

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

MEMORANDUM

DATE: July 13, 2006

TO: The Federal Labor Relations Authority

FROM: PAUL B. LANG  
Administrative Law Judge

SUBJECT: DEPARTMENT OF VETERANS AFFAIRS  
NORTH FLORIDA/SOUTH GEORGIA  
VETERANS HEALTH SYSTEM  
GAINESVILLE, FLORIDA

Respondent

and

Case No. AT-

CA-05-0295

AMERICAN FEDERATION OF GOVERNMENT  
EMPLOYEES, LOCAL 1976, AFL-CIO

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

DEPARTMENT OF VETERANS AFFAIRS NORTH FLORIDA/SOUTH GEORGIA VETERANS HEALTH SYSTEM GAINESVILLE, FLORIDA  Respondent	
and  AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1976, AFL-CIO  Charging Party	Case No. AT-CA-05-0295

NOTICE OF TRANSMITTAL OF DECISION

The above-entitled case having been heard before the undersigned 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 C.F.R. §2423.34(b).

PLEASE BE ADVISED that the filing of exceptions to the attached Decision is governed by 5 C.F.R. §§2423.40-2423.41, 2429.12, 2429.21-2429.22, 2429.24-2429.25, and 2429.27.

Any such exceptions must be filed on or before **AUGUST 14, 2006**, and addressed to:

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

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PAUL B. LANG  
Administrative Law Judge

Dated: July 13, 2006  
Washington, DC



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

DEPARTMENT OF VETERANS AFFAIRS NORTH FLORIDA/SOUTH GEORGIA VETERANS HEALTH SYSTEM GAINESVILLE, FLORIDA  <p style="text-align: center;">Respondent</p>	
<p style="text-align: center;">and</p> AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1976, AFL-CIO  <p style="text-align: center;">Charging Party</p>	Case No. AT-CA-05-0295

Richard S. Jones, Esquire  
 For the General Counsel

James Mantia, Esquire  
 For the Respondent

Frederick L. Brittain  
 For the Charging Party

Before: PAUL B. LANG  
 Administrative Law Judge

**DECISION**

**Statement of the Case**

On May 26, 2005, the American Federation of Government Employees, Local 1976, AFL-CIO (Union or Local 1976) filed an unfair labor practice charge against the Department of Veteran Affairs, North Florida/South Georgia Veterans Health System, Gainesville, Florida (Respondent); an amended charge was filed on August 19, 2005. On March 14, 2006, the Regional Director of the Atlanta Region of the Federal Labor Relations Authority (Authority) issued a Complaint and Notice of Hearing in which it was alleged that the Respondent violated §7114(b) (4) of the Federal Service Labor-Management Relations Statute (Statute) and committed an unfair labor practice in violation of §7116(a) (1), (5) and (8) of the Statute by refusing to provide the Union with certain information that it had requested.

A hearing was held in Gainesville, Florida on May 23, 2006. The parties were present with counsel and were afforded the opportunity to present evidence and to cross-examine witnesses. This Decision is based upon consideration of the evidence, including the demeanor of witnesses, and of the post-hearing briefs submitted by the parties.

### **Positions of the Parties**

The General Counsel maintains that, on or about April 18, 2005,<sup>1</sup> the Union requested that the Respondent furnish all logs and printouts showing the amount of scheduled, unscheduled and completed appointments in Ultrasound from November 1, 2004, through January 31 for the Respondent's facilities in Lake City and Gainesville. The General Counsel further maintains that the requested information was normally maintained by the Respondent in the regular course of business, that it was reasonably available, that it was necessary for the Union to fulfill its representational function, that it does not constitute guidance, advice, counsel or training to management officials or supervisors relating to collective bargaining, and that the disclosure of the requested information is not prohibited by law. According to the General Counsel, the Respondent stated that it would provide the requested information for Lake City but not for Gainesville. The Respondent has subsequently refused to provide the information for either location.

The Respondent maintains that the Union has failed to state a particularized need for the requested information and that, consequently, the Respondent has no duty to provide it.

### **Findings of Fact**

The Respondent is an agency as defined in §7103(a)(3) of the Statute. The American Federation of Government Employees, AFL-CIO (AFGE) is a labor organization within the meaning of §7103(a)(4) of the Statute and represents a unit of the Respondent's employees which is appropriate for collective bargaining. The Union is the agent of AFGE for the purpose of representing the Respondent's bargaining unit employees who are assigned to the Respondent's facility in Lake City, Florida.

