

Before Arbitrator Edward J. Gutman

In the Matter of:

**American Federation of Government Employees,
Council 222,
and**

FMCS Case No. 180918-08462

Union,

**United States Department of,
Housing and Urban Development,
Washington, DC.**

Agency.

DECISION

This Arbitration is to decide the merits of a grievance filed August 16, 2018¹, by American Federation of Government Employees Council 222 AFL-CIO charging the Department of Housing and Urban Development with violations of the Collective Bargaining Agreement between the Council and HUD, violation of statutory provisions, unfair labor practices and other violations of Federal law, A hearing was conducted at HUD in Washington, DC December 13. The parties were represented by able counsel, witnesses testified under oath, were subject to cross examination, and submitted well-reasoned post-hearing briefs on which together with the transcript of the testimony and review of federal statutes this decision to grant the Grievance is based.

STATUTORY BACKGROUND

Labor relations in the Federal sector are governed by the Federal Service Labor Management Relations Statute (“Statute”), 5 U.S.C. Chapter 71. The Statute requires federal agencies to bargain in good-faith over conditions of employment with the certified representative

¹ All dates occurred in 2018 unless indicated otherwise.

of its employees. 5 U.S.C. § 7116. The duty to bargain in good-faith requires an agency “to approach the negotiations with a sincere resolve to reach a collective bargaining agreement; in the case of an agency, 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... it shall be an unfair labor practice for an agency-- to refuse to consult or negotiate in good faith with an agency as required by this chapter.”

Unfair labor practices under the Statute may be adjudicated in two ways. A union or agency may file a charge with the FLRA or through a negotiated grievance arbitration procedure. 5 U.S.C. Section 7118, as in this case.

In defense of the Grievance, the Agency relied on an FLRA ruling which imposed a “particularized need” standard unions can be required to satisfy to validate requested information is “necessary.” This standard requires a union to authenticate an information request by showing a particularized need for the information by explaining: Why it needs the information; How it will use the information; How its use of the information relates to carrying out its representational responsibilities under the Statute. ²

² Another way to put this is that, to establish particularized need, a Union must: Tell the Agency what the Union wants. Tell the Agency why it wants that information. Tell the Agency what the Union intends to do with the information.

The FLRA particularized need requirement is to enable an agency to make a “reasoned judgment as to whether information must be disclosed under the Statute.” If an agency is unclear about the Union’s stated reason for needing the requested information, the Agency should ask the Union to clarify the request. As shown below, that is the course the parties followed here on three separate occasions.

FACTS

American Federation of Government Employees Council 222 AFL-CIO is the representative of a bargaining unit of professional and non-professional employees of the United States Department of Housing and Urban Development.³ In Spring 2018 the Agency and Council 222 began bargaining on their CBA which was set to expire July 23, 2018.⁴ The chronology of the negotiation started June 8, the date on which the Agency proposed a memorandum of understanding covering ground rules for the negotiation of a successor CBA, and ended July 30, the date on which the Union filed the Grievance to be decided in this case.

On June 8 the Agency proposed ground rules for pending labor negotiations. The Union responded June 19 submitting the following request for information to assist in formulating its proposals for the negotiations:

1. Any and all ground rules negotiated with non-AFGE bargaining units which provide for the payment of any travel and/or per diem of bargaining, including over grounds rules; and
2. Any and all HUD documents, policies, memorandum case law, instruction, correspondence or position papers regarding anticipated budget allocations for FY 2018 and 2019, including but not limited to projected reductions, allocations and reorganizations resulting from budget changes; and
3. All financial/budgetary information regarding actual expenditures/costs incurred by

⁴ All dates were in 2018 unless indicated otherwise.

HUD's Office of Employee and Labor Relations over the past five fiscal years, as well as budget amounts for the current and preceding fiscal year; and

4. All financial/budgetary information regarding any/all current and projected negotiations with the Union (term and mid-term). The data on actual (and budgeted) expenditures should include dollar amounts by detailed category, including bargaining unit and nonbargaining unit employee salaries and benefits, travel costs, etc. A budgetary breakdown for each member of the Management Negotiating Team is also requested.

