

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
OFFICE OF ADMINISTRATIVE LAW JUDGES
WASHINGTON, D.C. 20424

.
DEPARTMENT OF HEALTH AND .
HUMAN SERVICES, FOOD AND .
DRUG ADMINISTRATION, .
BALTIMORE, MARYLAND .
Respondent .
and .
AMERICAN FEDERATION OF .
GOVERNMENT EMPLOYEES, .
LOCAL 2486, AFL-CIO .
Charging Party .
.

Case No. 3-CA-80058

Richard M. Friedman, Esq.
For the Respondent

Ira Sandron, Esq.
For the General Counsel

Before: SAMUEL A. CHAITOVITZ
Administrative Law Judge

DECISION

Statement of the Case

This is a proceeding under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the U.S. Code, 5 U.S.C. § 7101 et seq., 92 Stat. 1191 (hereinafter referred to as the Statute) and the Rules and Regulations of the Federal Labor Relations Authority (FLRA), 5 C.F.R. Chapter XIV, § 2410 et seq.

The charge in this matter was filed on October 29, 1987 by American Federation of Government Employees, Local 2486, AFL-CIO, (hereinafter called the Union and AFGE Local 2486), against Department of Health and Human Services, Food and Drug Administration, Baltimore District, (hereinafter called Respondent and FDA Baltimore District). Pursuant to this charge, on December 23, 1987, the General Counsel of the FLRA by the Regional Director for Region III issued a Complaint and Notice of Hearing alleging sections 7116(b)(1),

(5) and (8) of the Statute by failing and refusing to provide the Union and the names and addresses of employees in a unit represented by the Union. Respondent filed an Answer admitting all the factual allegations of the Complaint except that it denies that the requested data is "necessary for full and proper discussion, understanding and negotiations of subjects within the scope of collective bargaining."^{1/}

On January 13, 1988 the Regional Director for Region III issued "Regional Director's Order Referring Respondent's Motion For Summary Judgment and, In The Alternative, Motion In Limine, And Motion To Postpone, and General Counsel's Opposition to Respondent's Motion For Summary Judgment and, In The Alternative, Motion In Limine, And Motion To Postpone, to the Chief Administrative Law Judge." By Order dated January 21, 1988 Chief Administrative Law Judge John H. Fenton denied Respondent's Motion For Summary Judgment based on Farmers Home Administration Finance Office, St. Louis, Missouri,^{2/} because that Motion requested dismissal of the Complaint because the requested information was prohibited by law. Such a contention was rejected in the cited case. Respondent's alternative Motion in Limine requested a ruling whether documentary and testimonial evidence about the availability to the union of alternative means of communication with employees in the unit was relevant and material. Chief Judge Fenton ruled that pursuant to FmHA II, supra, that the availability of such alternative means of communication is irrelevant and immaterial to the Union's right to the names and addresses of employees.

On January 29, 1988 the FLRA Regional Director for Region III issued an Order referring Respondent's motion that the subject case be decided on the record to the Chief Administrative Law Judge.

^{1/} The Answer of AFGE Local 2486 states that paragraph 7 of the Complaint is in error because the letter denying the requested is dated October 8, 1987 not, as alleged, October 1, 1987.

^{2/} Farmers Home Administration Finance Office, St. Louis, Missouri, 23 FLRA 788 (1986), enforced in part and remanded sub nom. U.S. Department of Agriculture and Farmers Home Administration Finance Office, St. Louis, Missouri v. FLRA, No. 86-2579 (8th Cir. Jan. 15, 1988), petitions for rehearing filed (hereinafter referred to as FmHA II).

By Order dated February 2, 1988 Chief Administrative Law Judge Fenton ordered all parties to submit briefs and positions as to the facts and merits of this case, including legal arguments. This case was assigned to the undersigned for Decision.

Respondent and General Counsel of the FLRA filed briefs,^{3/} which have been fully considered.

Accordingly, based on the Complaint, Answer and supporting briefs I make the following:

Findings of Fact

1. At all times material herein, the Union is, and has been, a labor organization within the meaning of section 7103(a)(4) of the Statute.

2. At all times material herein, Respondent is, and has been, as agency within the meaning of section 7103(a)(3) of the Statute.

3. At all times material herein, Thomas L. Hooker has occupied the position of Director, Baltimore District, and is a supervisor and/or management official within the meaning of section 7103(a)(10) and/or (11), respectively, of the Statute and has been and is now an agent of Respondent acting upon its behalf at its Baltimore, Maryland location.

4. At all times material herein, the Union has been and continues to be the certified exclusive representative of all nonsupervisory Wage Board and General Schedule employees, including professional employees, employed at Respondent's Baltimore, Maryland location.

5. By letter dated September 29, 1987 to Respondent, the Union requested that Respondent furnish it with the names and home addresses of the employees within the Union's unit of recognition as described above.

6. By letter dated October 8, 1987 to the Union, Respondent, through its agent Thomas L. Hooker, refused to furnish the Union the data it requested as described above.

^{3/} In its covering letter General Counsel for the FLRA stated there was no objection to the case being decided on the record.

7. The names and home addresses requested is data which is normally maintained by Respondent in the regular course of business, is reasonably available and 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.

