

63 FLRA No. 147

LIBRARY OF CONGRESS
(Agency)

and

CONGRESSIONAL RESEARCH EMPLOYEES
ASSOCIATION
IFPTE, LOCAL 75
(Union)

0-AR-4119

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DECISION

June 30, 2009

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Before the Authority: Carol Waller Pope, Chairman and
Thomas M. Beck, Member

I. Statement of the Case

This case is before the Authority on exceptions to an award of Arbitrator Barbara B. Franklin filed by the Agency under § 7122(a) of the Federal Service Labor-Management Relations Statute (the Statute) and part 2425 of the Authority's Regulations. The Union filed an opposition to the Agency's exceptions.

As relevant here, the Arbitrator found that the Agency failed to comply with the Union's information request.

For the reasons that follow, we deny the Agency's exceptions.

II. Background and Arbitrator's Award

The Agency notified the Union of its decision to eliminate certain bargaining unit positions. As described more fully below, the Union then requested the Agency to provide certain information, which it asserted it needed to respond to the Agency's notification. The Agency denied the request. Thereafter, the parties exchanged communications, but the Agency refused to provide the information. The Union then filed a grievance alleging that the Agency had failed to implement the reduction in force (RIF) procedures set forth in the parties' collective bargaining agreement (CBA)¹ and did not provide the Union with related

requested information. The grievance was not resolved and was submitted to arbitration.

As relevant here, the Arbitrator framed the issue as follows:

Did the Agency violate 5 U.S.C. § 7114(b)(4) by refusing to provide data requested by the Union to determine whether the Agency had breached the bargaining agreement and/or to negotiate appropriate arrangements for employees adversely affected by the proposed RIF? If so, what is the appropriate remedy?

Award at 2.²

In its initial information request, the Union asked the Agency to provide it with "all studies and other materials used by the Agency to reach its decision to eliminate the positions of the affected employees." *Id.* at 31. The Agency asserted that the Union had not established a particularized need for the requested information. In response, the Union stated that it needed the information "to determine if [the Agency] is complying with Article XVIII of the [CBA], to determine the types of proposals regarding impact and appropriate arrangements of the RIF pursuant to 5 U.S.C. § 7106(b)(3), and to determine whether [the Union] should file a grievance related to the RIF." *Id.* The Agency again denied the request on the ground that the Union had failed to establish a particularized need. The Union further explained its request, stating that it needed the information in order to determine:

(1) whether [the Agency] made an effort to accomplish a RIF through attrition (see Article XVIII Section 8); and (2) whether [the Agency] made a responsible effort to avoid downgrading employees as a result of technological changes (see Article XL Section 2F). [The Union] will use th[e] information to evaluate whether to file and to support grievances alleging violations of the CBA [The Union] also needs this information to determine the types of impact and implementation proposals to make related to the RIF, including to evaluate and negotiate a cost-effectiveness study proposal.

Id. at 32.

1. Relevant portions of the parties' CBA are set forth in the Appendix to this decision.

2. The Arbitrator framed four additional issues. The Agency does not except to the Arbitrator's findings concerning these issues. *See* Exceptions at 3-4. As these issues are not before the Authority, they will not be mentioned further.

The Agency again denied the request. The Agency stated that the Union had not shown that the information was necessary to determine whether the Agency had made an effort to accomplish a RIF through attrition because no RIF had been announced and because the Union could not challenge the Agency's right to reduce force through attrition. The Agency also stated that the information was unnecessary for the Union to determine whether it had made an effort to avoid downgrading employees because there had been no downgrades. Finally, the Agency asserted that the information was unnecessary for the Union to formulate impact and implementation proposals over a possible RIF because such proposals were "covered by" Article XVIII of the CBA. *Id.*

