

**Office of Congressional Workplace Rights
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Fraternal Order of Police, District of Columbia Lodge No. 1, U.S. Capitol Labor Committee)	
)	
Petitioner/Appellee,)	
and)	Case No. 24-LMR-01 (CA)
)	
United State Capitol Police)	
)	
Respondent/Appellant.)	
)	

Before the Board of Directors: Barbara Childs Wallace, Chair; Susan S. Robfogel; Alan V. Friedman; Roberta L. Holzwarth; Barbara L. Camens, Members.

DECISION OF THE BOARD OF DIRECTORS

This appeal is before the Board of Directors pursuant to the appellant United States Capitol Police’s (USCP) petition for review (PFR) of the Hearing Officer’s January 25, 2024, Decision on cross motions for summary judgment on an unfair labor practice (ULP) complaint filed by the Office of Congressional Workplace Rights (OCWR) General Counsel and the USCP. The Hearing Officer granted OCWR General Counsel’s motion and found that the USCP committed a ULP in violation of the Federal Service Labor Management Relations Statute (FSLMRS), 5 U.S.C. §§ 7116(a)(1), (5), and (8),¹ when it refused to provide the Fraternal Order of Police, District of Columbia Lodge No. 1, U.S. Capitol Police Labor Committee (FOP or Union) with regulations and orders issued by the Capitol Police Board (CPB) which may affect working conditions of bargaining unit employees.

Upon due consideration of the Hearing Officer’s Decision, the parties’ filings, and the record in these proceedings, the Board grants the PFR, vacates the Hearing Officer’s Decision and remands it for further adjudication consistent with this opinion.

I. Background and Hearing Officer’s Decision

On August 26, 2019, the Union submitted a request for information pursuant to 5 U.S.C. § 7114(b)(4), seeking “Orders enacted by the United States Capitol Police Board” and “Regulations of the United States Capitol Police Board.” In its request, the Union stated that:

¹ The FSLMRS is made applicable to employees in the Legislative Branch pursuant to section 220(a) of the Congressional Accountability Act (CAA), 2 U.S.C. § 1351.

The requested information will enable the Union to fulfill its representational responsibilities pursuant to the Congressional Accountability Act, and the collective bargaining agreement, by allowing the Union to be aware of orders and regulations enacted by the United States Capitol Police Board which may affect employee working conditions.

The CPB is a statutorily created board that oversees and supports the USCP. The CPB is comprised of three voting members, the House Sergeant at Arms, the Senate Sergeant at Arms, and the Architect of the Capitol. The USCP Chief of Police serves as a non-voting member of the CPB. The CPB is authorized by statute to issue regulations, including those that impact the conditions of bargaining unit employees' employment. USCP Answer at ¶13; USCP Mem. in Support of PFR at p. 5-6. The CPB also issues orders, which are often temporary in nature and address a present or emergent circumstance or special event. USCP Motion in Support of Cross Motion for Summary Judgment, Ex. 1 (Decl. of Thomas DiBiase) at ¶¶6-7.

On September 18, 2019, the USCP denied the Union's request on the grounds that it does not maintain the information sought in the regular course of business and is not authorized by the CPB to release CPB documents. The USCP's response also stated that the Union had not established a particularized need because the Union's request was "generalized and generic" and failed to establish any nexus between the articulated need for the information and the Union's representational responsibilities. The record does not include a written response from the Union to the USCP's September 18, 2019, communication. The Union filed a ULP charge on or about October 28, 2019.

On at least four occasions between 2019 and 2023, the Union separately requested orders and regulations pursuant to Section 8.05 of the collective bargaining agreement, which provides under "Department Issuances" that the USCP will provide the Union with "all orders or directives, policies and personnel rules and regulations . . . upon request to the Chief of Police." FOP/U.S. Capitol Police Labor Committee and the United States Capitol Police Collective Bargaining Agreement 2022 (CBA) at § 8.05; OCWR GC Motion for Summary Judgment (Decl. of Gus Papatthaniou) at ¶6 and Ex. 5 (May 17, 2023, Union request under § 8.05). The record does not reflect any responses by the USCP to those requests.

