

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

.....
U.S. CUSTOMS SERVICE .
WASHINGTON, D.C. and .
U.S. CUSTOMS SERVICE, .
GREAT FALLS, MONTANA .
Respondents .
and . Case No. 7-CA-90506
NATIONAL TREASURY EMPLOYEES .
UNION, CHAPTER 231 .
Charging Party .
.....

James H. Morley, Esq.
For the Respondent

Hazel E. Hanley, Esq.
For the General Counsel

Before: ELI NASH, JR.
Administrative Law Judge

Decision

Statement of the Case

The unfair labor practice complaint alleges that Respondent violated section 7116(a)(1), (5), and (8) of the Federal Service Labor-Management Relations Statute (the Statute) by refusing to furnish the Charging Party, the exclusive representative of certain of Respondents' employees, the names and home addresses of bargaining unit employees represented by the Charging Party.

On or about November 14, 1990, Counsel for the General Counsel moved for summary judgment. The Regional Director transferred the motion to the Chief Administrative Law Judge, pursuant to section 2423.22(b)(1) of the Regulations, and it was assigned to the undersigned for disposition pursuant to section 2423.19(k) and section 2423.22(b)(3) of the Regulations.

Thereafter, on or about November 21, 1990, Counsel for Respondents' filed a motion for extension of time to respond to the motion for summary judgment. Having its request for extension of time granted, Respondents served its response to the General Counsel's motion for summary judgment and a cross motion for summary judgment on December 20, 1990. Respondent takes no issue with the assertion that no material facts are in dispute, but contends that the General Counsel's motion should be denied and its cross motion for summary judgment granted as a matter of law based on FLRA v. Dep't of the Treasury, Financial Management Service, 884 F.2d 1446 (D.C. Cir. 1989), cert. denied, 110 S. Ct. 863 (1990). In the cited case the Court of Appeals for the District of Columbia Circuit held that the Privacy Act prohibited disclosure of employees' names and home addresses to the employees' exclusive representatives in light of the Supreme Court's decision in United States Dep't of Justice v. Reporters Committee for Freedom of the Press, 109 S. Ct. 1468 (1989) (Reporters Committee).

Based upon the entire record, and since it appears that no genuine issues of material facts exist, making summary judgment appropriate as a matter of law, the undersigned makes the following findings of fact, conclusions of law, and recommendations.*/

Findings of Fact

The National Treasury Employees Union, Chapter 231, is the exclusive representative of certain of Respondents' employees. On or about April 27, 1989 the National Treasury Employees Union, Chapter 231, by Assistant Counsel Cheryl Solon, requested Don Myhra, U.S. Customs District Director, to furnish the names and home addresses of bargaining unit employees covered by it. Solon stated that the "information is necessary for communication with them on matters of contract interpretation and bargaining issues." Myhra

*/ The General Counsel also filed a motion and brief in opposition to Respondents' cross motion for summary judgment, dated December 31, 1990 which also has been considered in the recommendation herein. Since Respondents made no argument that the collective bargaining agreement operated as a waiver to Chapter 231's right to obtain the names and home addresses herein, it is unnecessary for the undersigned to rule on the General Counsel's assertion that no waiver existed.

responded by letter dated May 11, 1989 in which he said that upon advice of the Agency's Counsel it would "not release the names and home addresses of bargaining unit employees in Chapter 231 unless mandated to do so by a court decision." The names and home addresses of Chapter 231 bargaining unit employees are normally maintained by Respondents' payroll system in Indianapolis, Indiana in the regular course of business, are reasonably available, are necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining, and do not constitute guidance, advice, counsel, or training for management officials or supervisors relating to collective bargaining.

Conclusions

Counsel for the General Counsel's motion for summary judgment is granted and Counsel for Respondents' cross motion for summary judgment is denied. The controlling case law in this matter is found in U.S. Department of the Navy, Portsmouth Naval Shipyard, Portsmouth, New Hampshire, 37 FLRA 515 (1990) (Portsmouth Naval Shipyard), application for enforcement filed sub nom. FLRA v. U.S. Department of the Navy, Portsmouth Naval Shipyard, Portsmouth, New Hampshire, No. 90-1949 (1st Cir. Oct. 1, 1990). For reasons more fully set out in Portsmouth Naval Shipyard the release of bargaining unit employees' names and home addresses is "necessary" within the meaning of the Statute and is not "prohibited by law." Respondents as already noted, think that Dep't of the Treasury, supra, should be followed in this case. In Portsmouth Naval Shipyard the Authority clearly had the opportunity to apply the D.C. Circuit's approach in Dep't of the Treasury, but specifically declined to abide by its holding because, among other things, the D.C. Circuit, in the Authority's view, failed to harmonize the Federal Service Labor-Management Relations Statute, the Freedom of Information Act, and the Privacy Act. In distinguishing the "public interest" standard relied upon in Dep't of the Treasury, the Authority reiterated its belief "that the appropriate public interest to be applied in (names and address) cases should be the facilitation of the collective bargaining process in the Federal sector." That public interest, the Authority found, far outweighs the relatively minor privacy interest of employees in the release of their names and home addresses to their exclusive representatives.

The request for the names and home addresses of Chapter 231 bargaining unit employees herein satisfies the requirements of section 7114(b)(4) of the Statute. The

overall issue here was earlier considered by the Authority in 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, 836 F.2d 1139 (8th Cir. 1988). Based on that case Respondents most certainly are required to provide the names and home addresses requested by the National Treasury Employees Union, Chapter 231, and the failure and refusal to do so constitutes 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 (3rd 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, 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 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 findings and conclusions, it is recommended that the Authority issue the following:

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. Customs Service, Washington, D.C. and U.S. Customs Service, Great Falls Montana, shall:

1. Cease and desist from:

(a) Refusing to furnish, upon request of the National Treasury Employees Union, Chapter 231, 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 them by the Statute.

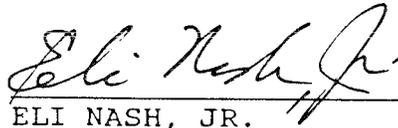
2. Take the following affirmative action in order to effectuate the purposes and policies of the Federal Service Labor-Management Relations Statute:

(a) Furnish the National Treasury Employees Union, Chapter 231, the exclusive representative of certain of its employees, the names and home addresses of all employees in the bargaining unit it represents.

(b) Post at its facilities 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 District Director 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 VII, Federal Labor Relations Authority, Denver, Colorado, 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., January 31, 1991.



ELI NASH, JR.
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 National Treasury Employees Union, Chapter 231 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 employees in the exercise of the rights assured them by the Federal Service Labor-Management Relations Statute.

WE WILL furnish the National Treasury Employees Union, Chapter 231, the exclusive representative of certain of our employees, 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 VII , whose address is: 1244 Speer Boulevard, Suite 100, Denver, Colorado 80204, and whose telephone number is: (303) 844-5224.