IN THE MATTER OF THE ARBITRATION	)	OPINION AND AWARD
	)	
Between	)	
	)	
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, NATIONAL VETERANS AFFAIRS COUNCIL	)	**RONALD F. TALARICO ARBITRATOR**
	)	
	)	FMCS Case No.: 040826-57429-A
and	)	
	)	
DEPARTMENT OF VETERANS AFFAIRS	)	

GRIEVANT

Class Action

ISSUE

Particularized Need

HEARING

December 17, 2004
Washington, DC

POST-HEARING BRIEFS

Received by February 22, 2005

APPEARANCES

For the Union
Jacqueline Sims, Esq.
Staff Counsel
American Federation of Government
Employees, AFL-CIO

For the Employer
Meghan Serwin Flanz, Esq.
U.S. Department of Veterans Affairs
Office of General Counsel

ADMINISTRATIVE

The undersigned Arbitrator, Ronald F. Talarico. Esq., was mutually selected by the parties from a list provided by the Federal Mediation and Conciliation Services to hear and determine the issues herein. An evidentiary hearing was held on December 17, 2004 in Washington, D.C. at which time the parties were afforded a full and complete opportunity to introduce any evidence they deemed appropriate in support of their respective positions and in rebuttal to the position of the other, to examine and cross examine witnesses and to make such arguments that they so desired. Post-hearing briefs were received from both parties by February 22, 2005 at which time the record was closed. No jurisdictional issues were raised.

PERTINENT CONTRACT PROVISIONS

ARTICLE 21 -- INVESTIGATIONS

. . .

Section 2 - Investigations

. . .

C. **Investigations should consider all facts, circumstances, and human factors. An investigation shall be conducted in an expeditious and timely manner.**

. . .

G. **Upon request, the subject of the investigation and the Union will be furnished a copy of the complete investigation file (not just the evidence file) and all other relevant and pertinent information which would be provided under Freedom of Information Act (FOIA) or 5**

USC Section 7114, which would normally include the Administrative Investigation Board (AIB) report findings.

ARTICLE 27 -- REDUCTION IN FORCE

. . .

Section 2 - Applicable Laws and Regulations

For purposes of Title 5 employees, the policy, procedures and terminology described in this Article are to be interpreted in conformance with 5 USC 350103504, 5 CFR Part 351, FPM Chapter 351, 29 CFR 1613.203, and other applicable governmentwide laws and regulations. For purposes of Title 38 employees, the policies, procedures, and terminology of this Article are to be interpreted in conformance with VA Directive and Handbook 5111. Either party may reopen Directive and Handbook 5111 within one year with proper notice. Any successor to the Directive and Handbook or changes or revisions to this document will be developed through the predecisional involvement of the Union and subject to collective bargaining.

ARTICLE 31 -- TEMPORARY, PROBATIONARY AND PART-TIME EMPLOYEES/JOB SHARING

. . .

Section 4 - Part-Time Employees

. . .

E. A full-time employee shall not be required to accept part-time employment as a condition of continued employment. If the Department proposes to convert any full-time positions to part-time, that will be a subject for negotiations in accordance with 5 USC 7106(b)(1) and Executive Order 12871.

ARTICLE 37 -- WITHIN GRADE INCREASES

. . .

B. Definitions

. . .

4. Equivalent Increase - This term means an increase in an employee's rate of basic pay which is equal to or greater than the amount of one within-grade increase. An equivalent increase is based on the step rate held by the employee before their advancement to the next step of her position. An equivalent increase does not include:

. . .

f. An increase resulting from placement of an employee in a supervisory or management position who does not satisfactorily complete a probationary period under 5 USC S.322(a)(2).

ARTICLE 42 -- GRIEVANCE PROCEDURE

Section 2 - Definition

. . .

B. This Article shall not govern a grievance concerning:

. . .

