

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

.....
UNITED STATES DEPARTMENT OF
AGRICULTURE, WASHINGTON, D.C.

and

UNITED STATES DEPARTMENT OF
AGRICULTURE, FOOD SAFETY AND
INSPECTION SERVICE,
WASHINGTON, D.C.

and

UNITED STATES DEPARTMENT OF
AGRICULTURE, FOOD SAFETY AND
INSPECTION SERVICE, MEAT AND
POULTRY INSPECTION PROGRAM,
SOUTHWEST REGION, DALLAS,
TEXAS

Respondents

and

Case No. 6-CA-70729

AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES,
AFL-CIO, SOUTHWEST COUNCIL
OF FOOD INSPECTION LOCALS,
C-17

Charging Party

.....
James W. Mast, Esquire
For the General Counsel

Illene M. Harrison, Esquire
For the Respondent

Before: BURTON S. STERNBURG
Administrative Law Judge

DECISION

Statement of the Case

This is a proceeding under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the U.S. Code, 5 U.S.C. Section 7101, et seq. and the Rules and Regulations issued thereunder.

Pursuant to an amended charge first filed on September 17, 1987, by the American Federation of Government Employees, AFL-CIO, Southwest Council of Food Inspection Locals, C-17, (hereinafter called the Union), a Complaint and Notice of Hearing was issued on November 25, 1987, by the Regional Director for Region VI, Federal Labor Relations Authority, Dallas, Texas. The Complaint alleges that the United States Department of Agriculture, Washington, D.C., (hereinafter called Respondent Agency); United States Department of Agriculture, Food Safety and Inspection Service, Washington, D.C. (hereinafter called Respondent Service); and the United States Department of Agriculture, Food Safety and Inspection Service, Meat and Poultry Inspection Program, Southwest Region, Dallas, Texas, (hereinafter called the Respondent Activity), and collectively called Respondents, violated Sections 7116(a)(1), (5) and (8) of the Federal Service Labor-Management Relations Statute, (hereinafter called the Statute), by failing and refusing to furnish to the Union the names and home addresses of bargaining unit members employed by Respondent by Respondent Activity.1/

On December 18, 1987, the Respondents filed an Answer denying the commission of any unfair labor practices but admitting all but one of the factual allegations of the Complaint.2/

On January 22, 1988, Counsel for the General Counsel filed with the Regional Director for Region VI a Motion For Summary Judgment. On the same date, the Regional Director for Region VI, pursuant to Section 2423.22(b)(1) of the

1/ Specifically Respondent Activity is charged with refusing to furnish the Union the requested information upon instructions from Respondent Agency and Respondent Service.

2/ Respondents denied that the requested information is necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining, or necessary and relevant to the pursuit of the Union's representational responsibilities.

Federal Labor Relations Authority's Rules and Regulations, transferred the General Counsel's Motion for Summary Judgment to the Chief Administrative Law Judge for decision. The matter was subsequently assigned to the undersigned Administrative Law Judge for decision on the Motion for Summary Judgment. Thereafter, Counsel for the General Counsel filed a "Memorandum In Support Of Motion For Summary Judgment" and the Respondents filed an "Opposition To General Counsel's Motion For Summary Judgment And Respondents' Cross-Motion For Summary Judgment And Dismissal Of General Counsel's Complaint."

Having read the Complaint and Respondent's Answer thereto, as well as the respective briefs of the parties in support of their respective positions on the General Counsel's Motion For Summary Judgment, I am convinced, based primarily upon the Federal Labor Relations Authority's decision in Farmers Home Administration Finance Office, St. Louis, Missouri, 23 FLRA No. 101, enf. in part and remanded sub non, U.S. Department of Agriculture and Farmers Home Administration Finance Office, St. Louis, Missouri v. FLRA No. 86-2579 (8th Cir. 1/15/88) petitions for rehearing filed, that a hearing in the instant matter is not necessary since there is no material fact in dispute.