5. Any and all contracts, including costs and terms of engagement, for consultants, advisors, assistants, and support during negotiations and Ground Rules preparation; and

6. The number of management HUD staff that were utilized to craft the proposed Management #1 Ground Rules (broken down by GS level and time)

7. The number of non-HUD staff that were utilized to craft the proposed Management #1 Ground Rules (broken down by GS level and time if federal employees, approximate salary for non-Federal employees; and

8. The number of staff hours (HUD, Federal, Non-Federal) utilized to craft Management's initial Ground Rules proposals, including the number of months it took to complete the proposals, and the number of hours spent each week during that time period by each staff member participating in the preparation of Management's initial Ground Rules proposals.

The Agency responded the Union had "not made a particularized need" that would obligate it to provide the requested information.¹ In addition, the Agency stated the data request did not articulate a relationship between the information requested and the Department's Ground Rules proposals.

On June 26 the Union revised the information request, reiterating the initial data request but with the following particularized need:

"The Union is requesting this information so that it can draft proposals, perform a cost analysis and allow it to understand the context in which the proposals were made and consider making concessions it would be unable to make absent evidence supporting the proposal"

On June 29 the Agency responded to the Union's revised information requests with the following responses:

1. The Union has not articulated a particularized need for the scope of the information being

requested, both with regard to the time period covered (all time periods?) and the need for information concerning employees represented by other labor unions. Further, the Union has not explained the relationship between final agreements reached by the Department with it or other unions and Union's ability to respond to the Department's initial proposals in our current ground rules negotiations.

2. It is not clear how data related to the Department's budget planning process is related to the Union's ability to respond to a proposal that you pay your own costs. As such, the Union has failed to articulate a particularized need for the data requested.

3. No explanation has been provided concerning the relationship between the data requested and the Union's representational functions. Specifically, the Union does not explain why the Department's previous expenditures for an office with responsibilities that include term bargaining and many other activities would be necessary for the Union to conduct a cost analysis for its own expenses in the upcoming term negotiations. This is another example of the Union's failure to state a particularized need for the data sought, including the scope of data requested.

4. The Union has failed to state a particularized need for the data requested. Specifically, you have not explained a need for the full scope of the data requested as it pertains to mid-term bargaining and non-bargaining unit employees. Notwithstanding that deficiency, if you provide a list of names and dates for the Union's negotiators and travelers, the Department would be happy to query our systems for that information.

5– 8 For requests 5, 6, 7 and 8 above the Agency stated that information related to nonbargaining unit employees and the Union has not explained its needs for that information.

On July 12, 2018 the Union again responded to the Agency's call for further justification in support of its information requests by submitting additional particularized need for each request or group of requests as well as well as articulating a relationship between the information requested and the Department's Ground Rules proposals. The Union responded:

“In order for to determine what is fair and equitable for the Union to pay its own expenses the union needs to know the facts relied upon by management to arrive at this determination. The union is aware that Management paid for the travel expenses for 1 (one) person from the Fort Worth Texas office during the first week for Ground Rules Negotiations. The union is also aware that at least 3 members of the term negotiation team were brought into the Washington, DC headquarters during the week of July 9th for preparatory work for term negotiations. In addition, the union is aware that in the past that the Agency has always paid the travel expenses and per diem of union and non-headquarters-based agency negotiators. Management's position that it is fair for the union to pay its own expensive, is conclusory and does not provide any facts upon which this conclusion was based. The Union needs the requested information to formulate a proposal

that considers agency resources, present expenditures by the agency and past expenditures by the agency in order to formulate a counterproposal.”

In addition, the Union reiterated:

“The Union is requesting this information so that it can draft proposals, perform a cost analysis and allow it to understand the context in which the proposals were made and consider making concessions it would be unable to make absent evidence supporting the proposal. The use of the information is connected to the Unions representation of employees within Ground Rules and Term negotiations with the Agency. The Union will utilize the information received to craft proposals and counterproposals to the Agency’s initial proposal for Ground Rules negotiations.”