Although all the details are not clear in the record, the Union also sought the CPB regulations and orders through informal communications with the CPB and the USCP. *See* Papatthaniou Decl. at ¶¶7, 10-15 and Ex. 6, 10-11. As a result of those communications, on March 17, 2023, the USCP Assistant Chief provided some CPB regulations to the Union, though the USCP subsequently indicated that he was not aware of or responding to the pending request for information at issue in this case. Also, in or around January 2024, the USCP posted several CPB regulations to its website; the record does not indicate whether the Union's requests prompted those postings.²

On November 6, 2023, the OCWR General Counsel filed a ULP complaint based on the Union's charge. The complaint alleged that:

² <https://www.uscp.gov/about/oversight/capitol-police-board-regulations>

The USCP committed an unfair labor practice in violation of 5 U.S.C. §§ 7116 (a)(1), (5), and (8) when it refused to provide the FOP with Capitol Police Board orders and regulations which affect the conditions of employment of Bargaining Unit Employees in a manner that allows the FOP to adequately represent Bargaining Unit Employees.

Complaint at ¶33. The parties filed cross motions for summary judgment. The OCWR General Counsel argued that the USCP's refusal to provide the CPB regulations and orders interferes with the Union's rights to file grievances and to demand impact and implementation bargaining and creates mistrust and unnecessary conflict. OCWR GC Motion for Summary Judgment at p. 11-13.

In his January 25, 2024 decision, the Hearing Officer found that the USCP committed a ULP by failing to provide regulations and orders affecting the conditions of employment of bargaining unit employees. The Hearing Officer determined that the USCP possesses and maintains the requested regulations and orders, and the Union established a particularized need for them.

II. Analysis

A. Standard of Review

The Board reviews a Hearing Officer's decision granting a motion for summary judgment *de novo*. *USCP and FOP*, 2022 WL 21807825 at *4 (C.A.O.C. Apr. 4, 2022); *United States Capitol Police, & Fraternal Order of Police, District of Columbia Lodge No. 1 U.S. Capitol Police Labor Committee*, 2017 WL 4335144 at *2-3 (OOC Sep. 25, 2017); *Patterson v. Office of the Architect of the Capitol*, No. 07-AC-31 (RP), 2009 WL 8575129, at *3 (OOC Apr. 21, 2009).

B. Presumption of Necessity for Current Regulations and Orders That Affect the Conditions of Employment for Bargaining Unit Employees

For the reasons set forth below, we find that CPB regulations and orders affecting conditions of employment for bargaining unit employees are presumptively necessary. Section 7114(b)(4) of the FSLMRS, 5 U.S.C. §§ 7101 *et seq.*, provides that:

The duty . . . to negotiate in good faith under subsection (a) of this section shall include the obligation . . . in the case of an agency, to furnish to the exclusive representative . . . , upon request and, to the extent not prohibited by law, data . . . which is normally *maintained* by the agency in the regular course of business, [and] which is *reasonably available* and *necessary* for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining. . . .

(emphasis added); *see also* CBA § 7.05 (“Information that is necessary for a full and proper discussion, understanding, and negotiation of matters within the scope of collective bargaining, includes information for both negotiations and contract administration purposes.”). The Union is

entitled to information related to the full range of representational activities, not just information related to contract negotiations. *Am. Fed. of Gov't Emps., Local 1345 v. Fed. Labor Relations Auth.*, 793 F.2d 1360, 1363 (D.C. Cir. 1986).

It is undisputed that current CPB regulations and orders affecting bargaining unit employees' conditions of employment are maintained by and "reasonably available" to the USCP. *See* USCP Motion in Support of Cross Motion for Summary Judgment, at 29 (acknowledging that the USCP "maintains" such regulations and orders); USCP Answer at ¶15 (admitting that the USCP Chief serves as a non-voting member of the CPB and has "knowledge and possession of all orders and regulations affecting conditions of employment" of bargaining unit employees) and ¶16 (admitting that the USCP "receives orders and regulations affecting . . . conditions of employment"); DiBiase Decl. at ¶8; CBA at § 7.04 (information is reasonably available if it is "accessible or obtainable by reasonable efforts, that is, by efforts that are not 'excessive' or 'extreme'"); *see also* *Dep't of Commerce, Nat'l Oceanographic and Atmospheric Admin., Nat'l Weather Serv. And Nat'l Weather Serv. Employees Org.*, 38 F.L.R.A. 120, 128 (1990), *rev'd on other grounds, Fed. Labor Relations Auth. v. Dep't of Commerce, Nat'l Oceanographic and Atmospheric Admin.*, 962 F.2d 1055, 1056-57 (D.C. Cir. 1992) (material readily available to an employing office is considered to be "maintained" within the meaning of § 7114(b)(4)).