Accordingly, upon the basis of the above described record, and after consideration of the parties briefs, I make the following findings of fact, conclusions and recommendations.

1(a) At all times material herein, Respondent Agency is, and has been, an agency within the meaning of 5 USC 7103(a)(3).

(b) At all times material herein, Respondent Service is, and has been, a primary subdivision of Respondent Agency within the meaning of section 2421.5 of the Authority's Rules and Regulations, and, therefore, is, and has been, an agency within the meaning of 5 USC 7103(a)(3).

(c) At all times material herein, Respondent Activity has been an activity of Respondent Agency and Respondent Service within the meaning of section 2421.4 of the Authority's Rules and Regulations, and, therefore, is, and has been, an agency within the meaning of 5 USC 7103(a)(3).

2(a) At all times material herein, the American Federation of Government Employees, AFL-CIO, herein AFGE;

the National Joint Council of Food Inspection Locals, herein the Joint Council; and the Union are, and have been, labor organizations within the meaning of 5 USC 7103(a)(4).

3. At all times material herein, the following named persons occupied the positions set opposite their names and are, and have been, agents of Respondent Agency, Respondent Service and Respondent Activity acting on their behalf, and are supervisors and/or management officials within the meaning of 5 USC 7103(a)(10) and (11):

Donald D. Downing	Chief, Security and Labor Relations, Office of Personnel, Office of the Secretary, Department of Agriculture
Dr. Donald L. Houston	Administrator, Food Safety and Inspection Service, Department of Agriculture
Karen Bridge	Chief, Employment and Employee Benefits Branch, Personnel Division, Food Safety and Inspection Service, Department of Agriculture
Dr. Moise Waguespack	Regional Director, Southwest Region, Food Safety and Inspection Service, Department of Agriculture
John C. Scogin	Administrative Officer, Southwest Region, Food Safety and Inspection Service, Department of Agriculture

4. At all times material herein, Roberto Macias, Sr., President of the Union, is, and has been, an agent of the Union, acting on its behalf.

5. At all times material herein, Respondent Service has recognized the Joint Council as the exclusive representative for employees in a unit appropriate for the purposes of collective bargaining composed of all permanent full-time food inspectors of the Meat and Poultry Inspection Program of the Service, excluding all veterinarians and non-veterinary inspectors in supervisory positions.

6. At all times material, the Joint Council and Respondent Service have been parties to a collective bargaining agreement covering employees in the unit described in paragraph 6 above.

7. At all times material, the Union is, and has been, the representative of AFGE and the Joint Council in the Respondent Activity for the purposes of collective bargaining, representation of employees in the unit described above in paragraph 5, administration of the collective bargaining agreement described above in paragraph 6, and dealing with Respondent and its agents, management and supervisors, with respect to employees employed by Respondent Activity.

8(a) Since on or about March 17, 1987, and particularly on or about April 30, 1987, the Union requested from Respondent Activity the names and home addresses of all bargaining unit employees in the unit described in paragraph 5 above.

(b) The data described in paragraph 8(a) above was and is normally maintained by Respondent Activity in the regular course of business.

(c) The data described in paragraph 8(a) above does not constitute guidance, advice, counsel, or training for management officials or supervisors relating to collective bargaining.

9. At all times since on or about March 17, 1987, and particularly on or about July 27, 1987, and continuing to date, Respondent Activity has failed and refused to furnish the Union with the requested information described in paragraph 8(a) above.

10. At all times material Respondent Agency and Respondent Service have established policy, and issued advice, instructions and directions causing Respondent Activity to fail and refuse to furnish the Union the requested information described in paragraph 8(a) above.

Discussion and Conclusions

The General Counsel takes the position that the Authority's decision in Farmers Home Administration Finance Office, St. Louis, Missouri, supra, is dispositive of the

matter and summary judgment in its favor is in order. As a remedy the General Counsel requests, among other things, that an order issue directing Respondent Agency and Respondent Service to rescind and cease the policy of requiring Respondent Activity and other components of Respondent Agency not to furnish to the unions representing its employees the names and home addresses of all employees in bargaining units represented by such unions.