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All subsequently cited dates are in 2005 unless otherwise indicated.

The Respondent operates medical facilities in a number of locations including Gainesville and Lake City, Florida. By letter dated April 16, 2003 (Resp. Ex. 1), from Charlotte Flowers, the National Vice President of the AFGE Fifth District, to Fred Malphurs, Respondent's Director, the Respondent was informed that Local 2779 was designated to represent bargaining unit employees assigned to Gainesville, Daytona Beach, Jacksonville, Inverness, Ocala and St. Augustine.<sup>2</sup> Local 1976 was designated to represent bargaining unit employees in Lake City, Tallahassee and Valdosta, Georgia.

#### The Initial Request for Information

In January of 2005 Mary Jackson, a member of the bargaining unit, spoke to Fred Brittain, the President of the Union, about her concerns regarding allegedly disparate treatment between radiology employees at the Respondent's Lake City and Gainesville facilities (Tr. 15, 16). Specifically, Jackson believed that Lake City employees were being assigned significantly heavier workloads than employees at Gainesville (Tr. 36, 37). On February 15 Brittain sent a letter (GC Ex. 2) to the Respondent requesting the following information:

d. Number of Ultrasound test run[s] in the period of November 1, 2004 thru [sic] January 31, 2005 at the Lake City Division?

e. Number of Ultrasound test run[s] in the period of November 1, 2004 thru January 31, 2005 at the Gainesville Division?

f. Number of Sonographers at the Gainesville Division and number of Sonographers at the Lake City Division? This includes full & part time.

g. Number of Ultrasound machines assigned to Gainesville Division?

I. Number of Ultrasound machines assigned to Lake City Division?

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<sup>2</sup>

Flowers' letter to Malphurs indicates that Local 2779 is also an agent of AFGE.

h. Number of months backlog for Ultrasound test[s] in Gainesville? Lake City?<sup>3</sup>

There was no statement of particularized need included with the information request of February 15.

By memorandum of March 3 from Paul O'Rourke, who was then the Labor Relations Supervisor, on behalf of Michelle Manderino, Chief of the Human Resources Management Division, to Brittain (Tr. 82; GC Ex. 3) the Respondent provided data for Lake City and Gainesville in response to the information request of February 15. The Respondent did not state that the Union had failed to demonstrate a particularized need.

The Information Request of April 18 and the Respondent's Answer

Brittain testified that he was not satisfied with the Respondent's response because of an apparent discrepancy between the number of tests reported at the Gainesville facility and the information that he had (Tr. 17, 18). Consequently, on April 13 he sent an e-mail message to O'Rourke (GC Ex. 4) in which he pointed out the alleged discrepancies in the information provided by the Respondent.<sup>4</sup> There is no evidence that the Respondent replied to this message.

By letter of April 18 to the Respondent (GC Ex. 5), Brittain requested additional information as follows:

INFORMATION REQUESTED: . . . Copies of all logs & print outs of all other information that will show the amount of scheduled/unscheduled and completed appointments in Ultrasound, such as the Technologist Work Load report kept by Ultrasound Section, Radiology Service, Gainesville Division, during the period of 1 November 2004 through 31 January 2005. All personal identifiers (such as names, social security numbers and other matters which identify a particular employee/Patient) should be sanitized.

PARTICULARIZED NEED: The Union needs this information to determine if the agency is imposing

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The last two lettered paragraphs of the information request were labeled out of order.

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Contrary to Brittain's testimony (Tr. 18) the e-mail message was not a request for additional information since he did not enlarge the request of February 15.

disparate treatment of BUE's [presumably bargaining unit employees] at the Lake City Division vs. the Gainesville Division of the NF/SGVHS in regards to working conditions. BUE's have recently complained to the union that they believe they have received disparate treatment in assignment of work load being moved to Lake City and Lake City staff being required to work in Gainesville, even though the work load doesn't require it. The requested information will enable the union to fulfill its representational responsibilities to represent employees under the sta[t]u[t]e and administer the contract by allowing the union to compare the work assigned to Lake City BUE's & Gainesville BUE's to determine if grievances under the contract or other action is warranted. The requested documents will enable the Union to determine if the agency either intentionally or unintentionally treated BUE's at Lake City & Gainesville differently. Coding the documents will allow the Union to make the comparison. Coding & sequential numbering will also allow the Union to make a more specific request in the future if deemed necessary.

