

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

.....
U.S. OFFICE OF PERSONNEL
MANAGEMENT

Respondent

and

AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES,
LOCAL 32, AFL-CIO

Charging Party
.....

Case No. 3-CA-80267

Steven E. Abow, Esq.
Stuart D. Rick, Esq.
For Respondent

Patricia Eanet Dratch, Esq.
For General Counsel of FLRA

Donald N. Bruce, Sr.
For the Charging Party

Before: SAMUEL A. CHAITOVITZ
Administrative Law Judge

DECISION

Statement of the Case

This is a proceeding under the Federal Service Labor-Management Relations Statute, as amended, 5 U.S.C. § 7101 et seq., (hereinafter called the Statute), and the Rules and Regulations of the Federal Labor Relations Authority (FLRA), 5 C.F.R. Chapter XIV, § 2410 et seq.

Pursuant to a charge filed and amended by American Federation of Government Employees, Local 32, AFL-CIO, herein called AFGE Local 32 and the Union, against the U.S. Office of Personnel Management, herein called OPM, the General Counsel of the FLRA, by the Regional Director of

Region III of the FLRA, issued a Complaint and Notice of Hearing alleging that OPM violated Sections 7116(a)(1), (5) and (8) of the Statute by refusing to furnish AFGE Local 32 the names and home addresses of all bargaining unit employees. OPM filed an Answer denying it had violated the Statute.

A hearing in this matter was conducted before the undersigned in Washington, D.C. AFGE Local 32, OPM and General Counsel of the FLRA were represented and afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence and to argue orally. Briefs were filed and have been fully considered.

Based upon the entire record in this matter, my observation of the witnesses and their demeanor, and my evaluation of the evidence I make the following:

Findings of Fact

At all times material herein and for about 17 years AFGE Local 32 has been recognized as the collective bargaining representative of an appropriate unit of about 1500 OPM employees. The unit employees are located in six locations, with a large majority divided between three downtown Washington locations^{1/} and a much smaller number divided between suburban offices.^{2/} OPM permits AFGE Local 32 to make desk drops of documents. There is some difficulty in identifying which desks are those of unit members, some offices are sometimes locked, some employees spend as much as 80 per cent of their time out of their offices, and some office locations have very few unit members located therein. AFGE Local 32 has bulletin boards where ever 20 or more unit employees are located. At no time previously has AFGE Local 32 alleged to OPM that OPM has interfered with the union's attempts to communicate in writing to unit members. During contract negotiations AFGE Local 32 has never requested names and home addresses of bargaining unit members.

On January 14, 1988, AFGE Local 32 President Donald N. Bruce wrote to OPM's Chief of Employee and Labor Relations

^{1/} The Main building, the Eighth Street Office and the Thomas Circle Office.

^{2/} The Alexandria Office, the Hyattsville Office and the Falls Church Office.

Branch Marjorie Marks, requesting the home addresses of all members and non-members within the OPM collective bargaining unit pursuant to Section 7114(b) of the Statute. No reason was set forth in the letter as to why this information was needed nor did the Union state that it was unable to obtain this information through alternative means. The Union did not state that without the names and home addresses its ability to communicate with employees would be impeded.

By letter dated January 29, 1988 OPM denied the request of AFGE Local 32. In denying the request OPM set forth the following reasons:

"Home addresses of bargaining unit employees do not constitute 'data which is necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining.'

"The home addresses of bargaining unit employees are not 'data' about those issues relating to conditions of employment that will form the basis of collective bargaining, that is, factual information used as a basis for discussion.

"Moreover, the statute requires that information that constitutes 'data' be 'necessary' for 'full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining.' An employee's home address is a piece of information that is extraneous to the workplace and does not constitute one of the conditions of employment that are 'personnel policies, practices, and matters...affecting working conditions...'

"Even if home addresses fell within the meaning of the term 'data' and theoretically could be 'necessary' for 'full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining,' within the meaning of the statute, effective alternative means are available to Local 32 to communicate with the bargaining unit members.

