

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

DEPARTMENT OF HOMELAND SECURITY IMMIGRATION AND CUSTOMS ENFORCEMENT MIAMI, FLORIDA Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1458 Charging Party	Case Nos. AT-CA-04-0572 AT-CA-04-0592

NOTICE OF TRANSMITTAL OF DECISION

The above-entitled case having been submitted to 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 **APRIL 18, 2005**, and addressed to:

Federal Labor Relations Authority
Office of Case Control
1400 K Street, NW, 2nd Floor
Washington, DC 20424-0001

RICHARD A. PEARSON
Administrative Law Judge

Dated: March 18, 2005
Washington, DC

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

MEMORANDUM

DATE: March 18, 2005

TO: The Federal Labor Relations Authority

FROM: RICHARD A. PEARSON
Administrative Law Judge

SUBJECT: DEPARTMENT OF HOMELAND SECURITY
IMMIGRATION AND CUSTOMS ENFORCEMENT
MIAMI, FLORIDA

Respondent

and Case Nos. AT-CA-04-0572
AT-CA-04-0592

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 1458

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 is a Motion for Summary Judgment and other supporting documents filed by the parties.

Enclosures

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

DEPARTMENT OF HOMELAND SECURITY IMMIGRATION AND CUSTOMS ENFORCEMENT MIAMI, FLORIDA Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1458 Charging Party	Case Nos. AT-CA-04-0572 AT-CA-04-0592

Brad A. Stuhler
For the General Counsel

Before: RICHARD A. PEARSON
Administrative Law Judge

DECISION ON MOTION FOR SUMMARY JUDGMENT

On November 15, 2004, the Regional Director of the Atlanta Region of the Federal Labor Relations Authority (the Authority), issued a Complaint and Notice of Hearing alleging that the Department of Homeland Security, Immigration and Customs Enforcement, Miami, Florida (the Respondent), violated section 7116(a)(1), (5) and (8) of the Federal Service Labor-Management Relations Statute (the Statute), by failing to respond to requests for information made by the American Federation of Government Employees, Local 1458 (the Charging Party or Union) and by refusing to furnish the Union with the requested information.

The complaint, which was served on the Respondent by certified mail, specified that Respondent's answer must be filed by December 13, 2004, and that a failure to file an answer would constitute an admission of the allegations of the complaint. A hearing was scheduled for March 2, 2005.

The Respondent did not submit anything in response to the complaint.

On February 16, 2005, Counsel for the General Counsel filed a Motion for Summary Judgment, asserting that by its failure to answer the complaint, the Respondent admitted all of the allegations therein. Since no facts are in dispute,

the General Counsel submits that the record demonstrates that the Respondent violated section 7116(a)(1), (5) and (8) of the Statute as alleged.

The Respondent filed no response to the Motion for Summary Judgment.

Section 2423.20(b) of the Authority's Rules and Regulations, 5 C.F.R. § 2423.20(b), provides, in pertinent part:

(b) Answer. Within 20 days after the date of service of the complaint . . . the Respondent shall file and serve . . . an answer with the Office of Administrative Law Judges. The answer shall admit, deny, or explain each allegation of the complaint. . . . Absent a showing of good cause to the contrary, failure to file an answer or respond to any allegation shall constitute an admission. . . .

Not only has the Respondent failed to answer the allegations of the complaint in any manner, but it has neither made any showing of good cause nor responded to the Motion for Summary Judgment. By its inaction, it has admitted the allegations of the complaint. Accordingly, there are no factual issues in dispute, and it is appropriate to resolve this case by summary judgment. Based on the existing record, I make the following findings of fact, conclusions of law, and recommendations.

Findings of Fact

The Respondent is an agency as defined by 5 U.S.C. § 7103(a)(3). The American Federation of Government Employees (AFGE) is the exclusive representative of a nationwide bargaining unit that includes employees of the Respondent, and the Union is an agent of AFGE for purposes of representing certain employees at the Respondent's Miami facility.

On or about July 19, 2004, the Union submitted a written request to a representative of the Respondent for information related to work schedules and overtime records for employees assigned to the Krome facility. On or about August 5, 2004, the Union submitted a written request to a representative of the Respondent for information related to work schedules and overtime records for employees assigned to the Orlando, Tampa, Bradenton, Jacksonville, Miami and Krome facilities. The requested information is normally maintained by the Respondent in the regular course of

business; is reasonably available; is necessary for full and proper discussion, understanding and negotiation of subjects within the scope of bargaining; does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining; and is not prohibited from disclosure by law.

