significant experience negotiating CBAs and had previously submitted information requests regarding performance appraisals as a union official. (*Id.* at 15). On the other hand, this was the first time that Iverson and Abrusci had negotiated a CBA.

The GC stated that Abrusci and Iverson testified that Article 32 only restricted disclosure if the information included employee names, social security numbers, or other information that the Union could use to identify a particular employee. (*Id.*). The Union did not request employee names; therefore, Article 32 did not cover this disclosure. (*Id.* at 16).

As a remedy, the General Counsel seeks an order directing the Respondent to disclose the requested information and post a notice signed by the Commander of Luke AFB, on bulletin boards where employees are located. Also, the notice should be e-mailed to all employees.

### **Respondent**

First, the Respondent denies that it violated the Statute, and contends that the Union expressly waived its right to receive employee information absent authorization by the employee. (R. Br. at 14). During "detailed" discussions, Iverson and Abrusci made it clear that the Respondent would not disclose personal information without the employee's consent. (*Id.* at 13). The parties agreed that the Union could obtain aggregate information, such as the number of employees that received a particular rating. However, the Union could not receive information that identified an employee unless the Union received the employee's express consent. As further support, the Respondent stated that Iverson and Abrusci reviewed the information request and agreed that the Union was not entitled to the without the employee's consent. (*Id.* at 13-14).

Respondent also challenged Henderson's recollection of the meeting. (*Id.* at 12). It stated Abrusci and Iverson remembered more details about the negotiations and that Henderson may be confused because he has negotiated so many collective bargaining agreements in the past. (*Id.* at 13).

Finally, the Respondent states that the Privacy Act prohibits the disclosure of information about appraisals and awards. (*Id.* at 14). Therefore, the Union must either obtain consent from every employee or accept aggregated information.

### **ANALYSIS AND CONCLUSIONS**

Section 7114(b)(4) of the Statute requires an agency to furnish to the exclusive representative, or its authorized representative, upon request, 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.<sup>7</sup>

#### Particularized Need

In *IRS*, the Authority set forth the test 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). A union’s responsibility for articulating its interests requires more than a conclusory or bare assertion. (*Id.* 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 Union established a particularized need for the employees’ names, grades, and appraisal ratings, and the type and amount of the award they received. The Union stated that it needed the employees’ grades to determine whether grades had an impact on the types and amounts of awards received by employees. Although it did not specifically mention race and national origin in its particularized need statement, it is apparent that the Union wanted to know if the Respondent was discriminating based on those factors. Hembd stated that he wanted the performance awards that the employees “received for the appraisal rating” arguing that performance awards are based on appraisal ratings. Obviously, Hembd would need to know what appraisal rating the employees received to determine whether employees were treated fairly. Finally, the Union wanted to determine whether the Respondent gave awards fairly; therefore, information on the award types and amounts is fundamental to its investigation.

The Union did not explain why it needed each employee’s job title or job series or the names of the officials (and offices) that proposed and approved the awards. Therefore, the Union did not establish a particularized need for this information.

The Union’s primary reason for requesting this information was to ensure that the Respondent was complying with its contractual obligation to treat employees fairly. (G.C. Ex. 3). In particular, it wanted to ensure that the Respondent fairly and equitably distributed awards. If there was a violation, the Union planned to use this information to file grievances or other types of complaints. The Authority has found that monitoring compliance with the CBA and preparing grievances are consistent with unions’ representational responsibilities. *DOJ, INS, N. Region, Twin Cities, Minn.*, 144 F.3d 90, 93 (D.C. Cir. 1998); *NLRB v. FLRA*, 952 F.2d 523, 526 (D.C. Cir. 1992).

---

<sup>7</sup> The Respondent admitted in its answer to the Complaint that the requested information was normally maintained and that it did not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining. (G.C. Exs. 1(b) & 1(c)).

Reasonably Available

The Respondent failed to timely raise or properly support its argument that the information is not reasonably available. If an agency denies an information request, it must “assert and establish any countervailing anti-disclosure interests.” *IRS*, 50 FLRA at 669-70. Like the union, it cannot rely on bare and conclusory statements. (*Id.*). Countervailing anti-disclosure interests must be raised at or near the time of the union’s request, not for the first time at a ULP hearing. *U.S. DOJ, INS, N. Region, Twin Cities, Minn.*, 51 FLRA 1467, 1472 (1996). One anti-disclosure interest is that the information is not reasonably available. The agency has the burden to show that the information could only be obtained through “extreme or excessive means.” *Dep’t of HHS, SSA*, 36 FLRA 943, 950 (1990).