1. Any and all ground rules negotiated with non-AFGE bargaining units which provide for the payment of any travel and/or per diem of bargaining, including over ground rules; and *Particularized need: The other non-AFGE union serves similarly situated bargaining unit employees. The Union needs to know if the Agency is treating all HUD unions similarly, fairly and equitably in order to craft proposals relevant to travel related costs.*

2. Any and all HUD documents, policies, memorandum, case law, instruction, correspondence or position papers regarding anticipated budget allocations for FY 2018 and 2019, including but not limited to projected reductions, allocations, and reorganizations resulting from budget changes; and *Particularized need: The Union needs to know if the anticipated budget allocations are similar to the resources of the Union to determine if the proposal to cover only nonmanagement negotiators is fair and equitable as purported by the Agency. As such, information regarding projected reductions, allocations and reorganizations that would allow the Agency to allocate additional resources to negotiations is essential.*

3. Information directly impacting the costs of bargaining, including but not limited to: All financial/budgetary information regarding actual expenditures/costs incurred by HUD’s Office of Employee and Labor Relations over the past five (5) fiscal years, as well as budgeted amounts for the current and preceding fiscal year; *Particularized need: The Union needs to know if the anticipated budget allocations are similar to the resources of the Union so as to determine if the Management proposal to cover only non-management negotiators is fair and equitable as purported by the Agency. The Agency has purported that to split the costs between the parties would be fair and equitable.*

4. All financial/budgetary information regarding any/all current and projected term negotiations with the Union. The data on actual (and budgeted) expenditures should include dollar amounts by detailed category, including bargaining unit and nonbargaining unit employee salaries and benefits, travel costs, etc. A budgetary breakdown for each member of the Management Negotiating Team is also requested; *Particularized need: The Union needs to know if the anticipated budget allocations are similar to the resources of the Union so as to determine if the proposal to cover only nonmanagement negotiators is fair and equitable as purported by the Agency*

5. Any and all contracts, including costs and terms of engagement, for consultants, advisors, assistants, and support during negotiations and Ground Rules preparation.
6. The number of management HUD staff were utilized to craft the proposed Management #1 Ground Rules (broken down by GS level and time)
7. The number of non-HUD staff were utilized to craft the proposed Management #1 Ground Rules (broken down by GS level and time if federal employees, approximate salary for non-Federal employees)
8. How many staff hours (HUD, Federal, Non-Federal) were utilized to craft Management's

On June 29, 2018, the Agency submitted the following responses to the Union:

1. The Union has not articulated a particularized need for the scope of the information being requested, both with regard to the time period covered (all time periods?) and the need for information concerning employees represented by other labor unions. Further, the Union has not explained the relationship between final agreements reached by the Department with it or other unions and Union's ability to respond to the Department's initial proposals in our current ground rules negotiations.

¹ This statement was made for requests 1-5. Requests 6-8 were presented by the Union on June 26, 2018.

2. It is not clear how data related to the Department's budget planning process is related to the Union's ability to respond to a proposal that you pay your own costs. As such, the Union has failed to articulate a particularized need for the data requested.

3. No explanation has been provided concerning the relationship between the data requested and the Union's representational functions. Specifically, the Union does not explain why the Department's previous expenditures for an office with responsibilities that include term bargaining and many other activities would be necessary for the Union to conduct a cost analysis for its own expenses in the upcoming term negotiations. This is another example of the Union's failure to state a particularized need for the data sought, including the scope of data requested.

4. The Union has failed to state a particularized need for the data requested. Specifically, you have not explained a need for the full scope of the data requested as it pertains to mid-term bargaining and non-bargaining unit employees. Notwithstanding that deficiency, if you provide a list of names and dates for the Union's negotiators and travelers, the Department would be happy to query our systems for that information.

5- 8 For requests 5, 6, 7 and 8 above the Agency stated that information related to non-bargaining unit employees and the Union has not explained its needs for that information.