3. A suspension or removal in the interest of national security under Section 7532 of Title 5;

Section 3 - Other Applicable Procedures

A. As provided for in 5 USC Section 7121, the following actions may be filed either under the statutory procedure or the negotiated grievance procedure but not both:

1. **Action based on unsatisfactory performance (5 USC Section 4303),**
2. **Adverse actions (5 USC Section 7512), and/or**
3. **Discrimination (5 USC Section 2302 (b)(1)).**

ARTICLE 46 -- RIGHTS AND RESPONSIBILITIES

. . .

Section 2 - Union Rights

A. **In all matters relating to personnel policies, practices, and other conditions of employment, the parties will have due regard for the obligations imposed by 5 USC Chapter 71, this Agreement, and the concept and principles of Partnership.**

. . .

Section 5 - Information

The Department agrees to provide the Union, upon request, with information that is normally maintained, reasonably available, and necessary for the Union to effectively fulfill its representational functions and responsibilities. This information will be provided to the Union within a reasonable time and at no cost to the Union.

BACKGROUND

The Employer is the Department of Veterans' Affairs. The Union, American Federation of Government Employees, National Veterans' Affairs Council of Locals, is the sole and exclusive representative for all of those previously certified non-professional and professional employees, full-time, part-time and temporary in units consolidated and certified by the Federal Labor Relations Authority on February 28, 1980. The Employer and Union have been parties to a series of collective

bargaining agreements over the years the most recent of which has been continuously in effect since March 31, 1997.

On May 12, 2004 AFGE, Local 17, through William Wetmore , Steward for the Professional Bargaining Unit Employees. served on Steve Keller. Senior Deputy Vice Chairman of the Board of Veterans' Appeals the following Information Request regarding a Proposed Removal for Unacceptable Performance of Thomas Reichelderfer:

> **"In order to prepare a response to the above proposal, and to prepared for the likely arbitration or hearing before a Merit System Protection Board administrative law judge, I am requesting that you provide me with information. The request is filed under the provisions of Article 46, Section 5 of the matter Agreement between VA and AFGE, signed March 21, 1997.**
>
> **Please provide me with a copy of all Decision Assignment Sheet detail reports, with Board Member Comments, for all attorneys at the Board. This list was provided to Reichelderfer in an appropriate format. Please provide the information in that formal for the period from April 1, 2002 to April 30, 2004.**
>
> **Please provide me with a list showing the number of attorneys placed on a Performance Assistance Plan (PAP) and a Performance Improvement Period (PIP) for the period from April 1, 2002 to April 30, 2004. This list should show the supervisor who placed the attorney on the PAP or PIP and show whether the action was taken due to unsatisfactory performance int he area of legal writing and analysis, timeliness, productivity, organizational support, or a combination of those elements. If it was a combination of those elements, the specific elements should be detailed.**
>
> **If you have any questions regarding the above request, please contact me no later than 3:30 p.m., Friday, May 14, 2004. I may be reached at 202-565-9764.**
>
> **Please provide the above information by Friday, may 21, 2004. If it is provided later, it will not be useful for responding to the proposed removal, since that response is due May 26, 2004."**

By memo dated May 13, 2004 Jonathan B. Kramer of the Board of Veterans' Appeals responded to the Union's Information Request in the following manner:

> "1. **In response to your information request dated May 12, 2004, it is the Board's view that your request is premature to the extent that such information is needed to prepare for "the likely arbitration or hearing before the [MSPB] . . . ." The fact remains that no grievance has been filed on behalf of Mr. Reichelderfer, nor has this matter reached a point that an appeal may be made to the MSPB. Therefore, the Board has no obligation to respond to an information request relating to the possibility that there may be a future arbitration or MSPB appeal.**
>
> 2. **To the extent that the Union desires this information to assist Mr. Reichelderfer to prepare a response to the Proposed Removal for Unacceptable performance, the Board needs further information from you in order to assess your request. In order for the Board to determine whether you have a right to the information and whether it is otherwise appropriate to provide the Union with such information, you must explain the particularized need therefore. More specifically, please clarify how the information you have requested relates to the Union's representation of Mr. Reichelderfer in the context of his response to the Proposed Removal.**
>
> 3. **In addition, the Board has received a letter from Mr. Reichelderfer's attorney, Natania M. Soto, showing that Mr. Reichelderfer has designated her and Peter B. Broida as his representatives relative to the May 6, 2004, proposed removal. In view of the fact that Mr. Reichelderfer has made this designation, please clarify to the Board what your role is in regard to this matter.**
>
> 4. **Please contact me if you have any questions."**

On May 18, 2004 Mr. Wetmore responded to Mr. Kramer's May 13, 2004 Memorandum in pertinent part as follows:

"...