Respondent on the other hand takes the position that the Privacy Act of 1974, 5 U.S.C. 552a, prohibits the release of the home addresses of the bargaining unit employees. Respondent further contends that there has been no showing that the home addresses are necessary for full and proper discussion, understanding, and negotiation of subjects with the scope of collective bargaining.^{3/} The Respondent also contends that the home addresses are not necessary since the union possesses alternative means of communication.

In agreement with the General Counsel I find that the Authority's decision in Farmers Home Administration, Finance Office, St. Louis, Missouri, supra, is dispositive of all Respondent's contentions and or defenses.^{4/} Thus, the

^{3/} In this connection, Respondent contends that the Authority has misinterpreted Section 7114(b) of the Statute. According to Respondents information to be supplied is "data about issues relating to conditions of employment."

^{4/} See also United States Department of the Navy and Philadelphia Naval Shipyard v. FLRA, No. 87-3005 (3d Cir. Mar. 2, 1988), enforcing Philadelphia Naval Shipyard, 24 FLRA 37 (1986); U.S. Department of the Air Force, Scott Air Force Base, Illinois v. FLRA, No. 87-1143 (7th Cir. Jan. 27, 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), petition for rehearing filed Jan. 8, 1988, 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).

Authority held that the release of the names and home addresses of unit employees is not prohibited by the Privacy Act, that regardless of the existence of alternative means of communication the names and home addresses of unit employees should be supplied the Union on request, and, finally, that the exclusive representative need not offer any explanation as to the reasons it seeks such information since the Union's need "is so apparent and essentially related to the nature of exclusive representation"

Accordingly, in view of the foregoing, and based upon the Authority's holdings set forth above, and since the Union's request meets all the requirements of Section 7114(b)(4) of the Statute, as interpreted by the Authority, I find that the refusal of Respondents to furnish the Union with the names and home addresses of the bargaining unit employees constituted a violation of Sections 7116(a)(1), (5) and (8) of the Statute.

I further find that Respondent Activity was prevented by Respondent Agency and Respondent Service from fulfilling its obligations imposed by Section 7114(b)(4) of the Statute. In this connection it is noted that Respondents admit that Respondent Agency and Respondent Service have in furtherance of an established policy instructed Respondent Activity not to furnish the requested names and home addresses of the unit employees employed by Respondent Activity. Accordingly, inasmuch as the Respondent Activity was acting ministerially and without discretion in the matter, I shall pursuant to established Authority Policy, dismiss the complaint with respect to Respondent Activity. Veterans Administration, Washington, D.C. and Dallas Veterans Administration Medical Center, Veterans Administration, Dallas, Texas, 31 FLRA No. 48.

However, with respect to Respondent Agency and Respondent Service, both of which were responsible for directing Respondent Activity not to furnish the Union with the requested information, I find that they improperly prevented the Respondent Activity from complying with Section 7114(b)(4) of the Statute and improperly interfered with the local bargaining relationship between the Union and the Respondent Activity. In view of the foregoing, I further conclude that the Respondent Agency and Respondent Service by virtue of their activity in preventing Respondent Activity from complying with Section 7114(b)(4) of the Statute and interfering with the local bargaining relation-

ship between the Respondent Activity and the Union violated Sections 7116(a)(1), (5) and (8) of the Statute. Veterans Administration, Washington, D.C. and Dallas Veterans Administration Medical Center, supra.