Whether those regulations and orders are also "necessary" under §7114(b)(4) to informed collective bargaining would ordinarily depend on whether the Union demonstrated a particularized need by articulating why it needs the requested information, how it will use the information, and how its use of the information relates to the union's representational responsibilities under the FSLMRS. *Dep't of Veterans Affairs Veterans Affairs Medical Center Decatur, Georgia and National Fed. of Federal Emps., Local 2102*, 71 F.L.R.A. 428, 430 (2019); *see also* *Internal Revenue Service, Washington, D.C. and Internal Revenue Service Kansas City Service Center Kansas City, Missouri and Nat'l Treasury Emps. Union, Chapter 66*, 50 F.L.R.A. 661, 666-67 (1995) *citing* *NLRB v. Fed. Labor Relations Auth.*, 952 F.2d 523 (D.C. Cir. 1992).³ A request for information must be sufficient to permit an agency to weigh the union's interest against any countervailing non-disclosure interests and make a "reasoned judgment" as to whether information must be disclosed. *Small Business Administration and AFGE, Local 228*, 2022 WL 17416536 (F.L.R.A. Case No. DE-CA-21-0558) at *10 (November 8, 2022). "[T]he degree of specificity required of a union must take into account the fact that, in many cases, . . . a union will not be aware of the contents of a requested document." *IRS, Washington and Kansas City*, 50 F.L.R.A. at 670 n. 13.

While adherence to the usual particularized need standard remains appropriate for most information requests, we hold that the circumstances of this case warrant a different approach. Current CPB regulations and orders setting conditions of employment are manifestly "necessary for a full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining" between the Union and the USCP. We therefore hold that such materials are presumed necessary to the Union's discharge of its representational duties under §7114(b)(4).

³ Article 7 of the collective bargaining agreement includes similar language regarding the particularized need standard for requests for information.

Application of the presumption is particularly warranted here given the CPB's unique role and administrative process in setting conditions of employment. It is undisputed that the CPB is authorized by statute to issue regulations that impact many conditions of employment for bargaining unit employees represented by the Union. *See* USCP Answer at ¶13; USCP Mem. in Support of PFR at pp. 5-6. For instance, the CPB has statutory authority to establish pay schedules (2 U.S.C. § 1923(a)); prescribe by regulations a unified leave system (2 U.S.C. § 1923(b)); issue regulations relating to recruitment and relocation bonuses, merit bonuses, and step increases (2 U.S.C. § 1927); and regulate the uniform worn by USCP officers (2 U.S.C. § 1941).

Moreover, many of the CPB regulations that the USCP has disclosed plainly affect the conditions of bargaining unit employees' employment. For instance, the regulations provided to the Union in March 2023 and those posted on USCP's website in or around January 2024, include but are not limited to: Capitol Police Board Regulations for Unified Schedules of Rates of Pay; Capitol Police Board Regulations Implementing Sunday Premium Pay Holiday Pay and Night Differential Pay; 1998 CPB Leave Regulation; and Capitol Police Board Regulations for Recruitment and Relocation Bonuses and Retention Allowances.

It is also undisputed that the USCP issues policies and guidance to implement CPB regulations and orders that affect the conditions of employment for bargaining unit employees. USCP Answer at ¶17; DiBiase Decl. at ¶8. And the resulting USCP policies that change the conditions of employment are subject to impact and implementation bargaining. CBA at § 8; USCP Mem. in Support of PFR at pp. 7-8.

However, current CPB regulations and orders impacting working conditions for USCP employees are not published or opened for public comment. The Union and its bargaining unit employees therefore have no way of knowing about or obtaining those foundational documents unless management shares them voluntarily or in response to the Union's information requests. Accordingly, the Union has no effective way to state with specificity which unknown CPB regulations and orders are necessary to its representational role, beyond its manifest need to understand all rules setting employees' working conditions, and any CPB rulemaking effecting changes to those working conditions.

These circumstances lie in stark contrast to the laws that promote transparency in administrative rulemaking in the Executive Branch, such as the Administrative Procedure Act and the Freedom of Information Act, that do not have general application in the Legislative Branch. For instance, when Executive Branch employers create rules governing employee pay, promotions, discipline and other conditions of employment, those rules are published in the Federal Register and the public, including employees and unions, are given access to those rules and an opportunity to comment.

