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Federal Labor Relations Authority

United States Department of Justice, Federal Bureau of Prisons, Federal Correctional Institution Ray Brook, Ray Brook, New York (Respondent/Agency) and American Federation of Government Employees, Local 3882 (Charging Party/Union)

68 FLRA No. 83

UNITED STATES
DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF PRISONS
FEDERAL CORRECTIONAL INSTITUTION
RAY BROOK
RAY BROOK, NEW YORK
(Respondent/Agency)

and

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 3882
(Charging Party/Union)

BN-CA-10-0552

DECISION AND ORDER

April 22, 2015

Before the Authority: Carol Waller Pope, Chairman, and
Ernest DuBester and Patrick Pizzella, Members

I. Statement of the Case

In the attached decision, the Federal Labor Relations Authority's (FLRA's) Chief Administrative Law Judge (the Judge) found that the Agency committed an unfair labor practice (ULP) under § 7116(a)(1), (5), and (8) of the Federal Service Labor-Management Relations Statute (the Statute)[1] by refusing to provide certain information requested by the Union under § 7114(b)(4) of the Statute.[2]

This case presents three issues: (1) whether the Union articulated a particularized need for the information; (2) whether the Agency adequately raised a countervailing anti-disclosure interest; and (3) whether disclosure of the information is prohibited by law. We find that the Judge correctly applied Authority precedent to determine that the Union established its need for the information, and that the Agency failed to articulate an anti-disclosure interest at the time it denied the Union's request. Moreover, with one exception, we find that there is no merit to the Agency's contention that disclosure of the information is prohibited by law. Finally, we conclude that the disclosure of the Agency's contingency plans is contrary to law, based on the parties' stipulation to that effect.

II. Background and Judge's Decision

A. Background

Following a series of violent confrontations between rival gangs of inmates housed by the Agency, the Agency repeatedly placed the institution on lockdown, whereby prisoners were confined to their individual cells. The Agency initiated the first lockdown on

August 1, 2010,[3] following two incidents, which occurred on July 31 and August 1. Violence broke out again on August 3, shortly after the Agency lifted the lockdown, causing it to return to lockdown status that same day. Another incident occurred on August 6, soon after the Agency's second attempt to lift the lockdown, and in connection with that incident, an inmate was apprehended with a weapon. Rather than returning to full lockdown, the Agency placed the institution on a modified lockdown, confining inmates to their housing units, but not to individual cells.

Following these incidents, on August 9, the Union requested copies of security footage of the incidents, as well as information related to the Agency's decision to institute a modified, rather than full, lockdown. Specifically, the Union requested:

> Item 1: All government-wide rules, regulations, orders, policies, or procedures that were used in making this decision. . . .
>
> Item 2: All documents used in substantiating the decision to return the institution to normal operations even though there was a lack of intelligence information. . . .
>
> Item 3: Copies of any emails or correspondence by any management official that was used regarding the above matters. . . .
>
> Item 4: The procedures used to obtain the evidence.[4]

The Agency responded to the Union's request one month later, on September 9, indicating that the Union's need for the information was "unclear."[5] It also told the Union that, with respect to Items 2 and 3, "[w]hile certain investigative information might be disclosed after an administrative investigation is completed, particular care must be exercised regarding disclosure during the course of the investigation to ensure personal safety and prison security."[6] Finally, the Agency stated that while it would not release the security footage, the Union could view it.

The Union sent a second, more detailed request on September 14 that requested much of the same information, but with several distinct differences. The second request did not ask for security footage, and the numbered items were modified. For example, Item 1 added a specific reference to contingency plans, program statements, and past incidents; and Items 2 and 3 included a request that the Agency provide the applicable law, policy, or regulations that justified its refusal to provide the information that the Union requested on August 9. Item 4 was essentially new, requesting "[c]opies of any investigative reports relating to the incidents in question as well as a complete accounting of any and all methods used and/or employed by [m]anagement to obtain evidence that was used to support [its] decisions regarding the incidents."[7]

