

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

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BUREAU OF INDIAN AFFAIRS, .
PHOENIX AREA OFFICE .
PHOENIX, ARIZONA .

Respondent .

and .

Case No. 8-CA-60560

NATIONAL FEDERATION OF .
FEDERAL EMPLOYEES .

Charging Party .

.....

Gerald J. Rachelson, Esquire
For the Respondent

Mr. John G. Combs
For the Charging Party

John R. Pannozzo, Esquire
Gerald M. Cole, Esquire
For the General Counsel, FLRA

Before: GARVIN LEE OLIVER
Administrative Law Judge

DECISION

Statement of the Case

This decision concerns an unfair labor practice complaint issued by the Regional Director, Region VIII, Federal Labor Relations Authority, Los Angeles, California against the Bureau of Indian Affairs, Phoenix Area Office, Phoenix, Arizona (Respondent), based on a charge filed by the National Federation of Federal Employees (Charging Party or Union). The complaint alleged, in substance, that

Respondent failed to comply with section 7114(b)(4) and violated section 7116(a)(1), (5), and (8) of the Federal Service Labor-Management Relations Statute (the Statute), by refusing to furnish the Union upon request with the names and home addresses of bargaining unit employees under the jurisdiction of Respondent's Phoenix Area Office.

Respondent's answer essentially admitted the jurisdictional allegations as to Respondent, the Union, and the charge, but denied any violation of the Statute and alleged that the Union waived its right to the information requested.

A hearing was held in Phoenix, Arizona. The Respondent, Charging Party, and the General Counsel were represented and afforded full opportunity to be heard, adduce relevant evidence, examine and cross-examine witnesses, and file post-hearing briefs. The Respondent and General Counsel filed helpful briefs. Respondent's motion to strike portions of the General Counsel's brief and to reopen the hearing is denied. Based exclusively on the evidence received at the hearing, including my observation of the witnesses and their demeanor, the pleadings, and arguments of the parties, I make the following findings of fact, conclusions of law, and recommendations.

Findings of Fact

The Bureau of Indian Affairs Council of Consolidated Locals, National Federation of Federal Employees, is the exclusive representative of an appropriate national consolidated unit of Bureau of Indian Affairs (BIA) employees including bargaining unit employees under the jurisdiction of the Phoenix Area Office.

On or about September 5, 1986, the Union's national representative, James Davis, requested Respondent to furnish the names and home addresses of bargaining unit employees within the jurisdiction of the Phoenix Area Office pursuant to section 7114(b)(4) of the Statute. There are approximately 1200 bargaining unit employees under the jurisdiction of the Phoenix Area Office. They serve at approximately 13 different locations.

At all times material herein, since on or about September 9, 1986, Respondent, through Ray G. Meadows, has refused, and continues to refuse, to provide the Union with the information it requested.

The names and home addresses of bargaining unit employees are located in the official personnel files in the Phoenix Area Office. It would take four individuals two and a half to three weeks to compile the list of names and home addresses at the Phoenix Area Office. The Phoenix Area Office does not make any effort to maintain current home addresses in the personnel files.^{1/} No more than approximately 75 percent of these addresses are correct at any particular time.

The PAY/PERS system also contains the home addresses of some employees. PAY/PERS is an acronym for the Office of Payroll and Personnel Systems of the Department of Interior located in Denver, Colorado. It is a computer system that generates payroll and personnel data for thousands of Federal employees, including all 15,000 BIA employees. Among the information maintained on each employee is a check mailing address which may be either a financial institution, the employee's home address, post office box, office address, or wherever else an employee may wish the check sent.

The Phoenix Area Office is comprised of urban and rural areas. Some of the employees live in remote areas 40 or 50 miles from the nearest trading post or village where they would receive postal delivery service. For this reason, the normal method of communication with employees is by means of the internal mail service whereby mail is shipped by the agency to work locations and distributed directly to the employees. Blue envelopes are used for confidential communications with employees and may be opened only by the addressee.