3. **My comments that I would like to see the information due to an impending litigation are actually irrelevant to the information request, as are your responses to those comments. Your position that I have to provide a particularized need is similarly irrelevant to the information request, which is not filed under 5 USC 7114 but under Article 46 of the Master Agreement between VA and AFGE. That article does not required a particularized need to be established. Finally, please find attached Mr. Reichelderfer's designation of me as co-representative, a point that you made which is relevant. This designation establishes all that needs to be established to satisfy the propriety of the information request, which I have enlarged slightly and accompanies this memorandum.**

4. **Under these circumstances, please provide the information requested in my memorandum dated May 18, 2004, so that we may more forward."**

Mr. Wetmore attached a memorandum which slightly expanded his earlier request for information by also including attorneys who left the Board in the period April 1, 2003 to April 30, 2004.

On May 19, 2004 the Board of Veterans' Appeals responded to Mr. Wetmore's memorandum in pertinent part as follows:

"3. **You contend that since the Union's request for information was made under Article 46 of the VA/AFGE Master Agreement rather than 5 U.S.C. 7114, there is no requirement for you to provide a particularized need for the information request. However, the Board notes that Article 46 closely tracks the language provided 5 U.S.C. 7114(b)(4), for the purpose of incorporating this statutory provision into the Master Agreement. Moreover, 5 U.S.C. 7114(b)(4) does not make a reference to the particularized need requirement. Rather, the particularized need requirement is a concept that has been enforced by the**

Courts in case law interpreting 5 U.S.C. 7114(b)(4). Therefore, the Board's position is that when the Union makes a request for information under Master Agreement or otherwise, the Union must provide a particularized need for the information. As your renewed request for information continues to lack an explanation for a particularized need, your request remains denied."

On May 24, 2002 the following National Grievance was filed regarding the issue of the denial of the Union's request for information under Article 46, Section 5 of the Master Agreement:

"1. This is a national grievance filed under the provisions of Article 42, Section 11 of the MCBA.

2. On or about May 12, 2004, AFGE Local #17 served on the Senior Deputy Vice Chairman, Board of Veterans' Appeals, VA, an information request filed under the provisions of Article 46, Section 5.

3. On or about May 13, 2004, a letter was received from a VA official (Jonathan B. Kramer) in which it was stated that the "particularized need" for an information request filed under Article 46, Section 5 of the MCBA must be provided before VA would provide the information requested.

4. In a response on or about May 18, 2004, that VA was informed that AFGE believed that the issue of "particularized need" was irrelevant to an information request filed under Article 46, Section 5 of the MCBA. It was stated that "[t]hat article does not require a particularized need to be established."

5. VA responded on or about May 19, 2004 that because Article 46, Section 5 "closely tracks the language provided (sic) 5 U.S.C. 7114(b)(4), for the purpose of incorporating this statutory provision" into the MCBA. Finding that AFGE had not provided a particularized need, the information request was again denied.

6. AFGE notes that VA has elsewhere taken the position that Article 46, Section 5 requires a particularized need be

shown before VA will respond to an information request filed under Article 46, Section 5.

7. **Under these circumstances , AFGE finds that the MCBA has been misinterpreted by VA officials at multiple facilities. The remedy sought is that VA ceases and desists from attempting to impose an incorrect interpretation of plain language in the MCBA and provide information requested under this provision without a statement of particularized need."**

ISSUE

Whether the Employer violated the collective bargaining agreement when it denied the Union's request for information under Article 46, Section 5 of the collective bargaining agreement on the basis of the failure to provide a particularized need?