Since July 24, 2004, the Respondent has refused to respond to the July 19, 2004, request and furnish the information requested. Since August 10, 2004, the Respondent has refused to respond to the August 5, 2004, request and furnish the information requested.

Discussion and Conclusions

Under section 7114(b)(4) of the Statute, 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 and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and (3) not guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining. In order for requested information to satisfy the requirement that it be "necessary," the union must establish that it has a particularized need for the information under standards discussed by the Authority in *Internal Revenue Service, Washington, D.C., and Internal Revenue Service, Kansas City Service Center, Kansas City, Missouri*, 50 FLRA 661, 669-70 (1995) (*IRS*). An agency denying a request for information is responsible for establishing any countervailing anti-disclosure interests. *IRS*, 50 FLRA at 670. Both particularized need and countervailing anti-disclosure interests must be raised at or near the time of the union's request. See, e.g., *United States Department of the Air Force, Randolph Air Force Base, San Antonio, Texas*, 60 FLRA No. 59, slip op. at 7-8 (2004).

The Authority has also held that section 7114(b)(4) requires that an agency respond to an information request in a timely manner and that a failure to do so violates section 7116(a)(1), (5) and (8) of the Statute. See, e.g., *Department of Health and Human Services, Social Security Administration, New York Region, New York, New York*, 52 FLRA 1133, 1149-50 (1997).

In this case, by failing to respond to the complaint, the Respondent has admitted: the Union's information request met the requirements of section 7114(b)(4); it failed to respond to the Union's requests for information;

and it failed to furnish the requested information. By failing to respond to the Union's requests and provide the requested information, the Agency failed to comply with section 7114(b)(4) and violated section 7116(a)(1), (5) and (8) of the Statute.

As a remedy for the Respondent's violations, the General Counsel requests, and I find it is appropriate, that a cease and desist order be issued, Respondent be ordered to furnish the requested information in sanitized form and that the Respondent post throughout its Miami Region a notice to employees signed by the Director of Field Operations.

I therefore recommend that the Authority grant the General Counsel's Motion for Summary Judgment and issue the following Order:

ORDER

Pursuant to section 2423.41(c) of the Authority's Rules and Regulations and section 7118 of the Federal Service Labor-Management Relations Statute (the Statute), it is hereby ordered that the Department of Homeland Security, Immigration and Customs Enforcement, Miami, Florida (the Agency), shall:

1. Cease and desist from:

(a) Failing and refusing to furnish, as requested by the American Federation of Government Employees, Local 1458 (the Union), data to which it is entitled under the Federal Service Labor-Management Relations Statute, including documents the Union requested on July 19, 2004, related to overtime records and work schedules for employees assigned to the Krome facility, and documents the Union requested on August 5, 2004, related to overtime records and work schedules for employees assigned to the Orlando, Tampa, Bradenton, Jacksonville, Miami and Krome facilities.

(b) Failing and refusing to reply to requests for data from the Union, which reply is necessary for a full and proper discussion, understanding and negotiation of subjects within the scope of collective bargaining.

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

2. Take the following affirmative action in order to effectuate the purposes and policies of the Federal Service Labor-Management Relations Statute:

(a) Furnish to the Union the data it requested on July 19, 2004, and August 5, 2004, in sanitized form.

(b) Post at its facilities in its Miami Region where employees represented by the Union are located, copies of the attached Notice on forms to be furnished by the Federal Labor Relations Authority. Upon receipt of such forms, they shall be signed by the Director of Field Operations and shall be posted and maintained for 60 consecutive days thereafter, in conspicuous places, including all bulletin boards and other places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that such Notices are not altered, defaced, or covered by any other material.

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

Issued, Washington, DC, March 18, 2005.

RICHARD A. PEARSON
Administrative Law Judge

If employees have any questions concerning this Notice or compliance with any of its provisions, they may communicate directly with the Regional Director, Atlanta Regional Office, Federal Labor Relations Authority, whose address is: Suite 701, Marquis Two Tower, 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 the **DECISION** issued by RICHARD A. PEARSON, Administrative Law Judge, in Case Nos. AT-CA-04-0572 and AT-CA-04-0592, were sent to the following parties:

—

CERTIFIED MAIL & RETURN RECEIPT

CERTIFIED NOS:

Bradford A. Stuhler
Counsel for the General Counsel
Federal Labor Relations Authority
Suite 701, Marquis Two Tower
285 Peachtree Center Avenue
Atlanta, GA 30303-1270

7000 1670 0000 1175 5240

Dated: March 18, 2005
Washington, DC