The Arbitrator first found that the Agency did not violate Article XVIII of the CBA by failing to provide RIF notices to employees or to impose a hiring freeze as there was no RIF, at the time of the Union's request, that would have triggered these requirements. *See id.* at 22 and 23. The Arbitrator then found that, although the Union's initial request "was lacking in specificity, the Union responded to the Agency's [clarification request] in a timely fashion by sufficiently expanding its rationale for requesting the information." *Id.* at 33. The Arbitrator found that the Union responded in a way that "permitted the Agency to understand both the nature of the information sought and the uses to which the Union would put the data." *Id.* In particular, with respect to the Union's first reason -- that it needed the information to determine whether the Agency had sought to accomplish a RIF through attrition, as set forth in Article XVIII, Section 8 -- the Arbitrator found that the Union had established a particularized need. The Arbitrator noted that such finding "may seem inconsistent" with the finding that there was no RIF at the time of the Union's request, but after considering the "definition of a RIF in Article XVIII[.]" the Arbitrator found that the Union "had . . . an arguable position that a RIF had occurred at the time it requested the information." *Id.* at 34.

In this regard, the Arbitrator found that Article XVIII, Section 8 provides that "the [Agency] shall, where the [Agency] determines it to be practicable or desirable, accomplish any RIF through attrition." *Id.* at 34 (quoting Article XVIII, Section 8). The Arbitrator also found that the "use of the word 'shall' [in] Section 8 mandates the use of attrition where a determination has been made that it would be practicable or desirable to do so." *Id.* The Arbitrator found that there "is no way the Union could police the agreement . . . to discover whether such determinations have been made

except by examining the studies leading up to the decision to conduct a RIF." *Id.* The Arbitrator rejected the Agency's assertion that it did not release the information because no RIF had occurred, finding that the Agency had stated "unequivocally that a RIF will take place in the future if any employees remain." *Id.* The Arbitrator found that Article XVIII was negotiated as an arrangement and was appropriate because it "would not excessively interfere with the Agency's rights to conduct a RIF or . . . exercise [other] rights." *Id.* at 35. The Arbitrator found that the Union "has an interest in uncovering information that will assist it in [deciding] whether to proceed to arbitration." *Id.*

As to the Union's second reason for requesting the information -- to determine whether the Agency had sought to avoid downgradings as the result of technological changes, as it agreed to do in Article XL, Section 2.F -- the Arbitrator found that the Union had established a particularized need. The Arbitrator rejected the Agency's claim that a grievance over this concern "would be speculative or premature in view of the fact that it has not yet instituted a RIF[.]" noting the Agency's statement that "a RIF will occur if there are any employees left to be RIFed . . ." *Id.* at 36. The Arbitrator also found that technological change is one of the primary reasons given by the Agency requiring such action.

With respect to the Union's last reason -- that it needed the information to determine the types of impact and implementation proposals to make related to the RIF -- the Arbitrator found that the Union did not establish a particularized need for this purpose. The Arbitrator found that the parties had "already engaged" in such bargaining and that "[a]ny negotiations sought now by the Union for contract provisions to be operative during a RIF" were covered by Article XVIII. *Id.* at 36 and 37.

The Arbitrator further found that the Agency "state[d] in th[e] arbitration] proceeding that the studies contain confidential identification of what staff members said about their work," and, therefore, the studies "are not disclosable for this reason." *Id.* at 37. Citing *United States Immigration and Naturalization Service, United States Border Patrol, Del Rio, Texas*, 51 FLRA 768 (1996) (*INS*), the Arbitrator found that the Agency "was silent regarding any countervailing interests at the time of the Union's request and its clarification of that request." *Id.* at 38. The Arbitrator found, therefore, that the Agency "has not established anti-disclosure interests that outweigh the Union's need for the requested [information]." *Id.* The Arbitrator found also that, in its initial request, the Union assured the Agency that it could

provide the information with redactions to meet any privacy concerns. *See id.*

Accordingly, the Arbitrator found that the Agency violated Article XL, Section 2.C and J of the CBA and § 7114(b)(4) by failing to provide the Union with requested studies and supporting materials. *See id.* at 39. The Arbitrator directed the Agency to provide the Union with such information, with redactions to ensure employee privacy.