POSITION OF THE UNION

At the outset, the Union contends that the Agency has unilaterally violated the parties' collective bargaining agreement by requiring the Union to articulate a "particularized need" for information requested under Article 46, Section 5 of the Master Agreement. The Union maintains that the Agencies arguments at the arbitration hearing, as well as will be emphasized in its brief, are grounded in its contention that Article 46, Section 5 essentially mirrors the statutory language in 5 U.S.C. §7114(b)(4), and, therefore, the Union is responsible for articulating a "particularized need" for the requested information as set forth in case law.

The Union maintains that it has no problem with squaring 5 U.S.C. §7114(b)(4), and the case law which supports the need for the articulation of a "particularized need". The Union's argument

is that the language negotiated by the parties under Article 46, Section 5 expanded its right to information beyond the statutory "floor" of 5 U.S.C.§7114(b)(4). Further, the Union maintains that, request for information under Article 46, Section 5 of the Master Agreement, does not now, nor has it been in the past, required an articulation of a "particularized need".

The Union further argues that the Agency's narrow construction of Article 46, Section 5, would effectively strip the Union of its right to obtain information in a manner that it had bargained in good faith for during the parties' negotiations of its current Master Agreement. The Agency argues that Article 46, Section 5 must be interpreted in light of the entire text of Article 46 and the Master Agreement as well as the language of 5 U.S.C. §7114(b)(4), and quoted the language in Article 46, Section 2 to provide support for his argument. While the Union is mindful that the meaning of an individual section of a contract may be determined in reference to the entire contractual scheme, in this case, the Agency official, here, failed to articulate a supportable argument for the parties clear exclusion of U.S.C. §7114(b)(4) or Chapter 71 in Article 46, Section 5.

Indeed, the Union points out, that a complete review of the parties Master Agreement clearly reveals that throughout the entirety of the collective bargaining agreement, the parties specifically cited relevant statutory provisions in various articles to acknowledge that the articles were governed by those statutory mandates. Further, the exclusion of U.S.C. §7114(b)(4), strongly supports the Union's arguments, herein, and at the hearing, that the intent of the language in Article 46, Section 5 was to expand and not limit its ability to request information from the Agency. Moreover, it would be wholly inconsistent for the negotiated collective bargaining agreement to require the parties to apply statutory provisions when they are specifically set forth in the article sections, and then, require

the parties to also apply statutory provisions when the statutes, as in the instant case, are specifically excluded. That would be nonsensical.

In the Federal sector, as in the private sector, the practices of the industry and shop (past practices) are equally a part of the collective bargaining agreement although not expressed in it. In the instant case, the record is clear that there was an established practice of the Agency providing the Union requested information under Article 46, Section 5 of the contract without providing a "particularized need" as currently suggested by the Agency. As revealed by the Union witnesses, including the long term Chairman of the Mid-Term Bargaining Team, Mr. Williams, who testified as follows regarding the genesis and meaning of Article 46, Section 5, the Union has been requesting information from the Agency under Article 46, Section 5 without having to provide a "particularize need" since the article was incorporated in the parties negotiated and executed March 1997 Master Agreement.

Finally, in addressing the Agency's May 13, 2004 response to the May 12, 2004 information request by the Union leading to the National Grievance, the Union points out that the Agency erred in denying its obligation to provide the Union with request for information made "[i]n order to prepare a response to the above proposal, and to prepare for the likely arbitration or hearing before a Merit System Protection Board administrative law judge. In this regard, the Union notes that "[t]he union's right extends not only to information necessary to process a pending grievance, but to information necessary to determine whether to file a grievance at all.

The Union similarly contends that the Agency's May 13, 2004 reasons for its denial of the Union's May 12 request for information under Article 46, Section 5 should also be rejected. As the

Union's request for information indicated, the information was needed to enable it to fulfill its representational functions.