^{1/} William Davis, Union vice president for the Phoenix Area Office, testified that Respondent, on an annual basis, requires current addresses from all employees. He has received such requests from the Colorado River Agency, but had no specific knowledge that the Phoenix Area Office required the information. I credit the testimony of Ray G. Meadows, assistant personnel officer, Phoenix Area Office, that the Phoenix Area Office has no requirement that employees update home addresses. The two exceptions where a mailing address is specifically requested is on the application for employment and when the employee terminates his employment so as to have a forwarding address for final correspondence.

Under Article 6, Section 3 of the negotiated agreement the internal mail service of the Respondent, excluding franked mail, is available to the Union. Under Article 6, Section 1 each Local of the Union is to be furnished a list of bargaining unit employees at least quarterly.

The internal mail service has been used by the Union at some locations to distribute mail to its memberships. It has also been used by management and the Union to communicate with one another at some locations.

THE SETTLEMENT OF CASE NO. 8-CA-50114 ON
JUNE 13, 1985.

An unfair labor practice charge in Case No. 8-CA-50114, concerning the failure to provide the names and home addresses of employees in the Navajo Area of the Bureau of Indian Affairs was filed by Gwen E. (Beth) Leidy, who was formerly the Vice President of the BIA Council of Locals for the Navajo Area Office. A complaint was subsequently issued in Case No. 8-CA-50114, and settlement discussions concerning the case took place in Flagstaff, Arizona, on June 12-13, 1985. At the time settlement discussions began Respondent had on hand a computer generated checklist which had been compiled from the PAY/PERS System for the Navajo Area only. Thus, it did not cover the various locals listed under the jurisdiction of the Phoenix Area Office. Although the charge pertained to a denial of the Navajo Area Office to furnish a list of home addresses, present at the hearing in the Navajo case were Council President Robert Keener from Chemawa Indian School (Salem, Oregon), Council Vice-Presidents Bill Davis from the Colorado River Agency (Phoenix Area Office) and Beth Leidy from Shonto (Navajo Area Office) and Secretary-Treasurer Sally Halvorsen from Choctaw, Mississippi. Respondent was concerned about the cost and disruption of the work force in trying to come up with lists of home addresses from the Official Personnel Files. In the Navajo Area, they would have to search 4,000 official personnel folders for the manual compilation since BIA did not maintain lists of home addresses. Respondent's representatives felt that case provided the best case scenario in the Bureau to try the home addresses issue. This was based upon the Navajo Area Office consisting of the largest single grouping of employees in the consolidated unit and being the most remote geographical situation in the Bureau. In most cases, the employees on Indian reservations live in communities that are not on roads and have no home address. Consequently, the U.S. Postal Service does not

deliver mail to individual addresses in most places on the Navajo reservation. Employees receive mail at various places, such as the school, trading post, or at a post office in the nearest town. There is also a large amount of government housing at most of the remote locations. Respondent determined that the Navajo case was the best case to set the issue to rest once and for all as to whether the Bureau would have to provide home addresses of employees.

Despite Respondent's confidence in its position, on the day of the hearing, June 13, 1985, John Combs, on behalf of Respondent, and Robert Keener, on behalf of the Council, signed a memorandum of agreement in settlement of Case No. 8-CA-50114. Keener and Respondent's witnesses, Attorney Rachelson and Labor Relations-Employee Relations Officer John Combs, proffered their respective versions of the memorandum of agreement. The memorandum provided as follows:

In settlement of the ULP concerning names and addresses listing at the Navajo area, the parties agree to:

1. Provide the computer generated checklist of names and addresses of unit employees for pay check distribution (excluding financial institutions) as compiled by the PAY/PERS system for Navajo Area only.
2. Provide the existing listing of names and addresses is (sic) normally maintained by each location of bargaining unit employees in Navajo Area only.
3. Management will not be required to provide the Council or Area Vice-Presidents or any other union official computer generated listings as in number 1 above or any other non-existing list.
4. Not be limited in bargaining at the national level, over this or similar issues at the renegotiation of the Master Agreement.