III. Positions of the Parties

A. Agency's Exceptions

The Agency alleges that the award is contrary to law based on three grounds.

First, the Agency claims that the Arbitrator erroneously found that the Union had established a particularized need because the Union "had at least an arguable position that a RIF had occurred at the time it requested the information[.]" Exceptions at 6 (quoting Award at 34). The Agency states, however, that the Union did not base its information request on the reason stated by the Arbitrator. According to the Agency, the Union only "sought the information in order to show that the Agency had failed to consider resolving the staffing situation through attrition, not to show that the Agency had considered attrition and found [it] to be practicable or desirable and later disregarded its initial determination." *Id.* at 7. The Agency thus argues that the award is contrary to Authority precedent, which it claims states that a union's need for information "will be judged by how well it articulated its need at or near the time it made the request, not at the hearing." *Id.* at 10 (citing *United States Dep't of the Air Force, Air Force Materiel Command, Kirtland Air Force Base, Albuquerque, N.M.*, 60 FLRA 791 (2005), *aff'd*, *AFGE, AFL-CIO v. FLRA*, 454 F.3d 1101 (10th Cir. 2006) (*Dep't of AF*)).

Additionally, the Agency contends that, even if the Union articulated a particularized need, the information could only be used to preclude it from reassigning or separating employees. In this respect, the Agency relies on the Arbitrator's statement that the requested information "might show either that the Agency made no determinations concerning the efficacy of attrition in avoiding a RIF or that the Agency determined that attrition was neither practicable or desirable." Exceptions at 11 (quoting Award at 35). The Agency states that, by such statement, the "Arbitrator implied that [it] would be precluded from reassigning or separating employees if [it] previously had determined that it was practicable or desirable to accomplish [the] RIF through attrition, and that an attempt by the Agency to reassign or sepa-

rate employees . . . in the future could . . . form the basis for a proper grievance." *Id.* The Agency argues that any arbitral ruling in "such a hypothetical future case" would interfere with its rights to layoff employees, to assign work, and to determine personnel because such ruling would preclude it from exercising these rights. *Id.* at 11.

The Agency also contends that the Arbitrator erred in finding that the Union established a particularized need for information concerning downgrades.

Second, the Agency asserts that the Arbitrator's remedy ordering it to provide the requested information is contrary to § 7114(b)(4)(A) of the Statute because the documents sought by the Union are "not normally maintained by the Agency in the regular course of business[.]" and is contrary to § 7114(b)(4)(C) because the documents are "confidential strategic planning documents, which constitute guidance, advice, and counsel for management officials relating to collective bargaining." *Id.* at 14. The Agency contends that it failed to address these matters or assert its "countervailing interests" with the Union or "in the grievance and arbitration proceedings" because the Union first failed to establish a particularized need. *Id.*

Third, the Agency claims that the award prevents it from raising its anti-disclosure interests. The Agency concedes that it had not identified any countervailing interests "at the time the Arbitrator [found] the Union established [a] particularized need[.]" but argues that it is only required to do so where the Union has first established a particularized need. *Id.* at 15. The Agency also asserts that redacting employees' names as required by the award "would be insufficient" to protect their confidentiality because "each group is so small that even without names, it is in many cases possible to identify the source." *Id.*

B. Union's Opposition

The Union asserts that the Arbitrator correctly found that it had established a particularized need for the requested information based on its clarification that it intended to use the information to evaluate whether the Agency had complied with the parties' CBA relating to a RIF and technology and whether it should file a grievance. In support, the Union states that the Authority has found that a particularized need exists where a union seeks information concerning whether to file a grievance, without regard to whether that grievance will ultimately be successful. *See Opposition* at 7 (citing *United States Dep't of Treasury, IRS, Wash., D.C.*, 39 FLRA 241, 251 (1991)).