The Union explained that it needed the first two items to "[d]etermine if [m]anagement's actions were appropriate within the context of [its] requirement to lower the inherent risks of the correctional environment in accordance with the [governing master labor agreement (master agreement)] . . . [and] if [m]anagement followed its own policies and guidelines."[8] The Union also stated that it needed the information sought by the third item to "[d]etermine if [m]anagement, during the course of the electronic/written discussions regarding the incidents in question, ever factored in [its] responsibility to lower the inherent risk of the correctional environment in accordance with the [m]aster [a]greement."[9] And, with respect to the fourth item, the Union stated that it needed the information to "[d]etermine if [m]anagement followed its own policies and guidelines during the initial investigation(s) that were/was then used to justify [its] actions regarding the incidents."[10] The Union stated that it would use the information to "[d]etermine if a representational course of action on behalf of all bargaining[-]unit employees [wa]s justified in this matter . . . [and f]ulfill the Union's representational responsibilities."[11]

On September 21, while reviewing the security footage that the Agency made available in response to the Union's first request, a Union representative discovered that some of the footage from the August 6 incident was missing. After contacting an assistant warden about the missing footage, the representative asked to see the inmate investigative report (SIS report) for the inmate who was apprehended with a weapon. However, the assistant warden stated that he would not release the report because the Agency was planning to prosecute the inmate for that incident.

On October 6, the assistant warden advised the Union representative that the Agency would not provide the information requested on September 14 because the Agency could not release any information that it would need to prosecute the inmate. But the assistant warden did not explain how releasing the information would compromise the prosecution of the inmate.

On October 12, the assistant warden sent the Union representative an email that summarized their October 6 conversation. The email stated that the Agency had made the security footage available to the Union to view, but repeated that it could not release the footage because of the pending prosecution of the inmate. The email also asserted that the Union had "not identified [a] particularized need . . . [that] relate[d] to the [U]nion's representational duties."[12]

The Union then filed a ULP charge with the FLRA's Boston Regional Office. The FLRA's General Counsel (GC) issued a complaint alleging that the Agency violated § 7116(a)(1), (5), and (8) of the Statute by not providing the information requested by the Union on

September 14. Because the parties agreed that there were no material facts in dispute, they filed a joint motion requesting that the Judge decide the case on a stipulated record.

B. Judge's Decision

As relevant here, the Agency argued that it did not violate the Statute by withholding the information requested by the Union because the Union did not establish a particularized need for the information. In this regard, the Agency compared the Union's request to a request that the Authority found did not establish a particularized need in *U.S. DOJ, Federal BOP, U.S. Penitentiary, Marion, Illinois* (*Marion*).[13] The Agency also argued that it articulated a non-disclosure interest when it informed the Union that it could not release the information because of the ongoing investigation and its intent to prosecute the inmate. Finally, the Agency argued that Exemption 7(e) of the Freedom of Information Act (FOIA)[14] permits the Agency to withhold "records or information compiled for law enforcement purposes . . . to the extent that the production. . . would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law."[15]

Conversely, the GC argued that the Union explained its need for the information in sufficient detail and that the anti-disclosure interests that the Agency articulated were vague and conclusory.

The Judge first addressed whether the Union adequately explained its need for the information. The Judge observed that, under Article 27 of the master agreement, the Agency was obligated "to lower the inherent hazards of a correctional environment to the lowest possible level . . . without relinquishing its rights" under § 7106 of the Statute.[16] The Judge further found that the Union adequately explained why it needed the information and how it would use the information to fulfill its representational duties.[17] Specifically, he found that:

> common sense would lead any sensible person to conclude that what the Union wanted to understand was how and why the [w]arden thought transitioning away from full lockdown status, or not returning to that status after a fourth incident of inmate violence lowered the inherent risk of the correctional environment faced by bargaining[-]unit employees.[18]

The Judge next addressed whether the Agency articulated a countervailing anti-disclosure interest to the Union at or near the time of the request. The Judge did not consider the Agency's anti-disclosure interests because the Agency did not raise this issue until it filed its brief, rather than "at or near the time" of denial of the information request.[19] The Judge also found that the only reason that the Agency gave for not disclosing the information when it denied the request was that the Union failed to establish a particularized need for the information. But the Judge observed that the assistant warden failed to explain why the fact that "the inmate . . . was being prosecuted . . . justif[ied]" not providing the Union a copy of the requested security footage.[20] Moreover, because the Union did not request the security footage in the September 14 information request, the Judge concluded that "any countervailing anti-disclosure interest that such a conclusory claim did represent was not applicable to the second request."[21]

