

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

.....
DEPARTMENT OF HEALTH AND
HUMAN SERVICES, SOCIAL
SECURITY ADMINISTRATION

Respondents

and

AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES,
LOCAL 3302, AFL-CIO

Charging Party
.....

Case No. 3-CA-80582

Richard A. Matthews
For the Respondent

Patricia E. Dratch, Esq.
For the General Counsel

Before: WILLIAM NAIMARK
Administrative Law Judge

DECISION

Statement of the Case

Pursuant to a Complaint and Notice of Hearing issued on December 30, 1988 by the Regional Director. Federal Labor Relations Authority, Region III, a hearing was held before the undersigned on April 5, 1989 at Washington, D.C.

This case arose under the Federal Service Labor-Management Relations Statute, 5 U.S.C. 7101 et seq. (herein called the Statute). It is based on a first amended charge filed by American Federation of Government Employees, Local 3302, AFL-CIO (herein called the Union) against Department of Health and Human Services, Social Security Administration (herein called Respondent).

The Complaint alleged, in substance, that on July 1, 1988 and July 25, 1988 the Union requested Respondent to furnish it with travel information re the processing of a July 1, 1988 grievance concerning the denial of official time. Further, that since July 1, 1988 Respondent failed and refused to furnish the information in compliance with Section 7114(b)(4) of the Statute. By such conduct, it was alleged, Respondent also refused to bargain in good faith with the Union--all in violation of Section 7116(a)(1), (5) and (8) of the Statute.

Respondent's Answer, dated January 24, 1989, denied that it failed to comply with Section 7114(b)(4) of the Statute and that it violated the Statute as alleged.

All parties were represented at the hearing. Each was afforded full opportunity to be heard, to adduce evidence, and to examine as well as cross-examine witnesses. Briefs were filed with the undersigned which have been duly considered.

Upon the entire record herein, from my observation of the witnesses and their demeanor, from all of the testimony and evidence adduced at the hearing, I make the following findings and conclusions:

Findings of Fact

1. At all times material herein the Union has been, and still is, the exclusive representative of Respondent's employees in a unit appropriate for collective bargaining.

2. At all times material herein Respondent and the American Federation of Government Employees has been, and still are, parties to a collective bargaining agreement which covers, inter alia, Respondent's employees at its headquarters in Woodlawn, Baltimore, Maryland.

3. Region 3 of the Social Security Administration, which is located in Philadelphia, Pa., has 5000 employees. At the Central Office in Baltimore, Maryland are 1400 employees. There are 12 Social Security Administration Field offices in the Baltimore area with approximately 200 employees.

4. Employed at the Towson, Maryland Field Office is Rita Pyle, who is a Claims Representative as well as president of the Union.

5. On May 24, 1988^{1/} Pyle submitted a travel voucher to District Manager William C. Small claiming reimbursement for expenses while she travelled on official time between February 2, and April 18.^{2/}

6. In a memorandum dated June 16 Small replied to Pyle's letter and enclosed a voucher for her signature for her travel expenses which she claimed. He stated that in order to be paid for travel expenses to Washington on February 2, March 21, and April 18 an appropriate travel order would have to be submitted; that Pyle had not submitted evidence granting action for those trips.

7. On July 1 the Union filed a grievance on behalf of Pyle with Regional Commissioner Larry Massanari, in Philadelphia. The grievance protested Small's denying reimbursement to Pyle for travel expenses on the three dates mentioned above. Further, the grievant stated therein that preparation of a travel order for her is Small's responsibility.

8. The Union also wrote a letter^{3/} dated July 1 to Massanari wherein, regarding the grievance, the following information was requested:

(a) All the travel authority actions, travel orders and travel vouchers for all employees in the SSA Headquarters, Woodlawn, Baltimore, Maryland for the period 1/1/87 through 6/30/88 who travelled to Washington, D.C.

(b) All the travel authority actions, travel orders and travel vouchers for all employees in the Baltimore, Maryland Field offices for the period 1/1/87 through 6/30/88. (For the complete area including Westminster, Bel Air, Elkton and Annapolis).

^{1/}Unless otherwise indicated, all dates hereinafter mentioned occur in 1988.

^{2/} Three of the claims involved separate travels from Baltimore to Washington on February 2, March 21 and April 18 respectively.

^{3/} The letter was written by Pyle as president of the Union.

9. Pyle testified that the data was sought to pursue the grievance and show disparate treatment between her and other employees in Baltimore who travel and are reimbursed therefor. The employee was, in fact, seeking reimbursement for mileage (about \$40) driven in her car during the trip to Washington: February 2, March 21 and April 18.