The Union next contends that the Agency failed to raise the countervailing interest claim in its responses and “merely disputed whether the Union had established a particularized need.” *Id.* at 8 (emphasis omitted). The Union further asserts that, even if the Agency had established a countervailing interest, such interest cannot outweigh its particularized need for the information. As to the privacy issue, the Union contends that in its initial request it informed the Agency that all personal identifiers could be removed from the requested data. *See id.* at 8-9.

The Union also contends that the Agency’s assertions that the requested information is not normally maintained by the Agency in the regular course of business and constitutes advice and counsel under § 7114(b)(4)(C) are “bald assertions” that were raised “at this stage of the proceeding[s].” *Id.* at 9. The Union asserts that, assuming these claims are “timely[.]” the information is normally maintained by the Agency in the regular course of business and the Agency has failed to demonstrate how the requested information constitutes advice or counsel under Authority precedent. *See id.*

IV. Analysis and Conclusions

The award is not contrary to law

When an exception challenges an award’s consistency with law, the Authority reviews the question of law raised by the exception and the arbitrator’s award *de novo*. *See NTEU, Chapter 24*, 50 FLRA 330, 332 (1995) (citing *United States Customs Serv. v. FLRA*, 43 F.3d 682, 686-87 (D.C. Cir. 1994)). In applying a standard of *de novo* review, the Authority assesses whether an arbitrator’s legal conclusions are consistent with the applicable standard of law. *See NFFE, Local 1437*, 53 FLRA 1703, 1710 (1998). In making such a determination, the Authority defers to the arbitrator’s underlying factual findings. *See id.*

A. Section 7114(b)(4) of the Statute

1. Analytical Framework

In this case, the grievance alleged that the Agency violated § 7114(b)(4) of the Statute when it refused to provide the requested information to the Union. When a grievance under § 7121 of the Statute involves an alleged unfair labor practice (ULP), the arbitrator must apply the same standards and burdens that would be applied by an administrative law judge in a ULP proceeding under § 7118 of the Statute. *AFGE, Local 3529*, 57 FLRA 464, 465 (2001). Thus, in an arbitration case involving an alleged ULP, the union bears the bur-

den of proving the elements of the ULP claim by a preponderance of the evidence. *Id.* at 466.

Under § 7114(b)(4), an agency must furnish information to a union, upon request and “to the extent not prohibited by law,” if that information is: (1) “normally maintained by the agency in the regular course of business”; (2) “reasonably available”; (3) “necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining;” and (4) not “guidance, advice, counsel or training provided to management officials or supervisors, relating to collective bargaining.” 5 U.S.C. § 7114(b)(4)(A)&(B). To demonstrate that requested information is “necessary,” the 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.” *IRS, Wash., D.C.*, 50 FLRA 661, 669 (1995) (*IRS, Wash., D.C.*). The union’s responsibility for articulating its interests in the requested information requires more than a conclusory assertion and must permit an agency to make a reasoned judgment as to whether the disclosure of the information is required under the Statute. *Id.* at 670.

In short, consistent with Authority precedent, a “union must establish a particularized need for requested information *before* an agency is required to come forward with countervailing interests that would militate against the furnishing of such information.” *NLRB*, 60 FLRA 576, 581 (2005) (Chairman Cabaniss concurring and Member Pope dissenting) (emphasis in original) (citing *United States Dep’t of the Army Headquarters, Fort Monroe, Va.*, 57 FLRA 793, 796 (2002) (Member Pope dissenting in part)). Further, although a union must establish a particularized need for the requested information before an agency is required to come forward with countervailing interests, an agency still must articulate its interest in non-disclosure “at or near the time” that it denies a union’s request for information. *Dep’t of AF*, 60 FLRA at 794, *aff’d*, *AFGE, AFL-CIO v. FLRA*, 454 F.3d 1101 (court affirmed on Authority’s second reason for dismissing case, but rejected dismissal on Authority’s first reason - that an agency may withhold information for all requested information when a union fails to establish a particularized need for some information); *United States Dep’t of Justice, Immigration and Naturalization Serv., Northern Region, Twin Cities, Minn.*, 51 FLRA 1467, 1473 (1996), *reconsideration denied*, 52 FLRA 1323 (1997), *aff’d*, 144 F.3d 90 (D.C. Cir. 1998).