The Respondent did not tell the Union that the information was not reasonably available at or near the time of the information request. Moreover, other than writing the word “denied” in its Answer, the Respondent made no effort to raise or support its countervailing interest. Therefore, the Respondent’s contention is rejected.

Privacy Act

The Privacy Act does not prohibit the disclosure of the information requested by the Union. Generally, the Privacy Act prohibits the disclosure of personally identifiable information. 5 U.S.C. § 552a. However, information can be disclosed if the Freedom of Information Act (FOIA) permits its disclosure. 5 U.S.C. § 552a(b)(2). Under FOIA, information must be disclosed unless it falls under one of several exceptions. 5 U.S.C. § 552(b). In this case, the Respondent asserts that the information is prohibited from disclosure under 5 U.S.C. § 552(b)(6) because it would result in a “clearly unwarranted invasion of personal privacy.” The Authority has previously held that the Privacy Act prohibits the disclosure of appraisal and award information. *Dep’t of HHS, SSA, N.Y. Region, N.Y., N.Y.*, 52 FLRA 1133 (1997); *Dep’t of Transp., Fed. Aviation Admin., Fort Worth, Tex.*, 51 FLRA 324 (1995) (*FAA*). However, agencies can disclose information if it is sanitized so that the union cannot identify individuals. *FAA*, 51 FLRA at 329; *Health Care Fin. Admin.*, 56 FLRA 503, 506 (2000).

In this case, the Union provided instructions to the Respondent that clearly stated that the Respondent could redact any personally identifiable information. (G.C. Ex. 4). Although Iverson and Abrusci raised concerns about disclosing job series information (Tr. 68, 77-78), the Union did not establish a particularized need for that information; therefore, that is not an issue. As such, the Respondent may disclose the information without violating the Privacy Act.

Waiver

The Union did not waive its statutory right to sanitized information. As discussed above, the Union has a right, under the Statute, to sanitized award and appraisal information. However, Respondent asserts that the Union waived that right when it agreed to Article 32.

Although the witnesses disagreed about a number of facts, the Respondent's witnesses agreed that Article 32 permits the disclosure of sanitized award and rating information without written authorization.<sup>8</sup>

A union may waive a statutory right in an agreement but the contract language must be "clear and unmistakable." *U.S. Dep't of the Navy, U.S. Marine Corps (MPL)*, Wash., D.C., 38 FLRA 632, 636 (1990). To determine whether a contract provision waives a statutory right, the Authority evaluates the wording of the provision, the bargaining history, and the past practice. (*Id.*). It "will not lightly infer a waiver of a statutory right." (*Id.*).

Abrusci and Iverson testified that Article 32's restriction on the disclosure of "personal information" only applied if the Union could use that information to identify particular individuals. (Tr. 62, 68, 80, 90). Critically, their interpretation of Article 32 is consistent with their testimony regarding the negotiations. Abrusci and Iverson stated that their goal during the negotiations was to protect the privacy interests of employees. (Tr. 55, 74). Abrusci said that the parties discussed the fact that several employees were concerned that their co-workers would learn about their awards. (Tr. 57). Based on the employees' concerns, the parties agreed to add the language to ensure that the Union would not receive any information that would "tie" an employee's name "to an award amount" without written authorization. Iverson also noted that the parties' discussion of personal information focused on names, social security numbers, and any other information that could be used to identify a particular employee. (Tr. 77).<sup>9</sup>

The purpose and effect of Article 32 is consistent with the Statute and case law. As discussed above, the Authority recognizes that employees have a privacy interest in appraisal and award information; therefore, an agency must refuse to disclose that information if the union would be able to identify the employee that received the appraisal or award. On the other hand, the Privacy Act does not prevent the disclosure of sanitized information since the employee's privacy interests are protected. This interpretation is also consistent with Abrusci's goal, during negotiations, of ensuring that Article 32 "mirror[ed]" § 7114(b)(4) "as much as possible . . . ." (Tr. 55).

---

<sup>8</sup> At the hearing, the General Counsel sought an adverse inference because the Respondent did not offer any employees to testify that they complained to Iverson and Abrusci about the disclosure of personal information. (Tr. 101). In its brief, the Respondent sought an adverse inference because the General Counsel did not call Oakley and Stokes to testify about the negotiations. (R. Br. at 11). However, I do not need to address these issues since the Respondent's witnesses agree that Article 32 does not restrict the disclosure of sanitized information.

