

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

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UNITED STATES DEPARTMENT .
JUSTICE, IMMIGRATION AND .
NATURALIZATION SERVICE, .
WESTERN REGIONAL OFFICE, .
SAN PEDRO, CALIFORNIA .
Respondent .
and . Case No. 8-CA-70395
NATIONAL BORDER PATROL .
COUNCIL, AMERICAN FEDERATION .
OF GOVERNMENT EMPLOYEES, .
LOCAL 1613, AFL-CIO .
Charging Party .
.

Louise Fillmann
For the Respondent

Jonathan S. Levine, Esq.
For the General Counsel

Before: WILLIAM NAIMARK
Administrative Law Judge

DECISION

Statement of the Case

This case arises under the Federal Service Labor-Management Relations Statute, 5 U.S.C. 7101 et seq. (herein called the Statute). Pursuant to a first amended charge filed on May 29, 1987 by the National Border Patrol Council; American Federation of Government, Local 1613, AFL-CIO (herein called the Union), a Complaint and Notice of Hearing was issued on June 9, 1987 by the Regional Director, Region VIII, Federal Labor Relations Authority against United States Immigration and Naturalization Service, Western Regional Office, San Pedro, California (herein called the Respondent).

The Complaint alleged, in substance, that Respondent violated Section 7116(a)(1), (5) and (8) of the Statute by

failing and refusing to furnish the Union, upon request, the names and home addresses of the bargaining unit employees represented by the Union as required by Section 7114(b)(4) of the Statute.

Respondent's served its Answer herein on or about July 9, 1987. As to the Complaint, it admitted: (a) the jurisdictional allegations therein; (b) that on or about April 7, 1987 the Union, as the exclusive representative of an appropriate unit of Respondent's employees, requested the names and home addresses of bargaining unit employees; (c) that on or about April 10, 1987 an agent of Respondent denied the Union's request for the information; (d) that the names and home addresses so requested are normally maintained by Respondent in the regular course of business; (e) that such information is reasonably available, and (f) that such information does not constitute guidance, advice, counsel or training provided for management officials or supervisors, relating to collective bargaining. Such matters are therefore found to be established.

Respondent's Answer denied that the information requested is necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining. Further, it denied the commission of any unfair labor practices in violation of Section 7116(a)(1), (5) and (8) of the Statute.

Under date of August 12, 1987, General Counsel moved for summary judgment and submitted a brief in support thereof. By Order dated August 12, 1987 the Regional Director transferred the Motion to the Chief Administrative Law Judge pursuant to Section 2423.22(b)(1) of the Rules and Regulations. The matter was duly assigned to the undersigned for disposition.

Under date of September 10, 1987, Respondent filed its opposition to the Motion and moved for summary judgment in its favor.

Respondent takes the position that it is not obliged under the Privacy Act, 5 U.S.C. 552a to furnish the names and home addresses of unit employees to the Union. It insists that (a) the information, which it would otherwise be required to furnish under the Freedom of Information Act (FOIA) 5 U.S.C. 552, is protected from disclosure under the exceptions set forth in 5 U.S.C. 552(b)(6); (b) home addresses do not fall within the exception 552(b)(3) of the Privacy Act, 5 U.S.C. 552(b)(3) as "routine use" of

information to be disclosed; (c) disclosure is not necessary under 7114(b)(4) of the Statute.

The facts herein, as well as the contentions raised by Respondent, are substantially the same as were present in Farmers Home Administration Finance Office, St. Louis, Missouri, 23 FLRA 788 (1986), affirmed in U.S. Department of Agriculture, Farmers Home Finance Administration, St. Louis, Missouri v. FLRA, Nos. 86-2579, 87-1024 (8th Cir. Jan. 15, 1988). The Authority has held, with affirmance by the Second and Eighth Circuit Courts, that the release of names and home addresses of bargaining unit employees to the exclusive representative of those employees is not prohibited by law, is necessary for unions to fulfill their duties under the Statute, and meets all of the other requirements established by Section 7114(b)(4). Further, it determined that the release of the information is required without regard to whether alternative means of communication are available. It therefore rejected in Farmers Home and later cases the argument that the release of the information sought by the Union herein is prohibited by law and is not necessary. See United States Department of Health and Human Services, Social Security Administration v. FLRA, Nos. 87-3513(L), 87-3514, 87-3515 (4th Cir. Nov. 25, 1987), affirming Department of Health and Human Services, Social Security Administration, 24 FLRA 543 (1986); United States Department of the Air Force, Scott Air Force Base, Illinois, Nos. 87-1143 and 87-1272 (7th Cir. January 27, 1988), affirming Department of the Air Force, Scott Air Force Base, Illinois, 24 FLRA 226; 22nd Combat Support Group (SAC), March Air Force Base, California, 30 FLRA No. 72 (1987); Department of Health and Human Services, Social Security Administration and Social Security Administration Field Operations, New York Region, 24 FLRA 583 (1986).

Based on the foregoing, it is concluded that Respondent's refusal and failure to furnish the Union herein with the names and home addresses of bargaining unit employees was violative of Section 7116(a)(1), (5) and (8) of the Statute.

Accordingly, the motion by General Counsel for summary judgment is granted, and the cross motion by Respondent for summary judgment is hereby denied. It is recommended that the Authority issue the following:

ORDER

Pursuant to Section 2423.29 of the Authority's Rules and Regulations and Section 7118 of the Federal Service Labor-

Management Relations Statute, the United States Immigration and Naturalization Service, Western Regional Office, San Pedro, California shall:

1. Cease and desist from:

(a) Refusing to furnish, upon request of the National Border Patrol Council, American Federation of Government, Local 1613, AFL-CIO, 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 the rights assured them by the Statute.

2. Take the following affirmative action in order to effectuate the purposes and policies of the Statute:

(a) Furnish the National Border Patrol Council, American Federation of Government, Local 1613, AFL-CIO, the names and home addresses of all employees in the bargaining unit it represents.

(b) Post at its facilities where bargaining unit employees represented by the National Border Patrol Council, American Federation of Government, Local 1613, 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 the Commanding Officer of the United States Immigration and Naturalization Service, Western Regional Office, San Pedro, California, and shall be posted and maintained for 60 consecutive days thereafter in conspicuous places, including all bulletin boards and places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure 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 IV, Federal Labor Relations Authority, in writing, within 30 days from the date of this Order as to what steps have been taken to comply.


WILLIAM NAIMARK
Administrative Law Judge

Dated: April 18, 1988
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 NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT refuse to furnish, upon request of the National Border Patrol Council, American Federation of Government, Local 1613, AFL-CIO, 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 their rights assured by the Federal Service Labor-Management Relations Statute.

WE WILL furnish the National Border Patrol Council, American Federation of Government, Local 1613, AFL-CIO, 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 VIII, whose address is: 350 S. Figueroa Street, Room 370, Los Angeles, California 90071, and whose telephone number is: (213) 894-3805.