We believe that current CPB regulations and orders affecting conditions of employment for bargaining unit employees are presumptively necessary for a full and proper discussion, understanding, and negotiation of subjects within the scope of collective

bargaining. This presumption of necessity is akin to the presumption applied by the FLRA and upheld by the Fourth Circuit in the context of a union's request under section 7114(b)(4) for the names and addresses of bargaining unit employees, in part because the information was unobtainable from another source. *Dep't of Health & Human Servs. v. FLRA*, 833 F.2d 1129, 1133 (4th Cir. 1987).⁴ The Court of Appeals for the District of Columbia Circuit also contemplated that there may be circumstances where a union's need for the requested information is "self-evident" or obvious. We believe this case presents such a circumstance. *Am. Fed. of Gov't Emps., Local 2343 v. Fed. Labor Relations Auth.*, 144 F.3d 85, 89 (D.C. Cir. 1998).

The Union's presumed need for such basic information as CPB regulations and orders affecting working conditions is further demonstrated by language in the parties' collective bargaining agreement. For instance, the agreement provides that "[t]he Department will provide the Union with an updated copy of all orders or directives, policies and personnel rules and regulations . . . upon request to the Chief of Police." CBA at § 8.05.⁵ The agreement also provides that the Union and bargaining unit employees may file grievances for "violation, misinterpretation, or misapplication of any law, rule, or regulations affecting conditions of employment." CBA at § 32.02. The agreement references adherence to applicable regulations generally (CBA at § 2.02) and in connection with reassignments, transfers and details (CBA at § 17.01), leave (CBA at § 19.01), and disciplinary actions (CBA at § 31.01).

Despite the Union's clear need for such basic information, the CPB does not publish its regulations and orders, including those that affect conditions of employment, and the USCP, which has access to those materials, does not routinely provide them to the Union. USCP Answer at ¶¶18, 20. The OCWR GC and the Union provided examples of the practical consequences of this lack of transparency. *See* OCWR GC's Brief in Opp. to USCP's PFR at pp. 10-11; Complaint at ¶19; Papathanasiou Decl. at ¶9 and Ex. 6. We believe this lack of transparency undermines the cooperation needed for basic labor management relations and creates unnecessary conflict and litigation.

The foundational nature and general applicability of the regulations and orders at issue in this case distinguish it from many of the FLRA and court decisions assessing Union requests for information, including cases cited by the USCP, which typically involve requests for materials that are specific to a particular employee, incident or grievance. *See e.g., AFGF, Local 2343 v. FLRA*, 144 F.3d at 87 (seeking investigative reports relating to a specific incident with a federal

⁴ In *Dep't of Defense v. FLRA*, 114 S.Ct. 1006, 1016 (1994), the Supreme Court revisited the issue of disclosure of employee home addresses in response to a union request. The Court did not address the FLRA's prior position that the addresses were presumptively necessary but concluded that disclosure of such information was prohibited by the Privacy Act.

⁵ The USCP asserts that the parties have not historically interpreted Section 8.05, which is headed "Department Issuances", to apply to CPB regulations and orders. USCP Motion in Support of PFR at p. 20. The record does not reflect the existence of regulations issued by the USCP itself and the section on the USCP's website titled "Regulations and Prohibitions" only lists CPB regulations. Moreover, the record also reflects that the Union repeatedly requested orders and regulations under Section 8.05. Papathanasiou Decl. at ¶6 and Ex. 5.

prisoner); *IRS and NTEU*, 64 F.L.R.A. 972, 973 (2010) (seeking data pertaining to work groups and strategic plans related to employee surveys); *U.S. Border Patrol, Tucson Sector, Tucson, Arizona and AFGC Local 2544*, 52 F.L.R.A. 1231, 1232-33 (1997) (seeking proposed and final disciplinary letters in connection with pending grievances); *Dep't of the Airforce, Wright-Patterson AFB, Ohio, and Am. Fed. of Gov't Emps.*, 52 F.L.R.A. 1000, 1001 (1997) (seeking inspector general reports about a safety program following a plane explosion that killed a bargaining unit employee).