In this case, an examination of the "four corners" of the Master Agreement, Article 46, Section 5, the bargaining history of the Agency and the Union, and the long standing past practice of the parties, it is clear that VA's denial of the Union's Article 46, Section 5 of the Master Agreement violates the parties collective bargaining agreement in addition to the well established past practices between the parties. Wherefore, for the above reasons, the Union respectfully requests that its grievance be sustained.

POSITION OF THE EMPLOYER

The Union and management representatives who negotiated the parties' MCBA were experienced Federal labor relations practitioners on both sides of the aisle. In negotiating Article 46, Section 5, these negotiators were clearly aware of 5 USC §7114(b)(4), and were further aware that the term "necessary" has been interpreted in the statute to require that the union state with particularity its need for requested information. The parties must thus be presumed to have used the term "necessary" in its established Federal labor relations sense, absent some indication to the contrary.

Had the parties truly intended to deviate from the commonly understood usage of the term "necessary" in this contract provision, they would have discussed their alternative intention at the bargaining table and clarified their alternative intent in the contract. Moreover, they would not have recited, in the same Article and on the very same page, that they would have "due regard for the obligations imposed by 5 USC Chapter 71," since the particularized needs standard is an obligation

imposed by 5 USC §7114(b)(4) as FLRA interprets it. The Union's proffered interpretation is thus consistent with the language of the contract itself, as well as with the testimony of the Agency witnesses who were present at the bargaining table.

The Union's position is also contrary to logic. Despite some difference in wording, both the contract provision and the statute provide essentially the same right, and both contain the same requirement that the information requested be "necessary" for the union to perform its various representational functions. The word "necessary" as used in this context is ambiguous and was in fact hard to define until 1992, when FLRA set out the particularized need test that then became the standard definition throughout the Federal labor relations community. By the time the parties negotiated the subject provision, the term had been further clarified through specific guidance issued by FLRA's Office of General Counsel. However, the Union would have management ignore that guidance and clarification, and instead proceed blindly to guess whether requested information is "necessary" in any given case, without reference to the established industry standard that everyone else in the Federal labor relations community uses to make the same determination. The Union would further require the parties to go to arbitration every time management questions the necessity of an information request made under the contract. This simply defies logic.

What the Union is really after here is to shift a burden from its own shoulders to management's. Under FLRA's particularized need test, the burden is intentionally on the Union to state with particularity why it wants the information it is requesting and how that information relates to one of its representational functions. This burden attaches at the outset, requiring the Union to articulate its need for the information at the time that it makes its request. Absent this burden, management denies an information request at its peril, as it may not know until the matter reaches

arbitration or a ULP hearing why the Union felt the information to be necessary. Certainly the Agency would not have agreed to relieve the Union of this burden, at least not without significant discussion and clarification in the contract. The Union has provided no evidence of the former, and the contract is plainly devoid of the latter.

The "particularized need" standard as articulated by FLRA is not onerous or difficult for the Union to meet. The certainly and consistency inherent in applying a single standard to all information requests weigh strongly in favor of the Agency's interpretation of Article 46, Section 5 to require the same particularized need statement as is required under the statute. This was the management team's intent when the contract was negotiated, and it is the only outcome that makes sense at this time.

The Union's grievance is based upon an interpretation of the MCBA that is illogical and unsupported by the evidence. Accordingly, the Agency respectfully requests that the Arbitrator deny the grievance.

FINDINGS AND DISCUSSION

The essential underlying facts in the within grievance are not in dispute and the issue is a straight-forward matter of contract interpretation. The rule primarily to be observed in the construction of written agreements is that the interpreter must, if possible, ascertain and give effect to the mutual intent of the parties. The collective bargaining agreement should be construed, not narrowly and technically, but broadly so as to accomplish its evident aims. In determining the intent of the parties, inquiry is made as to what the language meant to the parties when the agreement was written. It is this meaning that governs, not the meaning that can possibly be read into the language.

