

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

.
DEPARTMENT OF VETERANS .
AFFAIRS MEDICAL AND REGIONAL .
OFFICE CENTER .
FARGO, NORTH DAKOTA .
Respondent .
and .
NATIONAL FEDERATION OF .
FEDERAL EMPLOYEES, LOCAL 225 .
Charging Party .
.

Case No. 7-CA-10570

Branson N. Moore, Esquire
For the Respondent

Julia D. Hurst, Esquire
For the General Counsel

Before: JOHN H. FENTON
Chief Administrative Law Judge

DECISION

Statement of the Case

This case arises under the Federal Service Labor-Management Relations Statute, 5 U.S.C. section 7101 et seq. (herein called the Statute). It is based on a charge filed on May 8, 1991 by the National Federation of Federal Employees, Local 225 (herein called the Union) against the Department of Veterans Affairs Medical and Regional Office Center, Fargo, North Dakota (herein called the Respondent). Pursuant thereto a Complaint and Notice of Hearing was issued on May 27, 1992 by the Regional Director, Federal Labor Relations Authority, Denver, Colorado Region.

The Complaint alleged, in substance, that Respondent violated section 7116(a)(1), (5) and (8) of the Statute by failing and refusing to provide the Union, upon request, with the names and homes addresses of bargaining unit employees

represented by the Union as required by section 7114(b)(4) of the Statute.

Respondent's Answer, which was duly served on June 19, 1992, admitted as to the Complaint: (a) the jurisdictional allegations contained therein; (b) that on or about December 3, 1990, the Union requested Respondent to furnish it with the names and home addresses of bargaining unit employees; (c) that on January 7, 1991, and since that date, Respondent refused to furnish the requested information to the Union; that such information does not constitute guidance, advice, counsel or training provided for management officials or supervisors relating to collective bargaining.

The said Answer denied that the information requested is necessary for full and proper discussion, understanding and negotiation of subjects within the scope of collective bargaining. It averred that there are alternative methods of contacting unit employees. It also denied that said information is not prohibited from disclosure by law.

Under date of August 25, 1992 the General Counsel submitted a Motion For Summary Judgement.

By order dated August 25, 1992 the Regional Director referred the Motion to the Chief Administrative Law Judge pursuant to section 2423.22(b)(1) of the Rules and Regulations.

Respondent insists that the disclosure of names and home addresses is prohibited under the Privacy Act, 5 U.S.C. 552(b) as an unwarranted invasion of privacy. In support thereof, Respondent cites Department of Justice v. Reporters Committee for Freedom of the Press, 489 U.S. 749 (1989); FLRA v. Department of Treasury, 884 F.2d 1446 (D.C. Cir. 1989), cert. denied, 110 S. Ct. 863 and 864 (1990).

The issue involved herein was the subject of considerable detail 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 the Farmers Home Administration Finance Office, St. Louis, Missouri v. FLRA, 836 F.2d 1139 (8th Cir. 1988). The Authority held therein that the names and home addresses must be furnished and that their release is not prohibited by law. It also concluded such data is necessary for unions to fulfill their representational duties under the Statute. The decision analyzed the exceptions to the Privacy Act's bar to disclosure of personal information pertinent to

releasing employees' names and home addresses; exception (b)(2) concerning the Freedom of Information Act and exception (b)(3) relating to "routine use" of information. The Authority found both exceptions applied so as to authorize the release of the data under the Privacy Act.

Despite the decision by the D.C. Circuit in the Department of the Treasury, supra, the Authority has stated it will continue "to look to our earlier decision in Farmers Home Administration for controlling principles in this area." See U.S. Department of the Navy, Portsmouth Naval Shipyard, Portsmouth, New Hampshire, 37 FLRA 515. In the latter decision the Authority explained in detail why it refused to be bound by, or to find applicable, the Circuit Court's ruling in the Department of the Treasury case.

It is also urged by Respondent that the disclosure is not necessary since alternative means of communication are available. However, in Portsmouth Naval Shipyard, supra, the Authority concluded that whether disclosure is relevant and necessary to a union's function will not depend upon whether alternative means of communication are available.

Respondent also lays stress on the assertion that it makes no attempt to keep accurate or current addresses for its employees; that it cannot represent such addresses to be current or accurate. This factor, even if established, does not relieve the employer from its obligation to provide the data within its possession. See U.S. Department of the Interior, U.S. Bureau of Mines, Washington, D.C., 37 FLRA 799, 801 (1990).

Respondent does not specifically deny that the requested data is normally maintained by Respondent in the regular course of business, and that it is reasonably available. However, it asserts in its Answer that such information may be contained in the official personnel folder; that it may be inaccurate since it is not updated unless an employee furnishes the information to the personnel office. Despite those assertions, Respondent is still obliged to provide whatever information in this regard which is within its possession or available. The fact that the data is not current or updated does not relieve Respondent of its duty to turn over the names and addresses on hand. See U.S. Department of the Interior, U.S. Bureau of Mines, Washington, D.C., 37 FLRA 799, 801 (1990).

In contending that the information requested is not necessary in regard to collective bargaining, Respondent

avers that there are other alternative means of communication available to the Union. Reference is made to bulletin boards utilized by the bargaining representative, as well as an internal mail system to disseminate information to civil employees. In Portsmouth Naval Shipyard, supra, the Authority concluded that whether disclosure is relevant and necessary to a union's function will not depend upon whether alternative means are available for communication. Thus, this defense is rejected.

Based on the foregoing, and the holdings of the Authority as set forth above, I conclude that Respondent's refusal and failure to provide the Union with the names and home addresses of unit employees violated section 7116(a)(1), (5) and (8) of the Statute. See also 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, the General Counsel's Motion For Summary Judgment is granted. 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 and Regional Office Center, Fargo, North Dakota, shall:

1. Cease and desist from:

(a) Refusing to furnish, upon request of the National Federation of Federal Employees, Local 225, the exclusive representative of the bargaining unit employee, the names and home addresses of such employees.

(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.

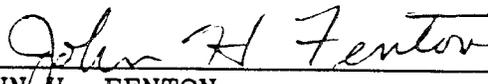
2. Take the following affirmative action in order to effectuate the purposes and policies of the Federal Service Labor-Management Relations Statute:

(a) Furnish the National Federation of Federal Employees, Local 225, the exclusive representative of the bargaining unit employees, the names and home addresses of such employees.

(b) Post at its facilities where bargaining unit employees represented by the National Federation of Federal Employees, Local 225 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 Director, Department of Veterans Affairs, Medical and Regional Office Center, Fargo, North Dakota, 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 of the Denver Regional Office, Federal Labor Relations Authority, 1244 Speer Boulevard, Suite 100, Denver CO 80204 in writing within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

Issued, Washington, DC, September 22, 1992



JOHN H. FENTON
Chief 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 Federation of Federal Employees, Local 225, the exclusive representative of the bargaining unit employees, the names and home addresses of such employees.

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 225, the exclusive representative of the bargaining unit employees, the names and home addresses of such employees.

(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, Denver Regional Office, whose address is: 1244 Speer Boulevard, Suite 100, Denver, CO 94103, and whose telephone number is: (303) 844-5224.