Also, a ULP “will be found if a union has established a particularized need . . . for the requested information and either: (1) the agency has not established a countervailing interest; or (2) the agency has established such an interest but it does not outweigh the union’s demonstration of particularized need.” *IRS, Wash., D.C.*, 50 FLRA at 671. Thus, in assessing whether an agency has unlawfully refused to furnish information, the proper inquiry is, first, whether a union has established a particularized need for the requested information. That showing is not contingent on the presence or absence of countervailing anti-disclosure interests.

2. The Arbitrator did not err in concluding that the Union established a particularized need for the requested information

In this case, the Agency contends that the Arbitrator failed to follow the applicable standard of law in determining that the Union had established a particularized need for the requested information. In this regard, the Agency claims that, prior to the hearing, the Union only sought information in order to determine whether the Agency had failed to consider eliminating positions through attrition rather than implementing a RIF. Exceptions at 7. For the reasons that follow, we find that the Union established a particularized need for the requested information.

In this regard, the Arbitrator did initially determine that the Union’s original request for information, requesting “all studies, and other materials used by the Agency to reach its decision to eliminate the positions of the affected employees” and to determine whether “there are violations of the RIF and Use of Technology articles in our CBA,” was “lacking in specificity.” Award at 31, 33. However, the Arbitrator further determined that a subsequent clarified request, in response to the Agency’s requests for clarification, was sufficiently specific. In this clarified request, the Union stated that it was seeking the information to determine:

- (1) whether [the Agency] made an effort to accomplish a RIF through attrition (see Article XVIII Section 8); and (2) whether [the Agency] made a responsible effort to avoid downgrading employees as a result of technological changes (see Article XL Section 2F). [The Union] will use th[e] information to evaluate whether to file and to support grievances alleging violations of the CBA [The Union] also needs this information to determine the types of impact and implementation proposals to make related to the RIF, including to evaluate and negotiate a cost-effectiveness study proposal.

Id. at 32. The Arbitrator found that the request inquired about whether the Agency had determined to conduct a RIF through attrition. The Arbitrator determined that such information was necessary for the Union to “police the agreement[.]” to the extent that the Agency had determined to RIF employees through attrition, and to assess whether the Agency had sought to avoid downgradings, and to make determinations concerning a potential grievance. *Id.* at 34.

The Arbitrator’s factual findings establish that the Union’s request complies with the standard set forth in *IRS, Wash., D.C.* First, the request articulates that it seeks the information in order to resolve whether the Agency had determined to conduct a RIF through attrition, a RIF that the Agency had stated “unequivocally . . . [would] take place in the future if any employees remain.” Award at 34. Further, as noted in the request, the Union’s reference to Article XVIII, Section 8 serves only to reinforce its assertion, as that Article deals directly with the Agency’s ability to accomplish a RIF through attrition. See Joint Exhibit 5. Second, by citing to particular contract language, the Union also notified the Agency that, as the Arbitrator phrased it, the Union sought to “police the agreement[.]” *Id.* at 34. The Union thus articulated, with specificity, why it needed the information including the uses to which it will put the information, and the connection between those uses and the Union’s representational responsibilities under the Statute. Therefore, the Union established a particularized need for the information under § 7114(b)(4) of the Statute. See *FAA*, 55 FLRA 254 (1999) (union demonstrated a particularized need for information to administer the parties’ agreement); *Dep’t of Justice, Immigration and Naturalization Serv., Northern Region, Twin Cities, Minnesota v. FLRA*, 144 F.3d 90, 93 (D.C. Cir. 1998) (union may request information under the Statute “by articulating a particularized need for the information in terms of fulfilling its representational duties and overseeing the administration of the collective bargaining agreement”); *NLRB v. FLRA*, 952 F.2d 523, 526 (D.C. Cir. 1992) (citation omitted) (“it is well settled that section 7114 creates a duty to provide information that would enable the [u]nion to process a grievance or to determine whether or not to file a grievance[.]”).

