



DEPARTMENT OF VETERANS AFFAIRS
Washington DC 20420

July 7, 2004

Mr. William H. Wetmore
Chair, Grievance and Arbitration Committee
AFGE National VA Council
Board of Veterans Appeals
VA Central Office
811 Vermont Ave., N.W.
Washington, DC 20420

Re: Final Decision on AFGE-NVAC National Grievance
Re: Request for Information under Article 46, Section 5 of the
Master Agreement

Dear Mr. Wetmore:

This letter is in response to the National Grievance (the "Grievance"), filed by AFGE-NVAC (the "Union") on May 24, 2004, based upon the Union's disagreement with the Department of Veterans Affairs' (the "VA") position that information requests under Article 46, Section 5 of the Master Agreement require the Union to demonstrate a particularized need. Specifically, in its Grievance, the Union argues that Article 46, Section 5 of the Master Agreement "does not require a particularized need to be established." (Grievance at ¶ 4). The Union's position appears to be based on the failure of Article 46, Section 5 to cite verbatim to 5 U.S.C. § 7114(b)(4). Having considered the matters addressed in your Grievance, I am now prepared to render a final decision on this grievance pursuant to the authority delegated to me by the Secretary.

Article 46, Section 5 provides:

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. The information will be provided to the Union within a reasonable time and at no cost to the Union. (emphasis added).

(Master Agreement, Article 46, Section 5 at 177).

Similarly, 5 U.S.C. § 7114(b)(4) provides:

The duty of an agency and an exclusive representative to negotiate in good faith under subsection(a) of this section shall include the obligation—(4) 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 related to collective bargaining, . . .

Id.

The VA recognizes that the language of Article 46, Section 5 does not recite, verbatim, the language of 5 U.S.C. § 7114(b)(4). Nevertheless, the requirements of Article 46, Section 5 are identical to those contained in 5 U.S.C. § 7114(b)(4), including the restriction that information requested should be "necessary" for the union to perform its representational duties. Accordingly, the VA does not believe that this section should be interpreted in a vacuum, as the Union suggests. It is VA's position that in Article 46, Section 5, the parties merely restated the statutory duty to provide information to the Union, including all conditions and restrictions.

As you are aware, requests for information pursuant to 5 U.S.C. § 7114(b)(4), require the Union to show a "particularized need" for the information. See Peter B. Broida, *A Guide to Federal Labor Relations Authority Law and Practice* Ch 3, V, A, 2 (17th ed. 2004) (citing *Department of the Air Force, Scott Air Force Base v. FLRA*, 104 F.3d 1396, 1400 (D.C.Cir. 1997); *NLRB v. FLRA*, 952 F.2d 523, 531-32 (D.C. Cir. 1992)). A "particularized need" is defined as the requirement that "the union articulat[e], 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." *Id.* (citing *IRS, Wash., D.C. and IRS Kansas City Serv. Ctr., Kansas City, Mo.*, 50 F.L.R.A. 661, 669 (1995) (*IRS, Kansas City*)). "In response to a union request for information, the [agency] must balance the union's particularized need against [any agency] countervailing anti-disclosure interest." *Id.* (citing *U.S. Dep't of Justice, Bureau of Prisons, Allenwood Fed Prison Camp, v. FLRA*, 988 F.2d 1267, 1270 (D.C. Cir. 1993)). Significantly, one of the purposes of the articulation requirement is to enable an employer to weigh its privacy interests against the union's disclosure interests. As a result, "the union ordinarily may not rely upon conclusory assertions of need." *Id.* (citing *Allenwood Fed Prison Camp*, 988 F.2d at 1271; *IRS, Kansas*

City, 50 F.L.R.A. at 670). However, “courts will not require the union to state a request with such specificity that it reveals its strategies or compromises the identity of potential grievants who desire anonymity.” *Id.* (citing *IRS, Kansas City*, 50 F.L.R.A. at 670 n.13).