Finally, the Judge rejected the Agency's comparison of the request here to the request in *Marion*. In this regard, he observed that:

> In *Marion,* the only reason provided for the information requested was a conclusory assertion that the union needed the information to prepare for arbitration of a previous grievance. In this case, the Union made it very clear that it wanted to assess the decisions made regarding the level of security implemented in response to the gang violence occurring at [the Agency], using the same guidance, policy requirements, and information as that used by the [w]arden. The Union also explained that [it] wanted to conduct this assessment to determine if the contractual obligation to lower the inherent hazards of a correctional environment to the lowest possible level was followed, and to seek recourse on behalf of bargaining[-]unit employees if that contractual requirement was not properly honored.[22]

Accordingly, the Judge found that the Agency violated § 7116(a)(1), (5), and (8) of the Statute when it refused to provide the information sought by the Union's September 14 request. As a remedy, the Judge ordered the Agency to provide the information and to post, and electronically distribute, a notice.

The Agency filed exceptions to the Judge's decision, and the GC filed an opposition to the exceptions.

III. Preliminary Matters

A. Section 2429.5 of the Authority's Regulations bars one of the Agency's exceptions, in part.

The Agency argues that the Judge's remedy requiring it to provide the Union with the information requested by Items 1 through 4 "is contrary to law because this information is prohibited from disclosure under FOIA Exemption 7(e) and the Privacy

Act."[23] However, in the joint motion, the Agency conceded that, with the exception of the Agency's contingency plans, the information covered by Item 1 was not prohibited from disclosure by law.[24] Additionally, the Agency never argued before the Judge that the Privacy Act prohibited the disclosure of any information.

Under § 2429.5 of the Authority's Regulations, the Authority will not consider any evidence, arguments, or issues "that could have been, but were not, presented in the proceedings before the . . . Administrative Law Judge."[25] Further, the Authority applies § 2429.5 to bar a party from advancing a position before the Authority that is inconsistent with a position it took below.[26] Accordingly, we decline to consider the Agency's Privacy-Act claims and its argument that the disclosure of the information – other than its contingency plans – covered by Item 1 is contrary to law.

B. The Agency's failure to inform the Union that the security footage no longer existed and its failure to provide the Union with a copy of the inmate's presentencing report are not at issue here.

The Agency argues that it informed the Union that security footage of the inmate wielding the weapon was not archived, and that it therefore did not violate the Statute when it failed to notify the Union that some of the information did not exist.[27] It also argues that it did not violate the Statute when it failed to provide the inmate's presentence investigative report (PSI report)[28] because it does not maintain the PSI report, which is under seal by the U.S. District Court for the Northern District of New York.[29] It is unclear why the Agency raises these issues in its exceptions, because the Judge expressly noted that issues concerning the security footage were beyond the scope of the complaint,[30] and the GC conceded that it was "not seek[ing] a finding of a violation as to [the PSI report]."[31]

Accordingly, because the Judge did not find a violation based on the security footage or the PSI report, we find it unnecessary to address these arguments further.

IV. Analysis and Conclusions

A. The Union established a particularized need for the information.

The Agency argues that the Judge erred when he found that the Union established a particularized need for the information, and claims that, for each item that it requested, the Union's explanation of its need for the information "[wa]s merely a boilerplate[,] conclusory assertion."[32]

Under § 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, as relevant here, the requested information is "necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining."[33] To demonstrate that requested information is "necessary" within the meaning of § 7114(b)(4), a union must establish a "particularized need" by articulating, with specificity, why it needs the requested information, including how the union will use the information, and how the union's use of the information relates to its representational responsibilities under the Statute.[34] The union's explanation must be more than a conclusory assertion and must permit an agency to make a reasoned judgment as to whether the Statute requires the agency to furnish the information.[35]

The Authority has found that a union establishes a particularized need where the union states that it needs information: (1) to assess whether to file a grievance;[36] (2) in connection with a pending grievance;[37] (3) to determine how to support and pursue a grievance;[38] or (4) to assess whether to arbitrate or settle a pending grievance.[39] The Authority has emphasized that such information is necessary because arbitration can function properly only when the grievance procedures leading to it are able to sift out unmeritorious grievances.[40]