According to Brittain, the purpose of the information request of April 18 was to obtain the data from which the Respondent had derived the figures contained in the memorandum of March 3 (Tr. 19, 20). It is the Respondent's failure to answer this information request that is cited in the Complaint as the basis for the alleged unfair labor practice (GC Ex. 1(c), ¶11).

By memorandum of April 29 (GC Ex. 6) from Randy Adams, Assistant Human Resources Chief, on behalf of Manderino to Brittain, the Respondent replied as follows:

3. In response to your request, it appears that on the surface, your request is unreasonable, overly broad, and burdensome. Your request also ask[s] for information from the Gainesville Division to which the Union, Local 1976, does not share an exclusive bargaining relationship and responsibility.

4. Therefore, the agency requests that the Union provide the agency in writing, a clarification of its particularized need for the information it is seeking. In responding to the particularized need the agency further request[s] that the Union articulate with specificity on how this

information will be used and how the use of this information relates to its representational responsibilities.

Brittain responded to Manderino by memorandum of May 9 (GC Ex. 7), stating:

On 15 Feb 05 an IR [presumably information request] . . . was submitted to LR [presumably labor relations] involving information being sought from Radiology Service . . . . We . . . received a response on 3 March 05. The information was in disagreement with information obtained from another source, therefore on 18 April 05 another IR was made . . . .

The Union was very clear in what we were requesting and identified a Technologist Work Load report (log) kept by Ultrasound Section of Radiology Service, Gainesville Division. . . As stated in our IR the needed information was to be used to determine if the Agency is imposing disparate treatment of BUE's at the Lake City Division versus the Gainesville Division of NF/SGVHS/ Even though there are two AFGE Locals, the decisions made by management affected both Lake City & Gainesville BUE's . . . .

By memorandum of May 25 on behalf of Manderino to Brittain (GC Ex. 8) the Respondent stated that Brittain's memorandum of May 9 set forth a sufficient statement of particularized need to establish the Union's entitlement to the information which it had requested for Lake City, but that information as to the Gainesville facility would only be provided to Local 2779, which the Respondent characterized as the "Exclusive Representative" for Gainesville. It was further stated that the information requested for Lake City would be provided on or about June 17. It is undisputed that the Respondent provided no additional information for either facility (GC Ex. 1(f), ¶20).

### **Discussion and Analysis**

#### The Legal Framework

Section 7114 of the Statute provides, in pertinent part, that:

(b) The duty of an agency . . . to negotiate in good faith . . . shall include the obligation--

(4) . . . to furnish to the exclusive representative involved, or its authorized representative, upon request and, to the extent not prohibited by law, data--

(A) which is normally maintained by the agency in the regular course of business;

(B) which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and

(C) which does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining . . . .

In order for a union to invoke its right to information under §7114(b)(4) of the Statute, it must establish a particularized need for the information by articulating, with specificity, the basis for its need, including the uses to which it will put the information and the connection between those uses and its representational responsibilities under the Statute. A union's responsibility for articulation requires more than a conclusory statement so as to permit the agency to make a reasoned judgment as to its obligation to disclose. However, a union is not required to describe the nature of the agency's alleged misapplication or violation of policy, procedure, law or regulation, *Health Care Financing Administration*, 56 FLRA 156, 159, 162 (2000) (*Health Care Financing*). In *United States Department of Justice, Federal Bureau of Prisons, Federal Correctional Institution, Forrest City, Arkansas*, 57 FLRA 808 (2002) (*Forrest City*) the Authority considered the issue of whether a union had established a particularized need in support of an information request that was, as in the instant case, intended to support a claim of disparate treatment. In determining that the union had made the required showing, the Authority observed that:

With respect to the contention that the Union has not shown how the requested information would enable it to demonstrate disparate treatment, the Authority has stated previously that whether requested information would accomplish a union's purpose is not determinative of whether it is necessary within the meaning of the Statute.

*Id.* At 812.