<sup>9</sup> The Respondent attempts to support its position by noting that Iverson and Abrusci testified that the Union was not entitled to the information it requested on September 4, 2014. (R. Br. at 13-14). I considered the witnesses' interpretation of Article 32 because it was consistent with their description of what the parties discussed during the negotiations. Their legal opinions, on the other hand, do not carry any weight. Moreover, the witnesses' opinions were not based on all the evidence in the record. Iverson stated that the Union was not entitled to the information but she had not seen the instructions that clearly stated that the Respondent could sanitize the information. (Tr. 80-81). Although Abrusci saw the instructions, he did not appear to recall that the Union sought sanitized information because he listed "names" as one of the items that the Union sought. (Tr. 62).

In summary, there is no evidence Article 32 constitutes a waiver of the Union's right to receive sanitized information.<sup>10</sup>

### REMEDY

The General Counsel requested that the Notice be distributed by email and physically posted. I will incorporate the electronic dissemination 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 is entitled to the information it requested on September 4, 2014, except for, employees' names, job titles, series, and office of the officials that proposed or approved the awards. I find that the Respondent's refusal and failure to furnish the requested information violated § 7116(a) (1), (5), and (8) of the Statute.

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:

---

<sup>10</sup> Article 32 does not appear to restrict the disclosure of unsanitized personal information, such as an employee's grade, unless the employee has a privacy interest in it. As noted above, Abrusci stated that the parties added the language to Article 32 because employees were concerned about the disclosure of awards. (Tr. 57). This is also consistent with Abrusci's statement that he wanted Article 32 to closely mirror the Statute. (Tr. 55). Furthermore, the Respondent regularly sends the Union the name, grade, job title, job series, and office code for all NAF bargaining unit employees. (Tr. 25, 30). Therefore, the bargaining history and past practice of the parties demonstrates that Article 32 does not restrict disclosure of personal information unless employees have a privacy interest. There may be an argument that the Union waived some of its rights. The Privacy Act permits disclosure of unsanitized information if: (1) the employee gives consent; (2) the routine use exception applies; or (3) the union establishes a public interest in the information that outweighs the employee's privacy interests. *FAA*, 51 FLRA at 327-28, 325 n.2. Article 32 appears to state that the Union can *only* receive information protected by the Privacy Act if the employee consents. Therefore, the Union may have waived its right to receive the information when one of the two remaining exceptions applies.

**ORDER**

## 1. Cease and desist from:

(a) Failing and refusing to furnish the American Federation of Government Employees, Local 1547, AFL-CIO (Union), with the following information requested:

- i. a list of all Non-Appropriated Fund (NAF) employees that includes each employee's grade and appraisal rating and the amount and type of performance award received for the 2014 appraisal year;
- ii. a list showing the distribution of awards received by NAF employees by race and national origin; and
- iii. a list of all NAF employees that includes the employee's grade and the amount and type of any other incentive awards they received between August 31, 2013 and September 1, 2014.

(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 the following information:

- i. a list of all NAF employees that includes each employee's grade and appraisal rating and the amount and type of performance award received for the 2014 appraisal year;
- ii. a list showing the distribution of awards received by NAF employees by race and national origin; and
- iii. a list of all NAF employees that includes the employee's grade and the amount and type of any other incentive awards they received between August 31, 2013 and September 1, 2014.

(b) Post at its facilities where bargaining unit employees represented by the Union are located, copies of the attached Notice on forms to be furnished by the Federal Labor Relations Authority. Upon receipt of such forms, they shall be signed by the Commander, 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.

(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) 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., September 8, 2016

A handwritten signature in cursive script that reads "Susan E. Jelen". The signature is written in black ink and is positioned above a horizontal line.

---

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 the information requested on September 4, 2014, regarding awards for Non-Appropriated Fund (NAF) employees.

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

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

**WE WILL**, furnish the Union with the following information: (1) a list of all NAF employees that includes each employee's grade and appraisal rating and the type and amount of performance award received for the 2014 appraisal year; (2) a list showing the distribution of awards received by NAF employees by race and national origin; and (3) a list of all NAF employees that includes the employee's grade and the type and amount of any other incentive awards they received between August 31, 2013 and September 1, 2014.

---

(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.