However, "a union's request for information 'need not be so specific' as 'to reveal its strategies.'"[41] Thus, the Authority has rejected claims that a union failed to "articulate[] its need with requisite specificity" where the union's information request referenced a specific agency action and specified that the union needed the information to assess: (1) whether the agency violated established policies and (2) whether to file a grievance; even though the union did not explain exactly how the information would enable it to determine whether to file a grievance.[42] In addition, the Authority has held that a union's citation to specific collective-bargaining-agreement provisions served to notify the agency that the requested information was necessary for the union to administer and enforce the agreement.[43]

Here, the Union referenced the Agency's decision to place the facility on a modified, rather than full, lockdown; explained that it would use the information to evaluate the appropriateness of that decision; and referred to the Agency's responsibility under the master agreement to lower the inherent risks of the correctional environment. Thus, the precedent set forth above supports the Judge's conclusion that the Union established a particularized need for the information.

Further, contrary to the Agency's arguments, we find that the facts of this case are distinguishable from those in *Marion*. In *Marion*,the only explanation that the union gave for a request was that it needed the information to prepare for arbitration of its previously filed grievance.[44] The Authority found that that explanation did not establish a particularized need because the information related only tangentially to the issue raised in the grievance, as understood by the agency when it denied the request.[45] Conversely, in this case, the Union explained the relationship between the information and its representational concerns.

Accordingly, the Judge correctly concluded that the Union established a particularized need for the information. We therefore deny the Agency's exception.

B. The Agency did not adequately establish a countervailing anti-disclosure interest.

The Agency also argues that the Judge erred in concluding that it had not established a countervailing anti-disclosure interest. Specifically, the Agency claims that it informed the Union on September 9, in response to the first information request, that it could not disclose the information until it completed an administrative investigation,[46] and that it referenced that response on October 6 and again on October 12.[47] The Agency notes that it denied the Union's request to review the SIS report because the Agency was planning to prosecute the inmate,[48] and then repeated that same explanation for its refusal to provide the security footage in its October 6 and October 12 denials.[49]

An agency denying a request for information under § 7114(b)(4) must assert and establish any countervailing anti-disclosure interests.[50] "Like a union, an agency may not satisfy its burden by making conclusory or bare assertions; its burden extends beyond simply saying 'no.'"[51] An agency must raise its anti-disclosure interests "at or near the time it denies the union's request."[52]

Here, the Judge determined that the Agency's purported anti-disclosure interest – its plan to prosecute the inmate – was "conclusory" and applied only to the Union's requests for the security footage.[53] Even assuming that the Agency's explanation – that it was planning to prosecute the inmate – extends to all of the information covered by the Union's request, we find that this explanation is insufficient to establish a countervailing anti-disclosure interest.

The Agency did not explain how releasing the information would interfere with its plans to prosecute the inmate or identify what information would jeopardize those plans; nor did the Agency suggest when, if ever, it would be able to provide the requested information. Thus, the Agency's explanation did not aid the Union in identifying "alternative forms or means of disclosure that may satisfy both [the U]nion's information needs and [the A]gency's interests."[54] Even assuming that the claimed countervailing interest was raised in response to the Union's request, it is not sufficient to outweigh the Union's demonstration of a particularized need for the information.[55]

Finally, the Agency argues that FOIA Exemption 7(e) permitted it to withhold the information.[56] However, the Authority has consistently held that an agency must raise *any* anti-disclosure interests "at or near the time it denies the union's request."[57] The mere fact that an anti-disclosure interest is also reflected as an exemption from mandatory disclosure under FOIA does not relieve an agency of this burden. Here, the Judge found,[58] and the record reflects,[59] that the Agency did not raise the security interests protected by Exemption 7(e) when it denied the Union's information request.

Accordingly, we find that the Judge did not err when he concluded that the Agency failed to adequately raise a countervailing anti-disclosure interest. We therefore deny the Agency's exception.

C. Disclosure of most of the requested information is not prohibited by law.

The Agency argues that FOIA Exemption 7(e) prohibits the disclosure of the requested information[60] and that the Judge's order to provide the information is contrary to law.[61] This argument reflects a misunderstanding of FOIA and its exemptions. FOIA is "solely a disclosure statute"[62] and "does not prohibit release of data within the meaning of [§] 7114(b)(4) of the Statute."[63] The same reasons that led Congress to exempt certain categories of records from mandatory disclosure may give rise to anti-disclosure interests under § 7114(b)(4), but as discussed above, an agency must articulate its anti-disclosure interests "at or near the time" that it denies a union's request for information.[64] Here, the Agency failed to raise the anti-disclosure interests addressed by Exemption 7(e) "at or near the time"[65] that it denied the Union's request.