"In fact, communication with bargaining unit employees is a matter that is not covered by statute, but is subject to the collective bargaining process. OPM and Local 32 previously have negotiated in their collective bargaining agreement a provision (Article 2, Section 17) by which the agency provides the union with a quarterly listing of bargaining unit members. Thus, the union already has full identification of the unit members it is required to represent. Further, the collective bargaining agreement permits the union to communicate with employees by using bulletin boards provided by the agency and office space provided by the agency. The agency has also allowed the union to conduct union membership campaigns on agency premises. At no time during the collective bargaining process did the union propose that the agency turn over to it the home addresses of bargaining unit employees. Accordingly, Local 32 waived any opportunity it arguably had to negotiate about home addresses as a means of communication when it negotiated a collective bargaining agreement that fully covered the issue of communication with bargaining unit employees.

"Finally, the disclosure of home addresses is prohibited by the Privacy Act of 1974, at 5 U.S.C. 552a. Thus, disclosure of the information you are seeking would be 'prohibited by law' within the meaning of 5 U.S.C. 7114(b)(4), and in no circumstance could 5 U.S.C. 7114(b)(4) be used as a basis to compel disclosure of the home addresses of bargaining unit employees."

On February 2, 1988 AFGE Local 32 submitted a second written request for the home addresses for the members for the bargaining unit. The Union also took issue with OPM's refusal to supply the information and referred to FLRA cases.

By letter dated February 4, 1988 OPM denied the Union's request and reiterated the reasons set forth in OPM's January 29 letter.

Discussion and Conclusions of Law

The FLRA has held that a collective bargaining representative is entitled to the names and home addresses of employees in the unit it represents pursuant to Section 7114(b)(4) of the Statute and that the refusal by an agency to furnish such information constitutes a violation of Sections 7116(a)(1), (5) and (8) of the Statute. 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, 836 F.2d 1139 (8th Cir. 1988), hereinafter called Farmers Home.

FLRA has dealt with all the contentions raised by OPM herein^{3/} and has rejected them. See Veterans Administration Medical Center, Milwaukee, Wisconsin, 32 FLRA 686 (1988), herein called VA, and the cases cited therein.

Accordingly, in the subject case I conclude that AFGE Local 32 was entitled to the names and addresses of the employees in the unit it represents pursuant to Section 7114(b)(4) of the Statute and OPM's refusal to furnish the information constitutes a violation of Sections 7116(a)(1), (5) and (8) of the Statute. VA, supra.

OPM urges that Farmers Home, supra, and the cases that followed are inconsistent with National Treasury Employees Union and Department of the Treasury and U.S. Customs Service, 31 FLRA 181 (1988), hereinafter referred to as NTEU. In this case the FLRA held that a union proposal that the agency furnish the union with the names and addresses of unit employees was negotiable. The FLRA, in concluding this proposal negotiable specifically mentioned and relied upon Farmers Home, supra. Further, VA, supra, was decided subsequent to NTEU, supra. It is not inconsistent for a labor organization to wish to place a statutory right in a collective bargaining agreement so it will also have available the contract procedures to enforce this right. Further, for certain considerations a union might waive a statutory right. In light of all the foregoing I conclude NTEU, supra, is not inconsistent with the holding in Farmers Home, supra, and VA, supra, and the cases cited therein.

^{3/} These contentions are the same ones set forth in its letter of January 29, 1988 to AFGE Local 32.

Having concluded that pursuant to Section 7114(b)(4) of the Statute AFGE Local 32 was entitled to the names and home addresses of the unit employees and that OPM violated Sections 7116(a)(1), (5) and (8) of the Statute by refusing to furnish this information, 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 U.S. Office of Personnel Management, shall:

1. Cease and desist from:

(a) Refusing to furnish, upon request of the American Federation of Government Employees, Local 32, AFL-CIO, the exclusive representative of a bargaining unit of its employees, the names and home addresses of all employees in the bargaining unit.

(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 32, AFL-CIO, the exclusive representative of a bargaining unit of its employees, the names and home addresses of all employees in the bargaining unit.

(b) Post at its facilities where bargaining unit employees represented by the American Federation of Government Employees, Local 32, 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 3, Federal Labor Relations Authority, 1111 - 18th Street, N.W., Room 700, 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.

Issued, Washington, D.C., September 7, 1989.



SAMUEL A. CHAITOVITZ
Administrative Law Judge

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 refuse to furnish, upon request of the American Federation of Government Employees, Local 32, AFL-CIO, the exclusive representative of a bargaining unit 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 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 32, AFL-CIO, the exclusive representative of a bargaining unit of our employees, 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 3, whose address is: 1111 - 18th Street, N.W., Room 700, P.O. Box 33758, Washington, D.C. 20033-0758, and whose telephone number is: (202) 653-8500.