3. The Agency has not established that the documents sought by the Union are not normally maintained by the Agency in the regular course of business within the meaning of § 7114(b)(4)(A)

The Agency claims that the requested documents are not normally maintained by the Agency in the regular course of business. The Union asserts that this is a

“bald assertions[.]” which the Agency only raised “at this stage of the proceedings[.]” Opposition at 9.

The Authority has found that requested information is “normally maintained” by an agency, within the meaning of § 7114(b)(4) of the Statute, if the agency possesses and maintains the information. *Dep’t of Health and Human Servs, Social Sec. Admin., Balt., Md.*, 37 FLRA 1277, 1285 (1990). Also, as stated above, an agency is responsible for raising, at or near the time of the union’s request for information, any countervailing anti-disclosure interests. *Dep’t of AF*, 60 FLRA at 794. Here, the Agency acknowledges and the record shows that the Agency did not raise this matter “in the grievance and arbitration proceedings[.]” Exceptions at 14. It was not until the Agency filed the exceptions that it raised this issue. Because the Agency did not raise this issue at or near the time of the Union’s request, the Agency’s assertion that the information is not normally maintained will not be considered.³ See, e.g., *United States Dep’t of Justice, Immigration and Naturalization Serv., W. Reg’l Office, Labor Mgmt. Relations, Laguna Niguel, Cal.*, 58 FLRA 656, 659-60 (2003) (*DOJ, INS*) (Chairman Cabaniss concurring and Member Armendariz, concurring in part and dissenting in part) (Authority found judge did not err by declining to consider agency’s defenses that information was not reasonably available or normally maintained because agency did not raise anti-disclosure interests at or near the time of the data request). See also § 2429.5 of the Authority’s Regulations.

Moreover, no evidence was presented to show that such information was not normally maintained by the Agency. Rather, as the Union argues, the Arbitrator’s findings support its position that the requested information is maintained by the Agency. See Award at 14-15. Accordingly, the Agency has not established that the requested information is not normally maintained by the Agency in the regular course of business.

4. The Agency has not established that the requested information constitutes guidance, advice, and counsel for management officials relating to collective bargaining within the meaning of § 7114(b)(4)(C)

3. We note that even if the Agency’s claim was considered, such claim would still not provide a basis for finding the award deficient. In this regard, as the Agency acknowledges and the record reveals, it was not until the Agency filed the exceptions that it raised this issue. Thus, by failing to present any evidence on, or even address this matter until after the arbitration proceeding, the Agency neglected to develop the record in support of its position on this issue. See, e.g., *Fed. Bureau of Prisons, Wash., D.C.*, 55 FLRA 1250, 1255 (2000).

Section 7114(b)(4)(C) exempts from disclosure to the exclusive representative information which constitutes guidance, advice, counsel, or training for management officials relating specifically to the collective bargaining process, such as: (1) courses of action agency management should take in negotiations with the union; (2) how a provision of the collective bargaining agreement should be interpreted and applied; (3) how a grievance or unfair labor practice charge should be handled; and (4) other labor-management interactions which have an impact on the union’s status as the exclusive representative. *NLRB*, 38 FLRA 506 (1990), *aff’d sub nom. NLRB v. FLRA*, 952 F.2d 523 (D.C. Cir. 1992).