Once the union has articulated a particularized need, the agency is responsible for establishing its countervailing nondisclosure interests and must do so in a nonconclusory way, *Internal Revenue Service, Washington, D.C. and Internal Revenue Service, Kansas City Service Center, Kansas City, Missouri*, 50 FLRA 661, 669 (1995). The agency must articulate its nondisclosure interests in response to the information request and not for the first time in response to an unfair labor practice charge, *Federal Aviation Administration*, 55 FLRA 254, 260 (1999).

#### The Union's Statement of Particularized Need

The Union's statement of particularized need was expressed in Brittain's memorandum of April 18 (GC Ex. 5) and reiterated in his memorandum of May 9 (GC. Ex. 7). The particularized need is effectively summarized in a statement in the May 9 memorandum that:

. . . the needed information was to be used to determine if the Agency is imposing disparate treatment of BUE's at the Lake City Division versus the Gainesville Division of NF/SGVHS. Even though there are two AFGE Locals, the decisions made by management affected both Lake City & Gainesville BUE's . . . .

In Manderino's memorandum of May 25 (GC Ex. 8), the Respondent indicated that the statement of particularized need was insufficient only with regard to the data which the Union had requested for the Gainesville facility and that the insufficiency arose out of the fact that the Union did not represent employees assigned to Gainesville. Contrary to the Respondent's assertion, the issue of whether the Union's representational responsibilities extend beyond Lake City is not determinative of its right to the requested information. The stated purpose of the information request was to enable the Union to determine whether there was a disparity between the work assignments of employees at Lake City and those at Gainesville. The requested information is clearly relevant to the Union's stated purpose. Even if the Union has no representational responsibility for bargaining unit employees at the Gainesville facility, it is difficult to imagine how a determination of the existence of disparate treatment of Lake City employees could be made without a comparison of data for both facilities. Accordingly, the Union's reference to alleged disparate treatment established a particularized need for the information which it had

requested for Gainesville as well as for Lake City. The question of the Union's standing to act on behalf of Gainesville employees can be addressed if and when the Union initiates a grievance or other proceeding on their behalf. However, there is no doubt that the Union is authorized to represent Lake City employees and that the requested information is necessary for the Union to discharge its representational responsibilities to those employees. The fact that AFGE has delegated responsibility for the Gainesville employees to Local 2779 merely means that both locals might be entitled to the requested information.

The Respondent has correctly cited *Internal Revenue Service, Washington, D.C., et al.*, 50 FLRA 661, 669, n.12 (1995) (*IRS*) in support of the proposition that, in order to establish a particularized need, the Union must show that the requested information is necessary, rather than merely relevant, to its representational responsibilities. However, as shown above, the Union has met that requirement by its explanation that the requested information is necessary to resolve discrepancies (whether or not actual) between the data previously provided by the Respondent and the information which Brittain had received from Jackson.

The Respondent's arguments as to the lack of merit in a possible future claim arising out of alleged disparate treatment are of no consequence, *Forrest City*, 57 FLRA at 812, 813. The Respondent will be free to advance those arguments if a claim is filed. However, it is not entitled to foreclose the Union's investigation of such a claim, nor is the Respondent entitled to require the Union to accept its assurances that the information which it provided in response to the February 15 request is correct, *Health Care*. Even if, as alleged by the Respondent, the Union failed to engage in a "cooperative dialogue" with regard to its particularized need, Brittain's correspondence of April 18 and May 9 was sufficient to allow the Respondent to make a reasoned judgment as to its duty to disclose the requested information. Thus, the Union met its obligation to articulate a particularized need in accordance with the holding by the Authority in *IRS*.

Contrary to the Respondent's position, it does not follow that, if the Union is entitled to the requested information for Lake City and Gainesville, it would automatically be entitled to such information for every one of the Respondent's facilities. Ermon Owens, the Respondent's Radiology Administrator, manages the radiology department at both Gainesville and Lake City. Owens testified that patients may be scheduled for ultrasound examinations at either facility, depending on which one has

the first opening (Tr. 55, 56). He also testified that he was authorized to move employees between the two facilities and that he had hired one employee as a "floater" (Tr. 64). It therefore follows that the Union's inquiry as to comparative workloads at Lake City and Gainesville was not overly broad as alleged by the Respondent. The same would not necessarily be true with regard to inquiries concerning the Respondent's other facilities whose operations may not be integrated. As stated in *Forrest City*, when an information request is broader than the circumstances upon which the request is based, the union has not established a particularized need for the information. This Decision is based upon the circumstances of this case; different circumstances might lead to a different result.