Accordingly, except as discussed below, the Agency has not established that the release of the requested information is prohibited by law. We therefore deny the Agency's exception, except as discussed below.

D. Disclosure of the Agency's contingency plans is prohibited by law.

Finally, the Agency argues that the Judge erred insofar as he found a violation based on the Agency's failure to provide its contingency plans.[66] Specifically, the Agency argues that the parties stipulated that the contingency plans "are prohibited from disclosure by law."[67] Conversely, the GC argues that the parties also stipulated that the Union has access to the contingency plans,[68] and argues that "compliance with the [Judge]'s order can be achieved by continuing to allow the Union . . . to review these [c]ontingecy [p]lans in accordance with the stipulation."[69]

As noted above, the statutory obligation to provide data applies only "to the extent [the data's release is] not prohibited by law."[70] Because the parties stipulated that disclosure of the contingency plans is prohibited by law, the Agency did not violate the Statute by withholding the plans.[71] Accordingly, we find that the Agency did not violate the Statute by withholding its contingency plans.

We therefore grant the Agency's exception, as it relates to the contingency plans, and we modify the Judge's order accordingly.

V. Order

Pursuant to § 2423.41(c) of the Authority's Regulations[72] and § 7118 of the Statute,[73] we order the Agency to:

1. Cease and desist from:
   (a) Failing and refusing to furnish the Union with:
      (1) All governmental rules, regulations, orders, policies, and written procedures that were considered by the Agency when making the decision to refrain from initiating a full lockdown following repeated inmate violence, in addition to the program statements and descriptions of the past incidents that the Agency referred to and evaluated during the decision-making process.
      (2) All documents used to substantiate the decisions to return the institution to normal operations following repeated gang-related violence in addition to any laws, policies, regulations, or cases relied upon by the Agency to support its position that this information could not be disclosed until after the administrative investigation was completed.
      (3) Copies of all e-mails or correspondence by any member of Agency management pertaining to the incidents, lockdowns, etc., in addition to any laws, policies, or regulations relied on by the Agency to support its position that this information could not be disclosed until after the administrative investigation was completed.
      (4) Copies of any investigative reports relating to the incidents in question as well as a complete accounting of any and all methods used and/or employed by the Agency to obtain evidence that was used to support their decisions regarding the incidents.
   (b) In any like or related manner interfering with, restraining, or coercing bargaining-unit employees in the exercise of their rights assured by the Statute.
2. Take the following affirmative actions in order to effectuate the purposes and policies of the Statute:
   (a) Furnish the Union with:
      (1) All governmental rules, regulations, orders, policies, and written procedures that were considered by the Agency when making the decision to refrain from initiating a full lockdown following repeated inmate violence, in addition to the program statements and descriptions of the past incidents that the Agency referred to and evaluated during the decision-making process.
      (2) All documents used to substantiate the decision to return the institution to normal operations following repeated gang-related violence in addition to any laws, policies, regulations, or cases relied upon by the Agency to support its position that this information could not be disclosed until after the administrative investigation was completed.
      (3) Copies of all e-mails or correspondence by any member of Agency management pertaining to the incidents, lockdowns, etc., in addition to any laws, policies, or regulations relied on by the Agency to support its position that this information could not be disclosed until after the administrative investigation was completed.
      (4) Copies of any investigative reports relating to the incidents in question as well as a complete accounting of any and all methods used and/or employed by the Agency to obtain evidence that was used to support their decisions regarding the incidents.
   (b) Post at the Agency, copies of the attached notice on forms to be furnished by the FLRA. Upon receipt of such forms, they shall be signed by the Director of Field Operations, and they shall be posted and maintained for sixty 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. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, or other electronic means, if the Agency customarily communicates with employees by such means.
   (c) Pursuant to § 2423.41(e) of the Authority's Regulations, notify the Regional Director, Boston Regional Office, FLRA, in writing, within thirty days from the date of this order, as to what steps have been taken to comply.