Discussion and Conclusions

The General Counsel of the FLRA, relying on the FLRA's decision in FmHA II, supra, contends Respondent violated sections 7116(a)(1), (5) and (8) of the Statute when it refused to supply the Union with the names and home addresses of all bargaining unit employees. Respondent essentially contends the requirements of section 7114(b)(4) of the Statute have not been met in that Respondent is prohibited by the Privacy Act, 5 U.S.C. § 552a, from releasing the information; and the data is not necessary for the Union to carry out its representational duties.

Section 7114(b)(4) of the Statute provides in relevant part:

"(b) 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; (and)

"(B) which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining . . ."

In FmHA II, supra, the FLRA held: (1) the disclosure of the names and addresses of bargaining unit employees to the exclusive representative was not prohibited by the Privacy Act; (2) an agency's possession of Official Personnel Files

wherein can be found employees' addresses satisfies the requirements of section 7114(b)(4)(A) and (B) of the Statute that such data to be normally maintained by the agency and reasonably available; and (3) such data was necessary under section 7114(b)(4)(B) for unions to meet their statutory obligation to represent the interests of all employees in the unit without discrimination as required by section 7114(a)(1) of the Statute, notwithstanding the existence of alternative means by which a union might communicate to unit employees. In subsequent decisions the FLRA followed FmHA II, supra, in deciding numerous cases which involved substantially the same issues. See U.S. Department of the Air Force, Scott Air Force Base, Illinois v. FLRA, No. 87-1143 (7th Cir. Jan. 27, 1988), affirming Department of the Air Force, Scott Air Force Base, Illinois, 24 FLRA 226 (1986); Department of Health and Human Services, Social Security Administration v. FLRA, 833 F.2d 1129 (4th Cir. 1987), petition for rehearing filed Jan. 8, 1988, affirming Department of Health and Human Services, Social Security Administration, 24 FLRA 543 (1986); Department of Health and Human Services, Social Security Administration Field Operations, New York Region, 24 FLRA 583 (1986); Department of Health and Human Services, Social Security Administration, 24 FLRA 600 (1986).

The arguments raised by Respondent herein are not significantly different from those considered by the FLRA in FmHA II, supra, and cases which followed thereafter, supra. In view of the FLRA's holdings in the above cases I conclude Respondent's defenses for its failure and refusal to provide the Union with the names and home addresses of unit employees as requested by the Union to be without merit. I further conclude Respondent was obligated under section 7114(b) of the Statute to furnish the Union with the names and addresses of unit employees and accordingly, I conclude Respondent's refusal to furnish such data violated section 7116(a)(1), (5) and (8) of the Statute.

Accordingly, I recommend the Authority issue the following Order:

ORDER

Pursuant to section 2423.29 of the Federal Labor Relations Authority's Rules and Regulations and section 7118 of the Statute, it is hereby ordered that Department of Health and Human Services, Food and Drug Administration, Baltimore District shall:

1. Cease and desist from:

(a) Refusing to furnish, upon request of the American Federation of Government Employees, Local 2486, AFL-CIO, the exclusive representative of certain of its employees, the names and home addresses of all employees in the bargaining unit it represents.

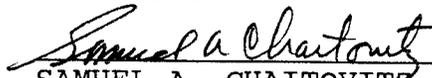
(b) In any like or related manner interfering with, restraining or coercing its employees in the exercise of rights assured by the Federal Service Labor-Management Relations Statute.

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

(a) Furnish the American Federation of Government Employees, Local 2486, AFL-CIO, with the names and home addresses of all employees in the bargaining unit it represents.

(b) Post at its facilities where bargaining unit employees represented by the American Federation of Government Employees, Local 2486, AFL-CIO are located, copies of the attached Notice on forms to be furnished by the Federal Labor Relations Authority. Upon receipt of such forms, they shall be signed by a responsible official and shall be posted and maintained for 60 consecutive days thereafter, in conspicuous places, including all bulletin boards and other places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that such Notices are not altered, defaced, or covered by any other material.

(c) Pursuant to section 2423.30 of the Authority's Rules and Regulations, notify the Regional Director, Region III, Federal Labor Relations Authority, 1111 - 18th Street, N.W., 7th Floor, P.O. Box 33758, Washington, D.C. 20033-0758 in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.



SAMUEL A. CHAITOVITZ
Administrative Law Judge

Dated: April 28, 1988
Washington, D.C.

NOTICE TO ALL EMPLOYEES

PURSUANT TO

A DECISION AND ORDER OF THE

FEDERAL LABOR RELATIONS AUTHORITY

AND IN ORDER TO EFFECTUATE THE POLICIES OF

CHAPTER 71 OF TITLE 5 OF THE

UNITED STATES CODE

FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS STATUTE

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT refuse to furnish, upon request of the American Federation of Government Employees, Local 2486, AFL-CIO, the exclusive representative of certain of our employees, the names and home addresses of all employees in the bargaining unit it represents.

WE WILL NOT in any like or related manner, interfere with, restrain, or coerce our employees in the exercise of their rights assured by the Federal Service Labor-Management Relations Statute.

WE WILL furnish the American Federation of Government Employees, Local 2486, AFL-CIO, with the names and home addresses of all employees in the bargaining unit it represents.

(Activity)

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

This Notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any 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 of the Federal Labor Relations Authority, Region III, whose address is: 1111 - 18th Street, N.W., 7th Floor, P.O. Box 33758, Washington, D.C. 20033-0758, and whose telephone number is: (212) 653-8500.