On May 18, 2004 the Union requested the Department of Veterans Affairs to provide it with the following information pursuant to the provisions of Article 46, Section 5 of the Master Agreement between the Department and the American Federation of Government Employees: (1) a copy of all Decision Assignment Sheet detail reports, with Board Member comments, for all attorneys at the Board of Veterans' Appeals currently and those who left the Board in the period from April 1, 2003 to April 30, 2004; (2) a list showing the number of attorneys placed on a Performance Assistance Plan ("PAP") and a Performance Improvement Period ("PIP") from the period of April 1, 2002 to April 30, 2004; and (3) that this list show the Supervisor who placed the attorney on the PAP or PIP and show whether the action was taken due to unsatisfactory performance in the area of legal writing and analysis, timeliness, productivity, organizational support, or a combination of those elements. If it was a combination of those elements, the specific element should be detailed.

The Union indicated in its accompanying memorandum that this information was being requested in order to prepare a response to the Proposed Removal for Unacceptable Performance of Thomas Reichelderfer, and to prepare for the likely arbitration or hearing before a Merit System Protection Board administrative law judge.

Article 46, Section 5 of the Master Agreement establishes a 3 prong test which must be met in order to trigger the Department's obligation to provide requested information to the Union with regard to it's representational functions and responsibilities. The requested information must be (1) normally maintained: (2) reasonably available; and (3) **necessary** for the Union to effectively fulfill it's representational functions and responsibilities. No objection, expressed or implied, has been raised by the Department as to the first two prongs of this test, i.e. that the information requested is

normally maintained and reasonably available. Rather, the Department denied the Union's request for information primarily because it failed to set forth a "particularized need" for the information in order for the Board to be able to assess the Union's request. The Board explained that the "particularized need" requirement is a concept that has been enforced by the Courts in case law interpreting 5 U.S.C. 7114 (b)(4) which language it asserts Article 46, Section 5 closely tracks.

The Union is correct that the concept of expressing a "particularized need" is not specifically set forth in Article 46, Section 5 of the Master Agreement. Rather, that particular provision merely indicates that the information being requested must be **"necessary"** for the Union to effectively fulfill it's representational functions and responsibilities. The word "necessary" is not defined anywhere in the Master Agreement. Moreover, since that term is susceptible to more than one meaning resort must be made to accepted interpretive aids in an effort to derive its proper meaning.

Webster's New World Dictionary defines the term "necessary" as "that cannot be dispensed with; essential; indispensable." Obviously, the Department is not capable of knowing what information is essential or indispensable for the Union to effectively fulfill it's representational functions and responsibilities. Therefore, it is strictly the Union's burden to <u>establish</u> that all requested information is, in fact, "indispensable and essential" for it to fulfill its representational functions and responsibilities. The narrow issue presented within is what standard the Union must meet in order to satisfy this third prong of the 3 prong test set forth above.

It is clear from the outset that, at a minimum, a threshold standard of "essential and indispensable" entails more than just being "relevant" and or "useful" to the Union. I also find it significant that Section 2 of Article 46 specifically indicates that the parties are to have due regard for the obligations imposed by 5 U.S.C. Chapter 71 which addresses labor-management relations

between government organizations and their employees. Although Chapter 71 deals with a variety of labor-management topics it is obviously more than mere coincidence that Article 46, Subsection 5 of the Master Agreement very closely tracks the language of 5 U.S.C. 7114 (b)(4). This is the statutory obligation which directs an agency to furnish the exclusive representative involved, upon request, certain data "which is normally maintained by the agency in the regular course of business; and is reasonably available and necessary for full and proper discussion, understanding and negotiation of subjects within the scope of collective bargaining."

