

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

.....
VETERANS ADMINISTRATION
WASHINGTON, D.C. AND
VETERANS ADMINISTRATION
MEDICAL CENTER,
ASHEVILLE, NORTH CAROLINA
Respondents
and Case No. 4-CA-70284
AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES,
AFL-CIO, LOCAL 446
Charging Party
.....

R. E. Lee, Jr., Esq.
For the Respondents

Richard S. Jones, Esq.
For the General Counsel

Before: SALVATORE J. ARRIGO
Administrative Law Judge

DECISION

Statement of the Case

This case arose 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. (herein the Statute).

Upon an unfair labor practice charge having been filed by the captioned Charging Party against the captioned Respondents, the General Counsel of the Federal Labor Relations Authority (herein the Authority), by the Regional

Director for Region IV, issued a Complaint and Notice of Hearing alleging Respondents violated the Statute by failing and refusing, upon request, to furnish the American Federation of Government Employees, AFL-CIO, Local 446 the names and home addresses of all bargaining unit employees it represented. Respondent Veterans Administration Medical Center, Asheville, North Carolina (herein VAMC) filed an Answer to Complaint in which some of the allegations of the Complaint were admitted and others denied. No Answer to the Complaint was received from Veterans Administration, Washington, D.C. (herein VA Washington).

Subsequently, counsel for the General Counsel filed a Motion for Summary Judgment and a Memorandum in support and the matter was transferred to the Office of Administrative Law Judges for ruling pursuant to section 2423.22(b)(1) of the Rules and Regulations of the Authority. No opposition to the Motion for Summary Judgment or argument was filed by either Respondent. Based upon my review and evaluation of the entire record before me, I make the following:

Findings of Fact

1. At all times material the American Federation of Government Employees, AFL-CIO, (herein AFGE) and the American Federation of Government Employees, AFL-CIO, Local 446 (herein the Union) have been labor organizations within the meaning of section 7103(a)(4) of the Statute.

2(a). At all times material VA Washington has been, and is now an agency within the meaning of section 7103(a)(3) of the Statute.

(b). At all times material VAMC has been, and is now, an activity of VA Washington within the meaning of section 2421.4 of the Authority's Rules and Regulations.

3(a). At all times material AFGE has been, and is now the exclusive representative of certain employees of VA Washington, including certain employees of VAMC, in a nationwide consolidated unit as set forth and described in a collective bargaining agreement between AFGE and VA Washington effective by its terms from August 13, 1982 and continuing in effect to date by mutual agreement of the parties.

(b). At all times material the Union has been an administrative subdivision of AFGE and an agent thereof for

the purpose of representing certain employees of VAMC in a bargaining unit more fully set forth in a supplemental collective bargaining agreement between VAMC and the Union effective June 25, 1977 for a three-year period and automatically renewable thereafter.

4(a). At all times material Jack Allison (herein Allison) has occupied the position of VAMC Chief, Personnel Service, and has been, and is now, a supervisor and/or management official within the meaning of section 7103(a)(10) and (11) of the Statute and an agent of Respondents.

(b). At all times material Robert Dawson (herein Dawson) occupied the position of Director of VAMC and has been, and is now, a supervisor and/or management official within the meaning of section 7103(a)(10) and (11) of the Statute and an agent of Respondents.

5. On or about December 8, 1986 the Union, by its President, Samuel Camp, made a request to Dawson for the names and home addresses of Union bargaining unit employees.

6. On or about January 5, 1987 Allison denied the Union's request for information as described in paragraph 5 above.

7. Allison engaged in the actions described in paragraph 6, above, at the direction of VA Washington.

8(a). The unfair labor practice charge herein was filed by the Union on February 9, 1987 and a copy thereof served upon VAMC on or about January 29, 1987.

(b). The first amended charge was filed by the Union on April 27, 1987 and a copy thereof served upon VAMC on or about April 27, 1987.

(c). The second amended charge was filed by the Union on May 4, 1987 and a copy thereof served upon Respondents on or about April 29, 1987.

9. On May 5, 1987 the General Counsel of the Authority, by the Regional Director for Region IV, issued a Complaint and Notice of Hearing alleging Respondents violated section 7116(a)(1), (5) and (8) by failing and refusing, and by continuing to fail and refuse, to provide the Union with the names and home addresses of all bargaining unit employees at VAMC as requested by the Union on December 8, 1986

(paragraph 5, above). Copies of the aforesaid Complaint were duly served by certified mail upon Respondents.

10. The information requested by the Union in paragraph 5 above, is: normally maintained by Respondents in the regular course of business; reasonably available; necessary for full and proper discussion, understanding and negotiation of subjects within the scope of collective bargaining, and; does not constitute guidance, advice, counsel or training for management officials or supervisors, relating to collective bargaining.