Similarly, Article 46 Section 5 requires that the decision to disclose information must be weighed against the VA’s countervailing interests of nondisclosure, including Privacy Act concerns. In addition, Article 46, Section 5 requires that the information requested is “necessary for the Union to effectively fulfill its representational functions and responsibilities.” *Id.* As a result, it is necessary to have a uniform interpretation of the term “necessary,” so that the agency may effectively and accurately determine what information it must disclose, pursuant to an information request under Article 46, Section 5. The Courts have developed an interpretation of the term “necessary” in connection with information requests under 5 U.S.C. § 7114(b)(4), which is the foundation upon which Article 46, Section 5 was developed. Accordingly, the Union’s argument that a particularized need standard does not apply to an information request under Article 46, Section 5 is absurd. Moreover, we are not aware of, nor has the Union cited to, any legal authority that distinguishes a request for information under a specific provision of a master agreement from those under 5 U.S.C. § 7114(b)(4), for the purpose of eliminating the requirement that the union demonstrate a particularized need for the information. Indeed, such a conclusion would cause unnecessary confusion and delay in connection with the exchange of information necessary to effective labor-management relations. *See, e.g. Allenwood, supra.*

The VA draws further support for its position that information requests under Article 46, Section 5 require the Union to demonstrate a particularized need for the information it seeks, under the basic principles of contract interpretation. Specifically, where a dispute arises as to the meaning to be given to a collective bargaining agreement:

Words and phrases are not to be isolated but related to the context and the contractual scheme as a whole, and given the meaning that comports with the probable intent and purpose; and thus the literal sense of the terms may be qualified by the context. . . . That which is patently and unmistakably implied is a constituent element of the contractual intention, just as much as that which is explicitly implied in terms.

Williston on Contracts at §55.20 (Fourth ed. 2001) (citing *Newark Publishers’ Ass’n v. Newark Typographical Union*, No. 103, 126 A.2d 348 (1956).

To this end, 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). Significantly, Article 46 Section 2 provides: “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 concepts and principles of Partnership.” (Master Agreement, Article 46, Section 2 at 177). The reference to Chapter 71 within Article 46 further supports the VA’s position that the “particularized need” test applicable to information requests under 5 U.S.C. § 7114(b)(4) also applies to those made under Article 46, Section 5.

Indeed, even the plain language of Article 46, Section 5 requires that the requested information be “necessary for the Union to effectively fulfill its representational functions and responsibilities.” (Master Agreement at 177). Nevertheless, the Union argues that because Article 46, Section 5 does not use the term “particularized need,” the VA should not require the union to demonstrate a particularized need when requesting information under Article 46, Section 5.

Merriam-Webster’s Collegiate Dictionary defines “necessary” as:

(adj) of an inevitable nature: inescapable; logically unavoidable; that cannot be denied without contradiction: determined or produced by the previous condition of things: compulsory: absolutely needed: required:
(n) an indispensable item: essential.”

(*Merriam-Webster’s Collegiate Dictionary* 828 (11th ed. 2003).

As discussed in the preceding paragraphs, the courts have construed “necessary” under the Statute to require the demonstration of a “particularized need.” The term “particularized need,” refers to “the requirement that “the union articulat[e], 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.” See *Broida, supra*. Accordingly, it is unreasonable to construe the language of the Master Agreement as not requiring the Union to demonstrate the necessity of the information it seeks according to the standard set forth under 5 U.S.C. § 7114(b)(4).

Finally, the VA notes that in its “Guidance on Investigating, Deciding and Resolving Information Disputes,” the General Counsel of the Federal Labor Relations Authority (Authority GC) also employs the “particularized need” test in its evaluation of union’s information requests and agency’s responses to those requests. http://www.flra.gov/gc/inf_guid.html. Citing *IRS, Kansas City, supra*, the Authority GC writes: “[t]he union requesting information under 7114(b)(4) of the Statute must establish a particularized need for requested 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, KC, supra*, at p. 669-670. "Among other things, a request for information must be sufficient to permit an agency to make a reasoned judgment as to whether the information must be disclosed under the Statute." *IRS, KC, supra*, at 669-670. In addition, a Model Form attached to this guidance, entitled "Union Request for Information Form," solicits the Union's demonstration of a particularized need for the information requested. (See "Model Form" at Attachment A). The same reasons for requiring a "particularized need" to demonstrate necessity under the Statute applies with equal force to demonstrating necessity under the Master Agreement.

Based upon the above, the VA cannot agree that the particularized need test employed for information requests under 5 U.S.C. § 7114(b)(4) should not apply to analogous requests under the Master Agreement, Article 46, Section 5. Accordingly, I must deny the subject grievance.

Sincerely yours,



Ronald E. Cowles
Associate Deputy Assistant Secretary
for Labor-Management Relations

Enclosure

cc: Jacqueline Sims, Legal Representative, NVAC