Also, as stated above, an agency is responsible for raising, at or near the time of the union’s request for information, any countervailing anti-disclosure interests. Here, the Agency acknowledges that it failed to raise such interests “in the grievance and arbitration proceedings.” Exceptions at 14. As the Agency acknowledges and the record shows, it was not until the filing of its exceptions that it raised such interests. Therefore, the Agency’s assertion that the information constitutes guidance, advice, and counsel for management officials relating to collective bargaining will not be considered. See, e.g., *DOJ, INS*, 58 FLRA at 659-60; *United States Dep’t of Justice, Fed. Bureau of Prisons, Fed. Corr. Inst., Forrest City, Ark.*, 57 FLRA 808, 811 n.8 (2002), *remanded as to other matters, FLRA v. United States Dep’t of Justice, Fed. Bureau of Prisons, FCI, Forrest City, Ark.*, 395 F.3d 845 (D.C. Cir. 2005) (citing § 2429.5 of the Authority’s Regulations, Authority found that because the issue concerning § 7114(b)(4)(C) was not raised before the judge, it was not properly before the Authority).

As to the Agency’s claim that redacting employee names would be insufficient to protect their confidentiality, the Agency “was silent regarding any countervailing interests at the time of the Union’s request and . . . clarification of that request.” Award at 38. Moreover, the award directs the Agency to provide the information, with “redactions” to ensure employee privacy, and the record does not establish that any employee’s identity would be discernable from the redacted information. *Id.*

B. Section 7106(a)(2)(A) and (B) of the Statute

The Agency claims that the information requested by the Union would constitute an intrusion on its rights to lay off employees, to assign work, and to determine personnel because any arbitral ruling the Union “might obtain” in a “hypothetical future case” would preclude it from exercising these rights. Exceptions at 11. When

resolving an exception which contends that the award is contrary to a management right under § 7106 of the Statute, the Authority first considers whether the award affects the exercise of a management right. *See United States Dep't of the Navy, Naval Undersea Warfare Ctr., Div. Newport, Newport, R.I.*, 63 FLRA 222, 225 (2009).

In this case, the Arbitrator only found that the Union established a particularized need for the requested information under § 7114(b)(4). Although the Arbitrator stated what the requested information “might show” with respect to the Agency’s determination “concerning the efficacy of attrition in avoiding a RIF,” the Arbitrator’s statement merely concerns how the Union could use the information to assess whether the Agency had complied with the parties’ CBA and to assess whether there was a basis for a potential grievance. Such statement is purely speculative and does not impose any requirements on the Agency with respect to the exercise of the subject rights.

Moreover, we note that the Authority has found provisions similar to Article XVIII, Section 8, to constitute appropriate arrangements under § 7106(b)(3) of the Statute. *See, e.g., NTEU*, 55 FLRA 1174, 1175-76 (1999) (provision provided that agency will make other reasonable efforts, if appropriate and possible, in order to avoid a RIF); *Patent Office Prof'l Ass'n.*, 41 FLRA 795, 842-44 (1991) (provision required agency to avoid RIF actions whenever practical by using attrition or other means); *Cong. Research Employees Ass'n.*, 25 FLRA 306, 306-11 (1987) (proposal required agency, whenever possible, to accomplish the goals otherwise achieved by a RIF through attrition and cost reduction efforts before abolishing positions).

V. Decision

The Agency’s exceptions are denied.

APPENDIX

ARTICLE X

TRAINING AND CAREER DEVELOPMENT

Section 1. Consistent wit[h] staff development and Affirmative Action, the Library recognizes that the training and career development of bargaining unit employees is a matter of significant importance. In recognition of this important matter, the Library, as resources permit, will provide the employees with training and career development opportunities. The provision of training will be subject to the following:

A. The Library’s assessment of the employee’s potential.

B. The linking of that potential with actual or projected duties that support the Library’s programs and needs.

C. The Library’s allocation of training resources.

D. The amount of Library resources allocated for training purposes, and

E. Provisions of the Government Employee Training Act, EEO laws and regulations, and LC implementing regulations.

Section 8. To the extent consistent with the Library’s need for a training program, the Library agrees to pay allowable expenses in connection with approved training courses

Award at 2-3.