Discussion and Conclusions

The General Counsel, relying on the Authority's decision 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, No. 86-2579 (8th Cir. Jan. 15, 1988), contends Respondents violated section 7116(a)(1), (5) and (8) of the Statute when they refused to supply the Union with the names and home addresses of all bargaining unit employees. The Answer to the Complaint denies the data sought is necessary for the Union to engage in full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining.

Section 7114(b)(4) of the Statute provides in relevant part:

"(b) the duty of an agency and an exclusive representative to negotiate in good faith under subsection (a) of this section shall include the obligation . . .

"(4) in the case of an agency, to furnish to the exclusive representative, upon request and, to the extent not prohibited by law, data --

"(A) which is normally maintained by the agency in the regular course of business; (and)

"(B) which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining . . ."

In Farmers Home Administration Finance Office, supra, the Authority held: (1) the disclosure of the names and addresses of bargaining unit employees to the exclusive representative was not prohibited by the Privacy Act; (2) an agency's possession of Official Personnel Files wherein can be found employees' addresses satisfies the requirements of section 7114(b)(4)(A) and (B) of the Statute that such data be normally maintained by the agency and reasonably available, and; (3) such data was necessary under section 7114(b)(4)(B) for unions to meet their statutory obligation to represent the interests of all employees in the unit without discrimination as required by section 7114(a)(1) of the Statute, notwithstanding the existence of alternative means by which a union might communicate to unit employees. In subsequent decisions the Authority followed Farmers Home Administration in deciding numerous cases which involved similar issues. Philadelphia Naval Shipyard, 24 FLRA 37 (1986); Defense Mapping Agency Aerospace Center, St. Louis, Missouri, 24 FLRA 43 (1986); Social Security Administration, Northeastern Program Service Center, 24 FLRA 108 (1986); Department of the Navy, Portsmouth Naval Shipyard, 24 FLRA 209 (1986); Department of the Air Force, Scott Air Force Base, 24 FLRA 226 (1986); Department of Health and Human Services, Region V, 26 FLRA 460 (1987); Air Force District of Washington, 26 FLRA 542 (1987); Departments of the Army and Air Force, Army and Air Force Exchange Service Headquarters, Dallas, Texas and Army and Air Force Exchange Service, McClellan Air Force Base, California, 26 FLRA 691 (1987); 831 Combat Support Group (TAC), George Air Force Base, California, 28 FLRA No. 16 (1987); and 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).

The facts presented herein are not significantly different from those considered by the Authority in Farmers Home Administration and cases which followed thereafter, supra. In view of the pleadings herein and the Authority's holdings in the above cases I conclude Respondents were obligated under section 7114(b) of the Statute to furnish the Union with the names and addresses of unit employees and accordingly, I conclude Respondents' refusal to furnish such data violated section 7116(a)(1), (5) and (8) of the Statute and grant counsel for General Counsel's motion for summary judgment. Therefore I recommend the Authority issue the following:

ORDER

Pursuant to Section 2423.29 of the Rules and Regulations of the Federal Labor Relations Authority and section 7118 of the Statute, the Authority hereby orders that Veterans Administration, Washington, D.C. and Veterans Administration Medical Center, Asheville, North Carolina, shall:

1. Cease and desist from:

(a) Refusing to furnish, upon request of the American Federation of Government Employees, AFL-CIO, Local 446, the agent of 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 Federal Service Labor-Management Relations Statute.

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

(a) Furnish the American Federation of Government Employees, AFL-CIO, Local 446, the agent of 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 all facilities where bargaining unit employees represented by the American Federation of Government Employees, AFL-CIO, Local 446 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 a senior official of the Veterans Administration Medical Center, Asheville, North Carolina, 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 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, 1371 Peachtree Street, N.E. Suite 736, Atlanta, Georgia, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.


SALVATORE J. ARRIGO
Administrative Law Judge

Dated: February 29, 1988
Washington, D.C.

APPENDIX

NOTICE TO ALL EMPLOYEES

PURSUANT TO

A DECISION AND ORDER OF THE

FEDERAL LABOR RELATIONS AUTHORITY

AND IN ORDER TO EFFECTUATE THE POLICIES OF

CHAPTER 71 OF TITLE 5 OF THE

UNITED STATES CODE

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, AFL-CIO, Local 446, the agent of 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 American Federation of Government Employees, AFL-CIO, Local 446, the agent of 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 IV, whose address is: 1371 Peachtree Street. N.E., and whose telephone number is: (404) 347-2324.