While the necessity standard under section 7114(b) is more stringent than the private sector relevance standard, the private sector approach is nonetheless instructive. In the private sector, employers have a duty to provide a union with requested information that will enable the union to negotiate effectively and to perform its other duties as a bargaining representative. *Teachers College, Columbia Univ. v. NLRB*, 902 F.3d 296, 301 (D.C. Cir. 2018). Information about the terms and conditions of employment of bargaining unit employees is presumed relevant. *New York and Presbyterian Hosp. v. NLRB*, 649 F.3d 723, 730 (D.C. Cir. 2011); *Wyman Gordon Pennsylvania, LLC v. NLRB*, 836 Fed.Appx. 1, 7 (D.C. Cir. 2020) (information about bargaining unit employees' wages, hours, and conditions of employment is presumptively relevant); *Spectrum Juvenile Justice Services and Am. Fed. of State, County, and Mun. Emps., Council 25*, 368 N.L.R.B. No. 102 at *34 (October 30, 2019) (information affecting conditions of employment, such as employee handbooks and documentation of wages, are presumptively relevant). "Where the information sought covers the terms and conditions of employment within the bargaining unit, thus involving the core of the employer-employee relationship, the standard of relevance is very broad, and no specific showing is normally required." *The House of Good Samaritan, dba Samaritan Medical Center and Samaritan-Keep Nursing Home, Inc. and Serv. Emps. Intl. Union, Local 721*, 319 N.L.R.B. No. 62 at **11 (1995). An employer can rebut the presumption of relevance by showing that the information is not relevant or does not exist, or that it cannot provide the information for some other valid reason. *Spectrum Juvenile Justice Services*, 368 N.L.R.B. No. 102 at *34.

Although the Union's request in this case was not particularly detailed, it was nonetheless sufficient to trigger the presumption of necessity. As discussed above, we believe the need for current CPB regulations and orders affecting conditions of employment is obvious. The Union's request provided enough notice for the USCP to know what the Union was requesting and why the information was needed, to weigh the Union's interest against any countervailing non-disclosure interests, and to make a reasoned judgment as to whether information must be disclosed.

The presumption we recognize in this decision is one of necessity, not of disclosure. A union's request must still meet all other statutory requirements set forth in section 7114(b)(4), including that the information be normally maintained by the agency and reasonably available and that disclosure is not otherwise prohibited by law. As discussed above, the record reflects that current CPB regulations and orders are maintained by and reasonably available to the USCP.

Moreover, for current regulations and orders affecting conditions of employment, the USCP may rebut the presumption of necessity by articulating countervailing anti-disclosure interests that would outweigh the Union's interest in disclosure of the requested information. To date, the

USCP has not timely provided substantial evidence of anti-disclosure interests, instead arguing that it “had no obligation to come forth with countervailing interests” until after the Union articulated a particularized need. *See e.g.*, USCP Reply in Support of PFR at p. 15. In light of our ruling that such a need is presumed for CPB regulations and orders affecting the conditions of employment, on remand, the USCP should be given the opportunity to rebut the presumption. On remand, the hearing officer should consider whether the USCP’s release of some of the regulations at issue, including posting some on its public website, cuts against any anti-disclosure interest the USCP may assert.

The presumption of necessity does not apply to regulations and orders that were not in effect at the time of the request or those that do not affect the conditions of employment of bargaining unit employees. The USCP is correct that there was insufficient evidence in the record to demonstrate that the USCP maintains those documents (particularly for outdated orders) or to show that these documents were necessary to the Union’s role in collective bargaining. However, this case was decided on a motion for summary judgment, and the factual record was not fully developed. If the Union continues to seek the regulations and orders to which the presumption of necessity does not apply, it should be given the opportunity to present additional evidence to satisfy the particularized need standard.

ORDER

The Hearing Officer’s Decision in this case is VACATED and the case is REMANDED to the Hearing Officer for further proceedings consistent with this opinion. Specifically, the Hearing Officer is directed to (1) conduct an in camera review of current CPB regulations and orders to determine which of them affect the conditions of employment for bargaining unit employees; and (2) provide the USCP with an opportunity to rebut the presumption of necessity by demonstrating countervailing anti-disclosure interests that would outweigh the Union’s interest in disclosure of the requested information.

The parties are strongly encouraged to attempt to resolve this matter through mediation. Reaching an understanding about the CPB regulations and orders may obviate future disputes over similar information.

So ORDERED.

Washington, D.C., March 24, 2026.