The agreement was not limited in application to the Navajo Area only. The parties in paragraph 1 agreed to provide the previously prepared computer generated checklist

from the PAY/PERS system for the Navajo Area only which Respondent had brought to the hearing. This checklist contained the home addresses of many unit employees, however, the list was not complete since, as noted, some employees have their pay checks mailed directly to a financial institution. Furthermore, the parties in paragraph 2, also agreed to have Respondent provide whatever existing listing of employee addresses that was normally maintained by each facility in the Navajo Area only and not for anywhere else. The agreement to provide the existing listing for the Navajo Area only as set forth in paragraph 2, had nothing to do with the computer generated checklist compiled from the PAY/PERS system referenced in paragraph 1. Paragraphs 3 and 4 clearly extended beyond the Navajo area and had nationwide application. Paragraph 3 provided that management would not be required to provide the Union the computer generated checklists from the PAY/PERS system "or any other non-existing list." With respect to the phrase "any other non-existing list," as set forth in paragraph 3, Keener testified that this phrase meant that Respondent was not obligated to spend an inordinate amount of clerical time going through official personnel files to compile computer generated checklists nationwide, which at the time did not exist. Keener testified that since cost was a paramount concern for Respondent, it sought to preclude the BIA council from seeking similar computer generated checklists elsewhere. Therefore, according to Keener, the phrase "any other non-existing list," was a limitation placed on future computer generated check lists (paragraph 1) not on any other type of listings which were available (paragraph 2) or could be compiled through other methods, e.g. from official and/or unofficial personnel folders. According to Keener, it would be incorrect to say that the reference to non-existing list had any application beyond computer generated checklists.

I do not credit Keener's testimony that "any other non-existing list" referred only to computer generated lists. His testimony in this regard was confusing. The testimony of Combs and Rachelson that "any other non-existing list" meant that BIA would not have to compile and provide the Council a list of names and home addresses, a list the BIA doesn't ordinarily keep, is consistent with the plain language of the agreement that management would not be required to provide the Union "computer generated listings as in number 1 above or any other non-existing list."

Paragraph 4 provided that the Union could raise the issue of securing the names and addresses of employees or other means of communication with employees when the Master

Agreement was renegotiated. During negotiations of the Master Agreement the Union did not make any proposals concerning the home addresses of employees. The agreement has no expiration date.

Discussion, Conclusions, and Recommendations

The General Counsel contends that Respondent violated section 7116(a)(1), (5) and (8) of the Statute by refusing to provide the Union with the names and home addresses of bargaining unit employees under the jurisdiction of the Phoenix Area Office. The General Counsel asserts that the evidence demonstrated that the information was "reasonably available" and otherwise met the requirements of section 7114(b)(4) under Authority precedent. The General Counsel argues that the memorandum agreement in Case No. 8-CA-50114 (the Navajo case) did not constitute a clear and unmistakable waiver of the Union's right to ask for such information.

Respondent defends on the basis that the names and home addresses of bargaining unit employees are neither "normally maintained" nor "reasonably available and necessary." Respondent contends that it would be unduly burdensome to compile such a list and adequate alternative means exist for the Union to communicate with employees. Respondent also argues that the release of home addresses is prohibited by law as it is precluded by the Privacy Act and does not properly fall under exception (b)(3) of the Privacy Act, 5 U.S.C. § 552 (b)(3), as a "routine use." Further, that "routine use" does not apply to payroll records. The Respondent also contends that the memorandum of agreement signed in the Navajo case constitutes a waiver of the Union's right to ask for such a list.