The so-called *res judicata* defense is also without merit. The Respondent has alluded to a prior unfair labor practice charge, AT-CA-05-0281, in which the Regional Director refused to issue a complaint. The Respondent describes the charge as involving a "'change of working conditions' allegation under 5 USC section 7116(a)(1)".<sup>5</sup> Contrary to the Respondent's assertion, AT-CA-05-0281 is not a legally binding precedent. The refusal of a Regional Director to issue a complaint may only be appealed to the General Counsel whose decision is final pursuant to §2423.11 of the Rules and Regulations of the Authority. The action of the Regional Director or of the General Counsel is not a decision by the Authority, nor may the Authority review the General Counsel's decision not to issue a complaint, *Turgeon v. Federal Labor Relations Authority*, 677 F.2d 937, 938 (D.C. Cir. 1982).

The Respondent has not articulated any nondisclosure interest. In its answer to the Complaint (GC. Ex. 1(f), ¶¶15, 16 and 18), the Respondent admitted that it maintains the requested information in the normal course of business, that the information is reasonably available and that it does not constitute guidance, advice, counsel or training for management officials or supervisors relating to collective bargaining. In fact, the Respondent brought the requested data to the hearing (Tr. 7).

Since the Union articulated a particularized need, and the Respondent has not alleged any nondisclosure interest, it is required to comply with the Union's request for information for both the Lake City and the Gainesville facilities.

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A refusal to bargain over changes in working conditions might constitute a violation of §7116(a)(1) and (5) of the Statute.

In view of the foregoing, I have concluded that, by virtue of its failure to provide the Union with the information requested in its memorandum of April 18, 2005, the Respondent violated §7114(b)(4) of the Statute and committed an unfair labor practice in violation of §7116(a)(1), (5) and (8) of the Statute. Accordingly, I recommend that the Authority adopt the following Order:

#### **ORDER**

Pursuant to §2423.41 of the Rules and Regulations of the Federal Labor Relations Authority (Authority) and §7118 of the Federal Service Labor-Management Relations Statute (Statute), it is hereby ordered that the Department of Veterans Affairs, North Florida/South Georgia Veterans Health System, Gainesville, Florida shall:

1. Cease and desist from:

(a) Failing or refusing to furnish the American Federation of Government Employees, Local 1976, AFL-CIO (Union) with information to which it is entitled under §7114(b)(4) of the Statute.

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

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

(a) Furnish the Union with information to which it is entitled under §7114(b)(4) of the Statute and, in particular, the information which it requested by its letter of April 18, 2005, for both the Lake City and Gainesville facilities.

(b) Post at all locations where bargaining unit employees in the North Florida/South Georgia Health Veterans Health System are located, copies of the attached Notice on forms to be furnished by the Federal Labor Relations Authority. Upon receipt, such forms shall be signed by the System Director and shall be posted and maintained for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that these Notices are not altered, defaced, or covered by any other material.

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

Issued, Washington, DC, July 13, 2006.

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PAUL B. LANG  
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 U.S. Department of Veterans Affairs, North Florida/South Georgia Veterans Health System has 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 American Federation of Government Employees, Local 1976, AFL-CIO with information to which it is entitled under §7114(b)(4) of the Federal Service Labor-Management Relations Statute.

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 the American Federation of Government Employees, Local 1976, AFL-CIO with information to which it is entitled under §7114(b)(4) of the Federal Service Labor-Management Relations Statute and, in particular, with the information which it requested by its letter of April 18, 2005, for both the Lake City and Gainesville facilities.

\_\_\_\_\_  
(Agency)

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 any of its provisions, they may communicate directly with the Regional Director, Atlanta Region, Federal Labor Relations Authority, whose address is: Marquis Two Tower, Suite 701, 285 Peachtree Center Avenue, Atlanta, GA 30303-1270, and whose telephone number is: 404-331-5300.



**CERTIFICATE OF SERVICE**

I hereby certify that copies of this **DECISION**, issued by PAUL B. LANG, Administrative Law Judge, in Case No. AT-CA-05-0295 were sent to the following parties:

**CERTIFIED MAIL AND RETURN RECEIPT**

**CERTIFIED NOS:**

Richard S. Jones, Esquire  
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**REGULAR MAIL**

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Dated: July 13, 2006

Washington, DC