On July 12 the Union submitted a third information request again particularizing the need

for each request or group of requests as well as articulating a relationship between the information requested and the Department's Ground Rules proposals. The Union stated:

“In order to determine what is fair and equitable for the Union to pay its own expenses the union needs to know the facts relied upon by management to arrive at this determination. The union is aware that Management paid for the travel expenses for 1 (one) person from the Fort Worth Texas office during the first week for Ground Rules Negotiations. The union is also aware that at least 3 members of the term negotiation team were brought into the Washington, DC headquarters during the week of July 9th for preparatory work for term negotiations. In addition, the union is aware that in the past that the Agency has always paid the travel expenses and per diem of union and non-headquarters-based agency negotiators. Management's position that it is fair for the union to pay its own expensive, is conclusory and does not provide any facts upon which this conclusion was based. The Union needs the requested information to formulate a proposal that considers agency resources, present expenditures by the agency and past expenditures by the agency in order to formulate a counterproposal.”

In addition, the Union reiterated:

“The Union is requesting this information so that it can draft proposals, perform a cost analysis and allow it to understand the context in which the proposals were made and consider making concessions it would be unable to make absent evidence supporting the proposal. The use of the information is connected to the Unions representation of employees within Ground Rules and Term negotiations with the Agency. The Union will utilize the information received to craft proposals and counterproposals to the Agency's initial proposal for Ground Rules negotiations.”

On July 18, 2018, the Agency filed its responses to the Union's revised information requests:

1. The Agency stated that in a meeting between the Union and Management the Union agreed that we did not need the information and therefore the current request was made in bad faith. However, Ms. Hannah is conflating two different requests. At the July 10, 2018 meeting we discussed the July 5, 2018 request (“Union Negotiation Timeframes”) and not the request made on June 26, 2018. Therefore, the Union was not in fact acting in bad faith and Ms. Hannah did not address the requests in 1 above nor was data provided.
2. The Agency stated that the Union is able to assess whether the Department's proposal if “fair” without the data requested and that it did not articulate why the information sought was necessary for the purpose stated.
3. The Union has not established a need for the scope for the data requested. In addition, (the Agency) states that the Union already has sufficient information to evaluate the Department's stated reasons for the proposals and prepare counters without additional

data.

4. The requested data is not necessary for the Union to formulate counterproposals as it has sufficient information to evaluate the Department's stated reasons for the proposals and prepare counters without additional data.

5-7 For requests 5, 6, and 7 the Agency states that the requested information related to non-bargaining unit employees and the Union has not explained its needs for this information.

8. The Union should be able to formulate a counter to the Department's proposal. The Union has not articulated a particularized need for the data sought, which concerns non-bargaining unit employees.

On July 30 the Union filed this Grievance:

The Grievance:

“Pursuant to Article 51 of the Collective Bargaining Agreement... this Grievance concerns the Agency's violation of statutory and contractual provisions, unfair labor practices and other violations of Federal law, which requires management to fulfill an information request that has shown a particularized need. The Union further maintains that management's attempt to withhold this information on matters relevant to Ground Rules negotiations for impending term bargaining is an unfair labor practice and violation of Management's duty to bargain in good faith. The Agency failed and refused to furnish data requested by AFGE Council 222 which is normally maintained by the agency in the regular course of business which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of ground rules.”

The grievance referenced the eight Union requests for information that included ground rules negotiated with non-AFGE bargaining units which provide payment of travel and/or per diem of bargaining unit members; HUD documents, policies, memorandum case law, instruction, correspondence or position papers regarding anticipated budget allocations for FY 2018 and 2019; financial/budgetary information regarding actual expenditures/costs incurred by HUD's Office of Employee and Labor Relations over the past five fiscal years, as well as budget amounts for the current and preceding fiscal year; financial/budgetary information regarding current and projected negotiations with bargaining unit and non-bargaining unit employee salaries and benefits, travel

costs, for members of the Management Negotiating Team; contracts, including costs and terms of engagement, for consultants, advisors, assistants, and support during negotiations and Ground Rules preparation; the number of management HUD staff that were utilized to craft the proposed Management #1 Ground Rules by GS level and time; the number of non-HUD staff that were utilized to craft the proposed Management #1 Ground Rules by GS level and time of federal employees, approximate salary for non-Federal employees; and the number of staff hours (HUD, Federal, Non-Federal) utilized to craft Management's initial Ground Rules proposals, including the number of months it took to complete the proposals, and the number of hours spent each week during that time period by each staff member participating in the preparation of Management's initial Ground Rules proposals.

