

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

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U.S. DEPARTMENT OF AGRICULTURE.
WASHINGTON, D.C.
and
FOREST SERVICE
WASHINGTON, D.C.
and
NATIONAL FORESTS IN FLORIDA
TALLAHASSEE, FLORIDA
Respondents
and
NATIONAL FEDERATION
OF FEDERAL EMPLOYEES
LOCAL 458, INDEPENDENT
Charging Party
.....

Case No. 4-CA-70653

Illene M. Harrison
For the Respondent
Kenneth D. Battle, Esq.
For the General Counsel
Before: WILLIAM NAIMARK
Administrative Law Judge

DECISION

Statement of the Case

This case arises under the Federal Service Labor-Management Relations Statute, 5 U.S.C. 7101 et seq. (herein called the Statute). Pursuant to a first amended charge filed by National Federation of Federal Employees, Local 458, Independent (herein called the Union), a Complaint and Notice of Hearing was issued on September 30, 1987 by the

Regional Director, Region IV, Federal Labor Relations Authority against U.S. Department of Agriculture, Washington, D.C. and Forest Service, Washington, D.C., and National Forests in Florida, Tallahassee, Florida (herein called Respondents).

The Complaint alleged, in substance, that Respondents violated section 7116(a)(1), (5) and (8) of the Statute by failing and refusing to furnish the Union, upon request, the names and home addresses of bargaining unit employees represented by the Union as required by section 7114(b)(4) of the Statute.

Respondent's Answer, dated October 21, 1987, was duly filed. As to the Complaint, Respondents admitted: (a) the jurisdictional allegations therein; (b) that on or about March 3, 1987 the Union, as the exclusive representative of an appropriate unit of employees at National Forests in Florida, Tallahassee, Florida (NFS), requested of such Respondent the names and home addresses of bargaining unit employees; (c) that on or about March 20, 1987 NFS denied the Union's request for the information; (d) that the names and home addresses so requested are normally maintained by Respondent in the regular course of business; (e) that such information is reasonably available; (f) that such information does not constitute guidance, advice, counsel or training provided for management officials or supervisors relating to collective bargaining.

Respondents' Answer denied that the requested information is necessary for full and proper discussion, understanding and negotiation of subjects within the scope of collective bargaining. It also denied the commission of any unfair labor practices in violation of section 7116(a)(1), (5) and (8) of the Statute.

Under date of November 23, 1987, General Counsel moved for summary judgment and submitted a memorandum in support thereof. By order dated November 23, 1987 the Regional Director transferred the motion to the Chief Administrative Law Judge pursuant to section 2423.22(b)(1) of the Rules and Regulations of the Federal Labor Relations Authority. The matter was duly assigned to the undersigned for disposition. On December 17, 1987 Respondents filed its Opposition to the Motion For Summary Judgment and its Cross-Motion For Summary Judgment and Dismissal of the Complaint.

Respondents take the position that section 7114(b) does not require that home addresses of bargaining unit members be furnished to the bargaining representative. It insists

that (a) names and home addresses are not "data" within the statutory provision; (b) no necessity 1/ exists for the information since alternative means exists for communication between the Union and the employees; (c) the release of such information is prohibited by the Privacy Act and the exception under 5 U.S.C. 552a(b)(3) therein does not apply; (d) the balancing test embodied in exemption 552(b)(6) of the Freedom of Information Act should be used only when an agency is responding to a request under such Act.

The same contentions, as made by Respondents herein, were raised by the agency and rejected by the Authority in Farmers Home Administration Finance Office, St. Louis, Missouri, 23 FLRA 788 (1986) (Farmers Home), enforced in part and remanded sub nom. U.S. Department of Agriculture and Farmers Home Administration Finance Office, St. Louis, Missouri v. FLRA, 836 F.2d 1139 (8th Cir. 1988). It was held that the release of the names and home addresses of bargaining unit employees to the exclusive representative is not prohibited by law, is necessary for unions to fulfill their duties under the Statute, and meets all other requirements established by section 7114(b)(4) of the Statute.2/

Accordingly, it is concluded that the refusal by Respondents to furnish the requested information, i.e., names and home addresses of bargaining unit employees at the National Forests in Florida, Tallahassee, Florida constituted a violation of section 7116(a)(1), (5) and (8) of the Statute. See United States Department of the Navy and Philadelphia Naval Shipyard v. FLRA, 840 F.2d 1131 (3d Cir. 1988) enforcing Philadelphia Naval Shipyard, 24 FLRA 37 (1986); U.S. Department of the Air Force, Scott Air Force Base, Illinois v. FLRA, 838 F.2d 229 (7th Cir. 1988), affirming Department of the Air Force, Scott Air Force Base, Illinois v. FLRA, 24 FLRA 226 (1986); Department of Health and Human Services, Social Security Administration v. FLRA, 833 F.2d 1129 (4th Cir. 1987), affirming Department of Health and Human Services, Social Security Administration, 24 FLRA 543 (1986); Department of Health and Human Services, Social

1/ Respondents also contend that the standard of "relevant and necessary" is stricter under the Privacy Act than under section 7114(b)(4) of the Statute.

2/ Both exceptions to the Privacy Act - (b)(2) and (b)(3) - were found to be applicable so as to authorize release of the information under the Privacy Act.

Security Administration and 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).

Based on the foregoing, the motion by General Counsel for summary judgment is granted, and the Cross-Motion by Respondents for Summary Judgment and Dismissal of Complaint is denied. It is recommended that the Authority issue the following:

ORDER

Pursuant to section 2423.29 of the Authority's Rules and Regulations and section 7118 of the Federal Service Labor-Management Relations Statute, the U.S. Department of Agriculture, Washington, D.C. and Forest Service, Washington, D.C., and National Forests in Florida, Tallahassee, Florida, shall:

1. Cease and desist from:

(a) Refusing to furnish, upon request of the National Federation of Federal Employees, Local 458, Independent, the exclusive representative of certain of its employees, the names with 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 the rights assured them by the Federal Service Labor-Management Relations Statute.

2. Take the following affirmative action in order to effectuate the purposes and policies of the Statute:

(a) Furnish the National Federation of Federal Employees, Local 458, Independent, the names with home addresses of all employees in the bargaining unit it represents.

(b) Post at its facilities where bargaining unit employees represented by the National Federation of Federal Employees, Local 458, Independent, 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 the Supervisor, or his designee, at the National Forests in Florida, Tallahassee, Florida, and shall be posted and maintained for 60 consecutive days thereafter

in conspicuous places, including all bulletin boards and 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.

(c) Pursuant to Section 2423.30 of the Authority's Rules and Regulations, notify the Regional Director, Region IV, Federal Labor Relations Authority, in writing, within 30 days from the date of this Order as to what steps have been taken to comply.



WILLIAM NAIMARK
Administrative Law Judge

Dated: June 30, 1988
Washington, D.C.

NOTICE TO ALL EMPLOYEES

AS ORDERED BY THE FEDERAL LABOR RELATIONS AUTHORITY
AND TO EFFECTUATE THE POLICIES OF THE
FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS STATUTE

WE NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT refuse to furnish, upon request of the National Federation of Federal Employees, Local 458, Independent, the exclusive representative of certain of our employees, the names with 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 employees in the exercise of their rights assured by the Federal Service Labor-Management Relations Statute.

WE WILL furnish the National Federation of Federal Employees, Local 458, Independent, the names with 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 IV, whose address is: 1371 Peachtree Street, N.E., Suite 736, Atlanta, GA 30367 and whose telephone number is: (404) 347-2324.