Turning to bargaining history as another interpretive aid, I credit the testimony of the Department witnesses for articulating the more plausible rationale behind selecting the language finally appearing as Article 46, Section 5. It is quite reasonable that Union members in many locations would not have ready access to Federal statutes or other similar books and that is why the Union proposed to include the actual statutory language of 5 U.S.C. 7114(b)(4) into the Master Agreement. The Department negotiators wanted to keep the contract as uncluttered as possible but eventually relented and agreed to track the applicable statutory language of 5 U.S.C. Section 7114(b)(4) into Article 46, Section 5 of the contract. Moreover, the parties would not have closely tracked this very specific statutory language if they actually intended to create contractual rights separate and distinct from those granted by the statute.

The negotiators were also aware that the Federal Labor Relations Authority had issued a precedent setting decision interpreting the word **"necessary"** and what an exclusive representative must show under Section 7114 (b)(4) as to their need for information to trigger an agency's statutory duty to furnish that information. In Internal Revenue Service, KC, 50 FLRA No. 86. 50 FLRA 661 (1995) the Authority adopted a "particularized need" standard for determining the necessity of all

requested information. Under this interpretation a Union must articulate, 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. This requirement will not be satisfied merely by showing that requested information is or would be relevant or useful to a Union. Instead a Union must establish that requested information is required in order for the Union to adequately represent it's members. The Union's request must also contain sufficient particularity to allow an agency to make a reasoned judgment as to whether the information must be disclosed under the statute.

I find the Union's argument that the information addressed in 5 U.S.C. Section 7114(b)(4) merely constitutes a statutory "floor" beyond which the Union can bargain for additional information to essentially be irrelevant. The issue within is not the scope, subject or extent of information requested but, rather, simply the standard of proof the Union must meet to establish that the requested information is necessary to the performance of it's representational activities.

The Union also point out that Article 46, Section 5 itself does not contain any reference to 5 U.S.C. Chapter 71 while other contractual provisions which are subject to statutory control do contain specific references. While that may be correct the fact remains that elsewhere in this same Article 5 U.S.C. Chapter 71 is specifically referenced as a general overriding standard for all matters relating to personnel policies, practices and other conditions of employment. Could the parties have made their intentions more clear? Certainly. However, the use of the word "necessary" by definition obviously requires more than just establishing how the requested information would be relevant or useful to the Union. Moreover, given the ambiguity associated with this word the case law concept of a "particularized need" quite reasonably addresses what should also be the appropriate contractual

standard requiring the release of requested information. Furthermore, the need put forth by the Union must also be sufficient to permit an agency to make a reasoned determination as to whether the requested information must, in fact, be disclosed under the statute. This goes far beyond the Union's apparent position of simply having to articulate some reasonable basis for the requested information.

Finally, the Union objects to the additional basis put forth by the Department for it's denial of the requested information:

> "The fact remains that no grievance has been filed on behalf of Mr. Reichelderfer, nor has this matter reached the point that an appeal may be made to the MSPB. Therefore, the Board has no obligation to respond to an information request relating the **possibility** that there may be a future arbitration or MSPB appeal". (emphasis added)

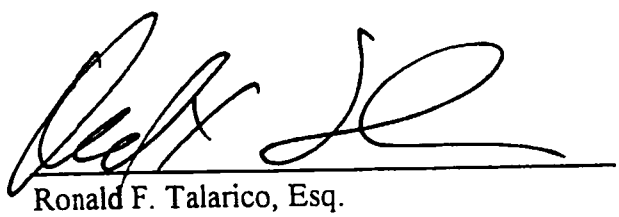
With respect to this collateral issue, the Union is correct that Article 46, Section 5 is not limited to information pertaining to grievances that have actually been filed. The reach of Article 46, Section 5 is much broader and pertains to the fullest scope of Union representation, which may include, inter alia, a preliminary determination of whether to file a grievance at all. The right to information under Article 46, Section 5 must be interpreted very broadly because it pertains to the Union's ability to effectively exercise its representational functions and responsibilities. This would include information necessary in connection with investigating an underlying cause of action, and/or deciding whether to pursue a grievance.

For all of the above reasons, the grievance must, therefore, be denied.

AWARD

The grievance is denied.

Date: April 12, 2005
Pittsburgh, PA



Ronald F. Talarico, Esq.
Arbitrator