10. By letter dated July 8 Michael Gutkind, Respondent's Labor Relations Specialist, responded to Pyle's request for "travel vouchers." He stated that the necessity and relevance for the information is not apparent and a more specific explanation is needed re the purpose of the request. Further, he asked for an explanation re the relevance of data on travel vouchers for control office employees whom the Union did not represent. Gutkind also maintained that the request, as written, included management employees.

11. As Union president, Pyle sent a modified request for the data to Massanari on July 25. She renewed her original request but limited it to forms 1164 and 1012 for those employees who travelled by privately owned vehicles between Baltimore and the Washington, D.C. area from January 1, 1987 through June 30, 1988.

12. In a letter dated August 3 Gutkind wrote Pyle that the Union's explanation for the data requested was insufficient due to the enormity of the request and the fact that the Union sought travel vouchers for employees it did not represent.

13. Record facts show that Respondent does not generally pay travel expenses from Baltimore to Washington, D.C. It depends on the nature of the activity involved and the purpose of the travel. Further, that a travel order is a prerequisite to obtaining reimbursement for travel.

14. The files at the Central (Headquarters) office in Baltimore include 1400 folders covering about 1400 employees at that office. HHS possesses about 10,000 vouchers per year. Travel orders and vouchers involving SSA would be less in number, but the data is interfiled for the HHS agencies. The record reflects it would take about two weeks to service 2800 folders in the Central office which would cover two fiscal years. Reviewing 20,000 vouchers for the field employees which cover two fiscal years, would take a week or two.^{4/}

^{4/} Vouchers are sent to HHS offices in Philadelphia which handles vouchers for all its agencies, including SSA.

Travel files are readily accessible. They are maintained in the Travel Unit area in the Annex Building within a filed cabinet. Travel orders are also kept in the file folders.

15. The grievance has not yet proceeded to arbitration, and the Union has stated it is waiting for the requested information before making a decision as to whether to so proceed.

Conclusions

Under Section 7114(b) of the Statute an agency's obligation to negotiate in good faith includes a duty to furnish an exclusive representative, upon request, data not prohibited by law which (a) is normally maintained in the regular course of business; (b) is reasonably available and necessary for full discussion, understanding and negotiation of subjects within the scope of collective bargaining, and (c) does not constitute guidance, advice, counsel or training for managers or supervisors related to collective bargaining.

In resisting its duty to furnish the information requested by the Union herein, Respondent's principal contentions are: (1) that the data is not necessary to sustain the grievance filed by Rita Pyle. Since the Complaint states the material relates to the grievance which contests the denial of official time, the travel vouchers sought would not be necessary or relevant to the grievance; (2) that the information was not reasonably available since the request was enormous and imposed an reasonable burden upon the agency; (3) that the information sought involved employees not included in the unit represented by the Union.

(1) Respondent claims that the alleged violation is predicated on the refusal to supply data to process a grievance re the denial of official time. In view of the fact that the material sought is to show disparate treatment denying Pyle travel expenses, it is argued that such items (travel orders and vouchers) have no relevance to the allegation in the Complaint. Thus, it is asserted, there can be no violation of Section 7114(b).

While it is true that the Complaint does allege that the Union requested travel information related to the grievance contesting denial of official time, I do not view this allegation as warranting dismissal of the Complaint. Pyle's request for the data on July 1 and July 25 makes it clear

that the information was needed to process the filed grievance. A review of the grievance, which is dated July 1, reflects that Pyle was grieving that she was denied reimbursement for travel expenses in connection with her travel on 2/2/88, 3/21/88 and 4/18/88. It is so stated therein. Although the Complaint misstated the nature of the grievance, it seems clear that Respondent was not misled thereby. It was made clear to Respondent that the travel orders and vouchers were sought to establish that Pyle was denied travel expenses. Such was spelled out in the grievance itself as well as at the hearing. Respondent was thus made aware of the purpose for which the information was sought, and the issue as to its' obligation to provide the requested data was litigated. Accordingly, I reject the contention that, based on the allegation in the Complaint, the material was not necessary to pursue the grievance.