NOTICE TO ALL EMPLOYEES
POSTED BY ORDER OF THE
FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority (FLRA) has found that the U.S. Department of Justice, Federal Bureau of Prisons, Federal Correctional Institution Ray Brook, Ray Brook, New York, violated the Federal Service Labor-Management Relations Statute (the Statute), and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY EMPLOYEES THAT:

WE WILL NOT fail or refuse to furnish the American Federation of Government Employees, Local 3882 (the Union) with information requested on September 14, 2010, relating to the decision not to order a full lockdown following the gang-related violence on August 6, 2010.

WE WILL NOT,in any like or related manner, interfere with, restrain, or coerce bargaining-unit employees in the exercise of their rights assured by the Statute.

WE WILL furnish the Union with the information requested on September 14, 2010, relating to the decision to not order a full lockdown following the gang-related violence on August 6, 2010.

_____
Agency/Activity

Dated: _____ By: _____
(Signature) (Title)

This notice must remain posted for sixty consecutive days from the date of posting and must not be altered, defaced, or covered by other material.

If employees have any questions concerning this notice or compliance with any of its provisions, they may communicate directly with the Regional Director, Boston Regional Office, FLRA, whose address is: 10 Causeway Street, Suite 472, Boston, MA, 02222, and whose telephone number is: (617) 565-5100.

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[1] 5 U.S.C. § 7116(a)(1), (5), (8).
[2] *Id.* § 7114(b)(4).
[3] All dates are in 2010 unless otherwise noted.
[4] Joint Mot. for Decision on Stipulated R. (Joint Mot.) ¶ 46 (emphasis omitted) (citing *id.*, Ex. B); *accord* Judge's Decision at 2-3.
[5] Joint Mot., Ex. C at 1.
[6] Judge's Decisionat 3 (quoting Joint Mot., Ex. C at 1) (internal quotation marks omitted).
[7] *Id.* at 5 (quoting Joint Mot., Ex. D at 3).
[8] *Id.* at 4 (quoting Joint Mot., Ex. D at 2).
[9] *Id.* at 5 (quoting Joint Mot., Ex. D at 2-3).
[10] *Id.* (quoting Joint Mot., Ex. D at 3).
[11] *Id.* at 4-5 (quoting Joint Mot., Ex. D at 2-3).
[12] *Id.* at 6 (quoting Joint Mot., Ex. E) (internal quotation marks omitted).
[13] 52 FLRA 1195 (1997) (Member Wasserman dissenting), *petition for review denied sub nom. AFGE, Local 2343 v. FLRA*, 144 F.3d 85 (D.C. Cir. 1998).
[14] 5 U.S.C. § 552(b)(7)(E).
[15] *Id.*
[16] Judge's Decision at 9.
[17] *Id.*
[18] *Id.*
[19] *Id.* at 10 (citing *U.S. DOJ, Fed. BOP, Fed. Det. Ctr., Hous., Tex.*, 60 FLRA 91 (2004) (*Houston*); *U.S. DOJ, INS, N. Region, Twin Cities, Minn.*, 51 FLRA 1467, 1472-73 (1996)).
[20] *Id.*
[21] *Id.*
[22] *Id.* at 11.
[23] Exceptions at 22.
[24] Joint Mot. at ¶ 84.
[25] 5 C.F.R. § 2429.5.
[26] *E.g., U.S. Dep't of the Army, Army Corps of Eng'rs, Directorate of Contracting Sw. Div., Fort Worth Dist., Fort Worth, Tex.*, 67 FLRA 211, 215 (2014) (citing *U.S. Dep't of the Air Force, Air Force Materiel Command*, 67 FLRA 117, 119 (2013)); *Broad. Bd. of Governors*, 65 FLRA 830, 831 (2011) (citing *U.S. Dep't of Transp., FAA, Detroit, Mich.*, 64 FLRA 325, 328 (2009); *U.S. Dep't of the Treasury, IRS*, 57 FLRA 444, 448 (2001)).