The Agency denied the Grievance and responded:

“For all the reasons stated above, the grievance and requested remedies are denied, except for Remedy 2, which requests that “the Agency satisfy its bargaining responsibilities in accordance with the Statute and the Collective Bargaining Agreement.” As demonstrated herein and from its other conduct with regard to the parties’ ongoing negotiations, the Agency has satisfied these responsibilities and will continue to do so. You may contact me should you wish to discuss this case further.”

The Agency claimed the Union was able to assess whether the Department's proposals were “fair” without the data requested and further, the Union had not articulated why the information sought was necessary for the purpose stated; that, the Union had not established a need for the scope for the data requested. In addition, the Agency defended its refusal to provide the information, claiming the Union had access to sufficient information to evaluate the Agency's proposals and prepare counter positions without additional data. The Agency stated the Union had not explained its need for information related to non-bargaining unit employees.

THE ISSUE

1. Did the Agency commit an unfair labor practice when it failed to fully respond to the Union's June 19th, June 26th, July 12th, and corresponding requests for information. If so, what would be the remedy
2. Did the Agency violate the law, CBA, or regulation when it failed to fully respond to the information requests? If so, what would be the remedy?
3. Did the Agency's actions in failing to respond to the Union's request for information constitute bad faith bargaining in violation of the law and agreement. If so, what would be the remedy?

POSITION OF THE PARTIES

THE UNION

The Grievance listed eight requests for information by the Union the Agency failed to furnish. The Agency denied the requests for the sole reason the Union failed to provide “particularized” need for the information; which was a violation of the Statute and CBA.

The Agency acknowledged the Union provided reasons for the information. These were particularized need statements. The Union requested the information to formulate ground rules proposals and determine whether it has been treated equitably. It is uncontested the Union requested the information based on the changes the Agency proposed to the typical manner the parties agreed to ground rules. Moreover, in numerous communications, the Union provided the Agency: the reasons it requested the information, how it would use the information, and how that use was related to its function as a representative; establishing a particularized need for the information.

The Union’s first request in the Grievance was for ground rules agreements with other unions, information that the FLRA says is necessary to formulate intelligible proposals and a union establishes a particularized need merely by stating that it.

The Union's request for various budgetary and financial documents it described is support by a particularized need according to the FLRA and federal courts rulings that a union is entitled to information regarding agency finances when it is making proposals that may impact resources. The information is necessary regardless of whether an agency has an obligation to bargain over the proposals. In a similar case the FLRA held a union was entitled to financial information when its proposals involved the reimbursement of negotiator expenses. This was the Union's purpose here - to make proposals regarding reimbursement. Consequently, the Union established a particularized need consistent with precedent. Third, as with the information on other unions' ground rules, the Union established a particularized need for the information in the fifth through eighth requests described in the Grievance. Because the Union established a particularized need for the information, and the Agency failed to even suggest a countervailing interest, the Agency's actions constituted unfair labor practices in violation of the Statute.

In addition to committing unfair labor practices through their failure to respond to the Union's requests for information, the Agency's actions evidence bad faith bargaining, an independent unfair labor practice. The record reveals that the Agency did not genuinely believe the information to be unnecessary but refused to answer in an attempt to impair the Union's ability to bargain. Consequently, the Union will also ask the arbitrator find that the Agency engaged in bad-faith bargaining in violation of the Statute. Finally, for the same reasons the Agency violated the Statute they violated numerous contract provisions.

For these reasons, the Grievance should be granted, and the Agency ordered to provide the information. It is clear the Union provided a particularized need for all the requested information. Additionally, the Union is entitled all the other remedies available in an unfair labor practice proceeding.