Decisional law in the public sector is well established that a Union is entitled to information under section 7114(b) to the extent necessary to carry out its representational functions and responsibilities. Internal Revenue Service et al., 32 FLRA 920. This requires an agency to furnish data, unless otherwise excused under the foregoing statutory provisions, which is necessary for a union to determine whether, in processing a grievance, an agency has engaged in discriminatory conduct. U.S. Equal Employment Opportunity Commission, Washington, D.C., 20 FLRA 357. It seems apparent that the travel information requested by the Union herein would bear on the issue as to whether Respondent did, as claimed by the grievant, deny her travel expenses from Washington, D.C. to Baltimore, Md., but did grant reimbursement therefor to other employees. As such, the data sought becomes necessary for the Union to pursue the grievance in connection therewith. Without some recognized justification for its non-compliance, Respondent would be obliged to provide the said data to the Union herein.

(2) It is insisted by Respondent that the Union's request herein is burdensome. Stress is laid upon the fact that 20,000 travel folders would have to be reviewed in order to select the information sought, and that it would take over three weeks to gather the material. Therefore, such an extreme burden justifies dismissal of the Complaint.

Under section 7114(b) data requested by a union must be reasonably available in order to compel an agency to provide it. Circumstances will obviously differ in each case as to

whether the data meets the requirement. In the case at hand I am persuaded that, while it may be somewhat onerous to gather the information, such difficulty does not justify Respondent's refusal to comply with the request. The 2800 folders for the SSA Headquarters' employees (Baltimore Central Office) are maintained in one room in a Travel Unit. The field management analyst for this office testified they are readily available. Although the record reflects it would take one to two weeks to gather the information for the field employees who travel from Baltimore to Washington, I would agree with General Counsel that a review of travel orders would aid in reducing the time required to furnish the data. There is no showing that the vouchers for the field employees are not centrally maintained in the Regional office, or that it would not be feasible to process them. Further, the Union modified its request by asking for just two forms, 1164 and 1012, for those employees using a privately owned vehicle. The Authority has, in the past, rejected a defense to furnishing information based on the fact that extracting information imposes a burden upon the agency. See Department of the Air Force et al., 28 FLRA 306; Air Force District of Washington, 26 FLRA 542; Department of the Air Force, Scott Air Force Base, 24 FLRA 226. In view of the foregoing, I conclude the requested information was reasonably available.

(3) Management resists any duty to furnish the data as an additional ground viz; that the request seeks information pertaining to non-bargaining unit employees as well as unit employees. The Authority was confronted with the same argument in Veterans Administrative Medical Center, Jackson, Mississippi 32 FLRA 133. The Union therein requested a list of the Center's employees to determine whether a grievance should be filed based on alleged discriminatory practices favoring hiring, promotion and other conditions of white employees. An arbitrator's award was excepted to by the agency on several grounds, including the fact that the request included data re nonbargaining unit employees. It was held that the information was necessary for the union to make its decision despite the inclusion of non-unit employees. Accordingly, I reject the Respondent's defense in this respect and similarly conclude that the data requested should be furnished even though some material pertains to nonbargaining employees.

In view of the foregoing, I conclude that Respondent's failure and refusal to furnish the requested data to the Union constitutes a violation of Section 7116(a)(1), (5) and (8) of the Statute.

It is recommended that 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 the Department of Health and Human Services, Social Security Administration, shall:

1. Cease and desist from:

(a) Failing and refusing to furnish the American Federation of Government Employees, Local 3302, AFL-CIO, the exclusive representation of an appropriate unit of its employees, copies of the data requested by the Union in its letters dated July 1, 1988 and July 25, 1988 addressed to Regional Commissioner Larry Massanari.

(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 3302, AFL-CIO, the exclusive representative of an appropriate unit of its employees, copies of the data requested by the Union in its letters dated July 1, 1988 and July 25, 1988 addressed to Regional Commissioner Larry Massanari.

(b) Post at its facilities within Region III where employees represented by American Federation of Government Employees, Local 3302, AFL-CIO are employed 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 Regional Commissioner 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 2423.10 of the Authority's Rules and Regulations, notify the Regional Director, Region III, Federal Labor Relations Authority, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

A handwritten signature in cursive script, reading "William Naimark".

WILLIAM NAIMARK
Administrative Law Judge

Dated: January 5, 1990
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 HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT fail and refuse to furnish the American Federation of Government Employees, Local 3302, AFL-CIO, the exclusive representative of an appropriate unit of our employees, copies of the data requested by the Union in its letters dated July 1, 1988 and July 25, 1988 addressed to Regional Commissioner Larry Massanari.

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 American Federation of Government Employees, Local 3302, AFL-CIO, the exclusive representative of an appropriate unit of our employees, copies of the data requested by the Union in its letters dated July 1, 1988 and July 25, 1988 addressed to Regional Commissioner Larry Massanari.

(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, and whose telephone number is: (202) 653-8500.