[27] Exceptions at 17-18 (citing *SSA, Dall. Region, Dall., Tex.*, 51 FLRA 1219, 1226 (1996); *Veterans Admin., Long Beach, Cal.*, 48 FLRA 970, 975-78 (1993)).
[28] *See generally* Fed. R. Crim. P. 32(d) (discussing contents of presentence report).
[29] Exceptions 21-22.
[30] Judge's Decision at 10 & n.3.
[31] Joint Mot. ¶ 82.
[32] Exceptions at 9 (citing *U.S. Dep't of the Air Force, Materiel Command, Kirtland Air Force Base, Albuquerque, N.M.*, 60 FLRA 791, 795 (2005); *Marion*, 52 FLRA at 1206); *see also id.* at 11-12, 13, 14-15.
[33] 5 U.S.C. § 7114(b)(4).
[34] *IRS, Wash., D.C., & IRS, Kan. City Serv. Ctr., Kan. City, Mo.*, 50 FLRA 661, 669 (1995) (*IRS*).
[35] *Id.* at 670.
[36] *U.S. Dep't of Transp., FAA, New Eng. Region, Bradley Air Traffic Control Tower, Windsor Locks, Conn.*, 51 FLRA 1054, 1068 (1996).
[37] *U.S. Dep't of the Army, Army Corps of Eng'rs, Portland Dist., Portland, Or.*, 60 FLRA 413, 415 (2004).
[38] *IRS*, 50 FLRA at 672.
[39] *Dep't of the Air Force, Scott Air Force Base, Ill.*, 51 FLRA 675, 682-83 (1995), *enforced* 104 F.3d 1396 (D.C. Cir. 1997).
[40] *Id.* at 683 n.5 (citing *NLRB v. Acme Indus.*, 385 U.S. 432, 438 (1967)).
[41] *Health Care Fin. Admin.*, 56 FLRA 503, 507 (2000) (quoting *IRS*, 50 FLRA at 670 n.13).
[42] *Id.* at 506-07.
[43] *Library of Cong.*, 63 FLRA 515, 519 (2009).
[44] *Marion*, 52 FLRA at 1202.
[45] *Id.* at 1202-03.
[46] Exceptions at 16 (citing Joint Mot., Ex. C).
[47] *Id.* at 16-17 (quoting Joint Mot., Ex. E).
[48] *Id.* at 16 (citing Joint Mot. ¶ 77).
[49] *Id.* (citing Joint Mot., Ex. E).
[50] *IRS*, 50 FLRA at 670.
[51] *Id.*
[52] *E.g., U.S. DOJ, Fed. BOP, Fed. Corr. Inst., Fort Dix, N.J.*, 64 FLRA 106, 109 (2009) (*Ft. Dix*) (citing *Houston*, 60 FLRA at 93).
[53] Judge's Decision at 10.
[54] *IRS*,50 FLRA at 671.
[55] *See Houston*, 60 FLRA at 94.
[56] Exceptions at 18-21.
[57] *Ft. Dix*, 64 FLRA at 109 (citing *Houston*, 60 FLRA at 93).
[58] Judge's Decision at 10.
[59] Joint Mot. ¶ 78; *id.*, Exs. C, E.
[60] Exceptions at 19-23.
[61] *Id.* at 22-23.
[62] *Campaign for Family Farms v. Glickman*, 200 F.3d 1180, 1184 (8th Cir. 2000) (*Glickman*).
[63] *F.E. Warren Air Force Base, Cheyenne, Wyo.*, 44 FLRA 452, 456 (1992) (*F.E. Warren*) (quoting *U.S. DOL, Office of the Assistant Sec'y for Admin. & Mgmt.*, 26 FLRA 943, 952 (1987) (internal quotation marks omitted)); *accord NFFE, Local 951, IAMAW*,59 FLRA 951, 954 (2004) (Dissenting Opinion of then-Member Pope) (citing *Glickman*, 200 F.3d 1180; *F.E. Warren*, 44 FLRA at 456).
[64] *Ft. Dix*, 64 FLRA at 109 (citing *Houston*, 60 FLRA at 93).
[65] *Id.* (citing *Houston*, 60 FLRA at 93).
[66] Exceptions at 22.
[67] *Id.* (citing Joint Mot. ¶ 85).
[68] Opp'n at 22 (quoting Joint Mot. ¶ 85).
[69] *Id.*
[70] 5 U.S.C. § 7114(b)(4).
[71] *See e.g., U.S. DOJ, Fed. BOP, U.S. Penitentiary, Marion, Ill.*, 66 FLRA 669, 673-74 (2012).
[72] 5 C.F.R. § 2423.41(c).
[73] 5 U.S.C. § 7118.

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