THE AGENCY

Under 5 USC § 7114(b)(4), an Agency must provide information to a Union, upon request and “to the extent not prohibited by law,” if the information is normally maintained in the regular course of business, reasonably available, necessary for full and proper discussion, understanding and negotiation of subjects within the scope of collective bargaining, and does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining. The failure to provide information that meets the requirements of 5 USC § 7114(b)(4) is an unfair labor practice.

The Authority applies the “particularized need” standard to determine whether the requested information is necessary under the Statute. A union must establish a particularized need for the information by stating with specificity, (1) why it needs the information, (2) how it will use the information, and (3) how its use of the information relates to carrying out its representational responsibilities under the Statute.

DISCUSSION

Federal Statutory Law requires federal agencies “to approach ... negotiations with a sincere resolve to reach a collective bargaining agreement.” A federal agency’s responses to requests for information in a bargaining context can reflect on its “sincere resolve.” The guides set by the statute for federal agencies to follow are the focal points to test “sincere resolve.” The first of these rules direct the agency to provide information a union requests if the data “is normally maintained by the agency in the regular course of its business.” If the information requested is “reasonably available” and can be shown to be “necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining”

it must be provided. The sole restriction is the information sought “does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining...”

The exclusive representative has a corresponding requirement to support its data requests upon demand with “particularized need” for the information in a bargaining context.

A failure of an agency to furnish data upon request that satisfies the criteria set by the Statute and the FLRA is a violation of its bargaining duty and subjects it to a failing to bargain in good faith charge in violation of federal law.

Thus, a ruling on the Grievance must answer these questions; (1) did the Union ask for data normally maintained by the agency in the regular course of business; was the information reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and did not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining and provided the Agency with particularized need for the information it requested; and (2) did the Agency fail to provide the data in violation of its bargaining duty.

The answer to the first question is found in an analysis of the Union’s responses to the Agency’s call for particularization. For example, to provide specific reasons for asking the Agency for the ground rules it had negotiated with non-AFGE bargaining units for payment of travel and/or per diem the Union explained since other non-AFGE union served similarly situated bargaining unit employees, it wanted to know how the Agency was treating other HUD unions in order to craft its proposals relevant to travel related costs.

As the Union explained to the Agency, it needed to know if projected reductions, allocations, and reorganizations anticipated in budget allocations for FY 2018 and 2019, were

similar to the resources of the Union so as to determine if the proposal to cover only nonmanagement negotiators was fair and equitable as claimed by the Agency. That information regarding projected reductions, allocations and reorganizations to enable the Agency to allocate additional resources to negotiations was essential.

The Union asked for information directly impacting the costs of bargaining and listed financial/budgetary information regarding actual expenditures/costs incurred by HUD's Office of Employee and Labor Relations over the past five (5) fiscal years, as well as budgeted amounts for the current and preceding fiscal year. When requested the Union explained it needed this information to determine if the Agency's anticipated budget allocations were similar to the resources of the Union which would allow it to determine if the Agency bargaining proposal covered only non-management negotiators as the Agency claimed would be fair and equitable as justification to split the costs between the parties.

The request for financial/budgetary information regarding data on actual (and budgeted) expenditures to include dollar amounts by detailed category, including bargaining unit and nonbargaining unit employee salaries and benefits, travel costs, etc., and a budgetary breakdown for each member of the Management Negotiating Team was needed so the Union would know if the anticipated budget allocations were similar to the resources of the Union. This would allow the Union to determine if the proposal to cover only nonmanagement negotiators was fair and equitable as claimed by the Agency

A union's burden to establish a particularized need requires the union to "state 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."

In the context of bargaining, a union satisfies the particularized need requirement when it requests information needed to determine the legitimacy of a proposed change; in order to draft bargaining proposals. Here it has done so. The evidence revealed the Union did provide a particularized need for the information after the Agency had demanded the Union to supplement its proposals with additional information. Yet, the Agency denied the Union's bargaining requests claiming the Union failed to establish a particularized need for the information requested.

