

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

.....
DEPARTMENT OF VETERANS AFFAIRS.
MEDICAL CENTER
WEST HAVEN, CONNECTICUT

Respondent

and

Case No. 1-CA-10074

AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES,
AFL-CIO, LOCAL 1674

Charging Party
.....

Robert S. Goshdigian
For Respondent

Richard D. Zaiger, Esq.
For General Counsel of the FLRA

Before: SAMUEL A. CHAITOVITZ
Administrative Law Judge

DECISION

Statement of the Case

The unfair labor practice complaint in this case alleges that Department of Veterans Affairs, Medical Center, West Haven, Connecticut (VA West Haven) violated section 7116(a)(1), (5), and (8) of the Federal Service Labor-Management Statute, 5 U.S.C. § 7101 et seq. (Statute) by refusing to furnish American Federation of Government Employees, AFL-CIO, Local 1674 (AFGE Local 1674), the exclusive representative of certain of VA West Haven's employees, the names and addresses of bargaining unit employees. VA West Haven filed an answer denying it had violated the Statute.

On or about March 6, 1991, General Counsel of the FLRA filed a Motion for Summary Judgment which was transferred by

the Boston Regional Director of Federal labor Relations Authority (FLRA) to the Chief Administrative Law Judge, pursuant to section 2423.22(b)(1) of the FLRA's Rules and Regulations, 5 C.F.R. § 2423.1 et seq.

On March 12, 1991, the Chief Administrative Law Judge issued an Order granting all parties hereto until March 27, 1991 to file additional responses.

VA West Haven timely filed an Opposition to Motion for Summary Judgment. VA West Haven did not take issue with the material facts, except to raise an issue of alternative means of communications, and requested that the motion be denied as a matter of law based upon FLRA v. Department of the Treasury, Financial Management Service, 884 F.2d 1446 (D.C. Cir. 1989), cert. denied 110 S. Ct. 863 (1990) (Dep't of the Treasury) and United States Department of Justice v. Reporters Committee for Freedom of the Press, 109 S. Ct. 1468 (1989) (Reporters Committee).

This case was assigned to the undersigned for disposition pursuant to section 2423.19(k) and section 2423.22(b)(3) of the FLRA's Rules and Regulations.

Based upon the entire record herein, and it appearing that there are no genuine issues of material fact and that the General Counsel of the FLRA is entitled to summary judgment as a matter of law. I make the following findings of fact, conclusions of law, and recommended order.

Findings of Fact

American Federation of Government Employees, AFL-CIO (AFGE) is the exclusive collective bargaining representative of an appropriate nationwide unit of employees including those employed at VA West Haven. AFGE Local 1674 is an agent of AFGE representing unit employees in VA West Haven.

On July 25, 1990, AFGE Local 1674, requested the names and home addresses of employees in the bargaining unit employed at VA West Haven. It is undisputed that the requested names and addresses are reasonably available and do not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining.

On October 31, 1990, VA West Haven, by Memorandum denied the request for the names and addresses and since October 31, 1990, VA West Haven has refused to supply AFGE Local 1674 with the requested information.

In its answer VA West Haven states that AFGE Local 1674 has adequate alternate means available to contact its members and disseminate information by use of employee bulletin boards, use of the internal mail system and access to the mailman computer system.

Discussion and Conclusions of Law

The decision in this case is controlled by 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 the reasons fully set forth in Portsmouth Naval Shipyard, supra, the release of the names and home addresses of bargaining unit employees is "necessary" within the meaning of the Statute and is not "prohibited by law". In Portsmouth Naval Shipyard, supra, the FLRA rejected the reasoning of the D.C. Circuit in Dep't of the Treasury, supra, because the D.C. Circuit did not harmonize the Statute, the Freedom of Information Act, and the Privacy Act.

VA West Haven, in addition to contending that the FLRA erred in Portsmouth Naval Shipyard, supra, argues that the union may not compel release of the home addresses unless there are no adequate alternative means of communication, and since the union has use of the bulletin boards, use of the internal mail system and access to the mailman computer system there are such alternate means and that there is an issue of material fact. This argument is rejected. The General Counsel of the FLRA does not dispute the fact that these three methods of communication are available to the union. The FLRA, in Portsmouth Naval Shipyard, supra, discusses the relationship of a union and the employees it represents and the special effectiveness of communication between the union and such employees when the union can communicate with the employees at their homes, "away from the workplace and potential surveillance by management." Id. at 527-528. In light of the uniqueness of the communication permitted by having the home addresses of the employees in the unit, as recognized by the FLRA, there are no "adequate alternate means of communication" in the subject case. The three methods of communication VA West Haven contends are adequate alternate means of communication, do not meet the FLRA's standards for the special effectiveness permitted by communication with the employees in their homes.

In the subject case no hearing is necessary because there is no dispute as to any material facts. Further I conclude, in light of the foregoing, that there are no adequate alternate means of communication available to AFGE Local 1674 at VA West Haven.

The names and home addresses of the unit Employees at VA West Haven were necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of bargaining. Portsmouth Naval Shipyard, supra.

Based upon the reasoning in Portsmouth Naval Shipyard, supra, I conclude that the request for the names and home addresses of unit employees satisfies the requirements of section 7114(b)(4) of the Statute. I conclude further that VA West Haven was required to provide the data requested by AFGE Local 1674 and the refusal to provide this data violated section 7116(a)(1), (5) and (8) of the Statute.

Based on the foregoing findings and conclusions, the Motion for Summary Judgment is hereby granted and 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 Veterans Affairs, Medical Center, West Haven, Connecticut shall:

1. Cease and desist from:

(a) Refusing to furnish, upon request of the American Federation of Government Employees, Local 1674, 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 American Federation of Government Employees, Local 1674, 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 Medical Center 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 Boston Regional Director, Federal Labor Relations Authority, Boston, Massachusetts, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

Issued, Washington, DC, April 5, 1991.


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 1674, 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 American Federation of Government Employees, Local 1674, 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, Boston Region whose address is: 10 Causeway Street, Room 1017A, Boston, MA 02222-1046, and whose telephone number is: (212) 264-8038