ARTICLE XII

POSITION CLASSIFICATION

Section 1. All appeals of classification actions by employees in the bargaining unit shall be governed by LCR 2016-2 and 5 U.S.C. Chapter 51

Section 2. Position descriptions will be prepared by the Library and will contain the principal duties, responsibilities, and supervisory relationships for the purpose of classification When the Library or CRS determines that significant changes in the duties and responsibilities of a position so warrant, the position description will be amended or rewritten to bring it to a current status no later that sixty (60) days after the determination has been made. The Association shall have the right to recommend changes in position descriptions. . . .

Id. at 3.

ARTICLE XVIII

REDUCTIONS IN FORCE

Section 1. “Reduction-in-Force” (RIF) is a situation created by the abolition of one or more permanent or indefinite positions resulting in the involuntary reassignment, transfer, change to lower grade, or separation of employees from their positions.

. . . .

Section 4. The following are definitions of the key terms used in this Article.

. . . .

J. Affected Employees: Is an employee who receives a reduction-in-force notice

....

Section 8. To minimize the adverse impact in a RIF, the Library shall, where the Library determines it to be practicable or desirable, accomplish any RIF through attrition. _

....

Section 12. The Library shall notify affected employees at least ninety (90) calendar days, except in fiscal emergencies, but no fewer than thirty (30) calendar days in advance of the reduction-in-force, unless precluded by law. This notice, in writing, shall include the following information:

- A. the action the Library intends to take;
- B. the reason for the RIF;
- C. the effective date of the RIF;
- D. the affected employee's LC service computation date;
- E. the affected employee's appointment status;
- F. the affected employee's competitive area and level;
- G. why any employees at the same competitive level in the division or office affected by the RIF with less retention preference is being retained. This includes information concerning why any employee occupying a position at a lower grade that is in the same promotion plan with the affected employee's competitive level is being retained[;]
- H. whom to contact concerning severance pay, if applicable;
- I. whom to contact concerning participation in the Civil Service Retirement Fund or the Federal Employees Retirement System and health plan conversion procedures;
- J. time limits on grievances and complaints of discrimination and where they are to be addressed;
- K. salary and grade retention rights, if any;
- L. reemployment rights, if applicable.

Section 13. Hiring Freeze

Upon notification to the affected employee(s) with respect to a RIF[,] the Library will impose a freeze on positions in the series identified by the affected employee's competitive level for which he/she qualifies. A hiring freeze under the terms of this Section will be for not more than ninety (90) calendar days or until the RIF is resolved, whichever comes first. The only exception to this hiring freeze is that the director of CRS may fill positions, if he/she determines that it is necessary to do so in order to meet the urgent and immediate needs of the Congress.

Section 14. The affected employee and/or his/her representative shall have the right to review pertinent records concerning a notice of separation or a change to a lower grade level position in lieu of separation. The right to review includes examination of the retention register of positions which the employee has the right to claim. The retention register shall be made available immediately for review upon the employee's receipt of either an offer to a position at a lower grade level or a notice of proposed separation.

Id. at 3-5. *See also* Award at 34 and Exceptions, Jt. Ex. 5 at 1-7.

ARTICLE XL

TECHNOLOGICAL CHANGE

Section 2. The Library and the Association agree that while the purpose of technology is to better serve the informational and analytical needs of the Congress, such change should occur with full consideration of its impact on the working conditions of employees. With this in mind, the parties agree to the following:

- C. That staff members who are assigned to use technology will be provided with appropriate information or training on official time related to hardware, software ... so that they can make effective use of it in performance of their responsibilities to serve the Congress.
- F. That use of technology, to the extent that it has a material and substantial impact on the classification of positions occupied by employees, will be considered as appropriate in modifying and reclassifying such positions, and that management will make a responsible effort to avoid downgradings as the result of technological change.

....

J. That the Library shall make a responsible effort to provide appropriate training to staff members displaced by technology and to reassign them

to other positions; however, if technological change results in a reduction of force, the provisions of the Reduction in Force article of this agreement will be applied.

Jt. Ex. 7.