The Union requested information on the Agency's ground rules with other bargaining units to determine whether its unit members were being treated consistent with employees in other bargaining units. According to the FLRA "information about employees who are not in the bargaining unit could be necessary," and "that bargaining unit status does not render information about employees who are not in the bargaining unit off limits when an exclusive representative requests information for the purpose of representing employees who are in the bargaining unit." That is the reason the Union made its request. Failing to respond to a particularized need is an unfair labor practice in violation of federal law.

Additionally, since the parties were encountering difficulty with ground rules negotiations, the additional information the Union requested had the potential of helping them formulate proposals that might lead to making progress towards an agreement.

The Union effectively identified the particularized need for the other unions' ground rules explaining why it needed the information, how it would use the information, and the connection to the Union's responsibility to the members of its bargaining unit. The Union needed the information to draft proposals and determine if the Agency was treating the Union equitably. The Union informed the Agency repetitively that it would use the information to draft proposals. The

potential use of the information was clearly connected to the Union's role as the representative of employees during the collective bargaining process.

The Agency's failure to provide the Union with the information requested also constituted an unfair labor practice of bad-faith bargaining in violation of the Statute which requires management and labor to engage in good-faith negotiations. The Statute's Good faith bargaining mandate requires the parties "to approach the negotiations with a sincere resolve to reach a collective bargaining agreement." Bargaining in bad faith by either party is an unfair labor practice

Here giving the Agency the benefit of any doubt whether it was unclear about the Union's seeming need for the requested information in all eight requests the Union submitted, the Agency's denial of the requests may have had legitimacy the first times the Union submitted them but any failure to "particularize" the need for the information was cured on the July dates when the Union highlighted the reasons for its entitlement to the information. In fact, the Agency acknowledged the Union provided reasons for the information; for example, the Union's explanation the requested information on the topic of ground rules was to enable it to determine whether it has been treated equitably compared to other bargaining units. This was a need inherently related to its function as a representative and was explained to the Agency

A union's request for budgetary and financial documents is recognized as a particularized need by the FLRA and federal courts. A union's access to an agency's financial information resources when formulating proposals involving the reimbursement of negotiator expenses is accepted as a particularized need.

A union is neither required to reveal its specific strategy or even know exactly what the information it is requesting will reveal. Rather, as long as the information is relevant to one of a

union’s “full range” of responsibilities, it will meet the particularized need standard. Because the Union established a particularized need for the information, and the Agency failed to even suggest an alternative, the Agency’s action was an unfair labor practices in violation of the Statute.

In sum, the Union told the Agency what it wants, why it wanted the information, what it intended to do with the information. The Agency failed to provide the information.⁵

The Grievance is granted. The Agency committed 5 USC § 7116(a)(1), (5), and (8), and 5 USC § 7114(b)(4) unfair labor practices and is ordered to provide all requested information immediately and post a notice of its violation of the Statute and to cease and desist from any future violations of the Statute.⁶ Finally, the Arbitrator shall retain jurisdiction for purposes of resolving any question of remedy, including attorney fees to which the Union may be entitled based upon the Arbitrator’s findings.⁷

Edward J. Gutman Arbitrator

Dated

⁵The speculation by the FLRA in a recent case whether an Agency’s “stated operational need for its bargaining proposal was legitimate or simply “hard ball negotiation tactics” may be apropos here.

⁶ While this Order requires the Agency to furnish the information requested, the parties are encouraged to engage in reconciliation/mediation type discussions to attempt to exercise a “sincere resolve” to defuse any disagreement over whether requested data is normally maintained by the agency in the regular course of business; or is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining.

⁷ The time to apply for attorney fees is after an award becomes final and binding. The Back-Pay Act grants an arbitrator jurisdiction to consider an attorney fee request after a final and binding award without regard to the *functus officio* doctrine. See *Philadelphia Naval Shipyard and Philadelphia Metal Trades Council*, 32 F.L.R.A. 417 (1988); *NAGE, Local R4-106 and Dept. of the Air Force*, 32 F.L.R.A. 1159 (1988).

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