Accordingly, the General Counsel's 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 Authority's Rules and Regulations and section 7118 of the Federal Service Labor-Management Relations Statute, we order that the United States Department of Agriculture, Washington, D.C. and United States Department of Agriculture, Food Safety and Inspection Service, Washington, D.C. shall:

1. Cease and desist from:

(a) Directing the United States Department of Agriculture, Food Safety and Inspection Service, Meat and Poultry Inspection Program, Southwest Region, Dallas, Texas, to refuse to furnish the American Federation of Government Employees, AFL-CIO, Southwest Council of Food Inspection Locals, C-17, the designated agent of the exclusive representative for a bargaining unit of its employees, the names and home addresses of all employees in the unit.

(b) Directing other component activities of the United States Department of Agriculture to refuse to furnish on request of the exclusive representative of bargaining units of its employees or designated agents of the exclusive representative for bargaining units of its employees the names and home addresses of employees in the units they represent.

(c) In any like or related manner, interfering with, restraining, or coercing its employees in the exercise of the rights assured them by the Statute.

(d) In any like or related manner, interfering with the local bargaining

relationship between the American Federation of Government Employees, AFL-CIO, Southwest Council of Food Inspection Locals, C-17, and the United States Department of Agriculture Food Safety and Inspection Service, Meat and Poultry Inspection Program, Southwest Region, Dallas, Texas.

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

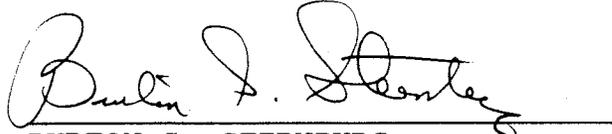
(a) Direct the United States Department of Agriculture, Food Safety and Inspection Service, Meat and Poultry Inspection Program, Southwest Region, Dallas, Texas, to furnish the American Federation of Government Employees, AFL-CIO, Southwest Council of Food Inspection Locals, C-17, the designated agent of the exclusive representative for a bargaining unit of its employees, the names and home addresses of all employees in the unit.

(b) Post at its facility, United States Department of Agriculture, Food Safety and Inspection Service, Meat and Poultry Inspection Program, Southwest Region, Dallas, Texas, 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 of the United States Department of Agriculture, Washington, D.C., 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 VI, Federal Labor Relations Authority, in writing, within 30 days from the date of this Order as to what steps have been taken to comply.

The allegations in the complaint against the United States Department of Agriculture, Food Safety and Inspection

Service, Meat and Poultry Inspection Program, Southwest
Region, Dallas, Texas, are dismissed.


BURTON S. STERNBURG
Administrative Law Judge

Dated: April 13, 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 direct the United States Department of Agriculture, Food Safety and Inspection Service, Meat and Poultry Inspection Program, Southwest Region, Dallas, Texas, to refuse to furnish, upon request of the American Federation of Government Employees, AFL-CIO, Southwest Council of Food Inspection Locals, C-17, the designated agent of the exclusive representative for a bargaining unit of our employees, the names and home addresses of all employees in the unit.

WE WILL NOT direct other component activities of the United States Department of Agriculture to refuse to furnish on request of the exclusive representative of bargaining units of our employees or the designated agents of the exclusive representative for bargaining units of our employees the names and home addresses of employees in the units they represent.

WE WILL NOT, in any like or related manner, interfere with, restrain, or coerce employees in the exercise of rights assured them by the Federal Service Labor-Management Relations Statute.

WE WILL NOT, in any like or related manner, interfere with the local bargaining relationship between the American Federation of Government Employees, AFL-CIO, Southwest Council of Food Inspection Locals, C-17, and the United States Department of Agriculture, Food Safety and Inspection Service, Meat and Poultry Inspection Program, Southwest Region, Dallas, Texas.

WE WILL direct the United States Department of Agriculture, Food Safety and Inspection Service, Meat and Poultry Inspection Program, Southwest Region, Dallas, Texas, to

furnish the American Federation of Government Employees, AFL-CIO, Southwest Council of Food Inspection Locals, C-17, the names and home addresses of all the employees in the unit.

(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 VI, whose address is: Federal Office Building, 525 Griffin Street, Suite 926, Dallas, TX 75202, and whose telephone number is: (214) 767-4996.