Except for the significance of the memorandum of agreement, all of Respondent's other arguments against the disclosure of the information have been disposed of by Authority precedent. See United States Department of Health and Human Services, Social Security Administration v. FLRA, Nos. 87-3513(L), 87-3514, 87-3515 (4th Cir. Nov. 25, 1987), affirming Department of Health and Human Services, Social Security Administration, 24 FLRA 543 (1986); Department of the Air Force, Headquarters, Armament Division, AFSC, Eglin Air Force Base, Florida, 30 FLRA No. 99 (1988). Apart from the agreement issue, the Union's request otherwise meets all of the requirements established by section 7114(b)(4).

The resolution of the dispute in this matter involves differing and arguable interpretations of the memorandum of agreement. In cases such as this one, where a disputed memorandum of agreement affects whether requested information must be provided, the Authority has held that the aggrieved party's remedy is through the grievance and arbitration procedure available to the parties rather than through the unfair labor practice procedure. 22nd Combat Support Group (SAC), March Air Force Base, California, 30 FLRA 331 (1988).

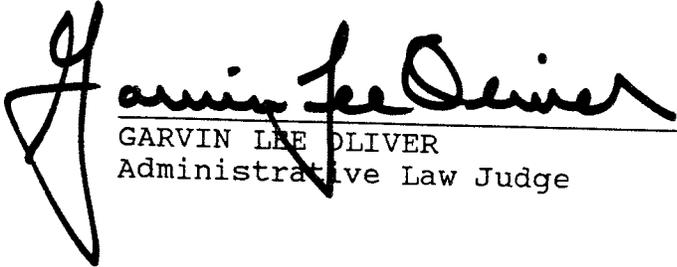
Assuming, however, that the case is properly the subject of an unfair labor practice proceeding, a preponderance of the evidence fails to establish that Respondent failed to comply with section 7114(b)(4) and violated section 7116(a)(1), (5) and (8) of the Statute, as alleged. Based on the language of the memorandum of agreement in the Navajo case, as found above, and the testimony of Respondent's witnesses, which I have credited, as to their understanding of the agreement, I conclude that, apart from the Navajo area, the Union clearly and unmistakably waived its right to have Respondent make such a compilation of the names and home addresses of bargaining unit employees as requested in this case either by developing a computer program or by having clerical personnel create a list by going through files. It is noted that the agreement was negotiated in the context of a dispute concerning section 7114(b)(4) and at a time when the Authority was actively considering the question of whether exclusive representatives had a right to the names and addresses of bargaining unit employees under section 7114(b)(4).^{2/} Cf. U.S. Library of Congress, 18 FLRA 224 (1984).

^{2/} A 1984 decision of an Administrative Law Judge, where no exceptions were filed, had been published on the issue. Internal Revenue Service, Memphis Service Center, Case No. 4-CA-30371 (1984), ALJ Decision Reports, No. 38 (July 5, 1984). Other unpublished decisions of Administrative Law Judges issued in 1983, 1984, and early 1985, and as to which exceptions were filed, were in conflict on the issue and were pending before the Authority. Defense Mapping Agency, Aerospace Center, St. Louis, Missouri, Case No. 7-CA-20482 (May 12, 1983), modified 19 FLRA 675 (1985); Farmers Home Administration Finance Office, St. Louis, Missouri, Case No. 7-CA-30560 (September 24, 1984), modified 19 FLRA 195 (1985); Philadelphia Naval Shipyard, Case No. 2-CA-40243 (September 24, 1984), modified 19 FLRA 899 (1985). The Authority issued its first decision reviewing one of these decisions in Farmers Home, 19 FLRA 195, on July 22, 1985, approximately six weeks after the agreement in this case.

Based upon the foregoing findings and conclusions, it is recommended that the Authority issue the following Order:

ORDER

The Complaint in Case No. 8-CA-60560 is dismissed.


GARVIN LEE OLIVER
Administrative Law Judge

Dated: February 8, 1988
Washington, D.C.