

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

.
UNITED STATES DEPARTMENT OF
DEFENSE, DEPARTMENT OF THE
AIR FORCE, TACTICAL AIR
COMMAND, LANGLEY AIR FORCE
BASE, VIRGINIA

and

UNITED STATES DEPARTMENT OF
DEFENSE, DEPARTMENT OF THE
AIR FORCE, TACTICAL AIR
COMMAND, 27TH COMBAT SUPPORT
GROUP (TAC), CANNON AIR FORCE
BASE, NEW MEXICO

Respondents

and

Case No. 6-CA-70450

AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES,
AFL-CIO, LOCAL 2308

Charging Party

.
James A. Harper, Esquire
For the Respondents

Joseph T. Merli, Esquire
For the General Counsel

Before: JOHN H. FENTON
Chief Administrative Law Judge

DECISION

Statement of the Case

This decision concerns an unfair labor practice complaint issued by the Regional Director, Region VI, Federal Labor Relations Authority, Dallas, Texas, against the Department of the Air Force, Tactical Air Command, Langley Air Force Base, Virginia (Command) and the Department of the Air Force, Tactical Air Command, 27th Combat Support Group (TAC),

Cannon Air Force Base, New Mexico (Activity),^{1/} based on a charge filed by the American Federation of Government Employees, Local 2308, AFL-CIO, (Charging Party or Union). The complaint alleged, in substance, that the Respondents violated sections 7116(a)(1), (5) and (8) of the Federal Service Labor-Management Relations Statute, 5 U.S.C. § 7101 et seq. (Statute), by refusing to furnish the Union upon request with the names and home addresses of employees represented by the Union pursuant to section 7114(b)(4) of the Statute.

Respondents' answer admitted the jurisdictional allegations of the Complaint; that Cruz C. Madrid was the agent for the Activity and the Command; that, since December 10, 1986, the Activity refused to furnish the Union with names and addresses of bargaining unit employees; and that such data does not constitute guidance, advice, counsel, or training provided for management officials or supervisors related to collective bargaining. Accordingly, such matters are found to be established facts.

Respondents' answer denied that the information requested is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; that the data is maintained by the Activity in the regular course of business; that providing the data is not otherwise prohibited by law;^{2/} that the Command has directed the Activity to refuse to provide the requested data; that the Command has unlawfully interfered with the bargaining relationship between the Activity and the Union, and that Respondents committed any unfair labor practice.

On or about December 15, 1987, Counsel for the General Counsel moved for summary judgment. Attached to the motion was an affidavit signed by Jackelyn A. Zimmerman, President of the Union, which alleged (1) that she requested the Activity to provide the names and addresses of bargaining unit employees, (2) that the request was twice denied in writing by Cruz C. Madrid, the Activity's Chief of Employee and Labor Relations Management, on the grounds that an

^{1/} The Command and the Activity will be referred to jointly herein as "Respondents".

^{2/} Despite these denials, Respondents admitted that they had violated section 7114(b)(4) of the Statute. It may be that this admission was inadvertant.

appeal was pending before the Office of Personnel Management (OPM) and the Department of Justice and disclosure was considered to be a violation of the Privacy Act, and (3) that she called Mr. Madrid on the telephone and that he "stated that he was advised by Tactical Air Command, Langley Air Force Base, Virginia, not to submit to the Union the names and home addresses of bargaining unit employees."

On or about December 18, 1987, Respondents served an opposition to General Counsel's Motion For Summary Judgment, consenting, however, to summary judgment only if the Command were dismissed as a party. The opposition was supported by an affidavit of its counsel, James A. Harper, who stated (1) that any advice or instruction from the Command to its Activity is legal advice which emanates from his office; (2) that, to his knowledge, the Command did not make any decisions on its own on the releasability of bargaining unit home addresses; (3) that the Union's request was invalid (a) because there is no showing that it requested the data for bargaining purposes, and (b) because the Activity does not maintain a list of employees' names and addresses and (4) that he talked to Mr. Cruz Madrid who denied telling her that he was instructed by the Command not to release names and home addresses. He acknowledges, however, that a list of names and addresses could be created by merging computer programs or by extracting names and addresses from official personnel files.

The Regional Director transferred the Motion For Summary Judgment to the Chief Administrative Law Judge, pursuant to section 2423.22(b)(1) of the Regulations. On January 6, 1988, I issued an order requesting the General Counsel to show cause why an order should not be issued finding that the Activity committed an unfair labor practice but finding that the Command did not violate the Act, on the ground that the General Counsel has failed to make a prima facie case that the Command directed it to refuse to provide the information. I also requested the Activity to confirm that it consented to the judgment against it, based on the admission in its Answer that it had violated section 7114(b)(4).

Positions of the Parties

The General Counsel takes the position that, under prior Authority decisions, the Activity was required to provide the requested names and addresses. Further, it takes the position that it was clear from Ms. Zimmerman's affidavit that the Activity was acting at the direction of the Command and had no choice in the matter, that Mr. Harper's affidavit should be disregarded since it contains secondhand informa-

tion, and that, in any event, Respondents admitted that Mr. Madrid was acting as agent of both the Activity and the Command. In such circumstances, according to the General Counsel, the Authority has held that where an activity refuses to supply information based upon advice from an agency, the agency has committed a violation of the Statute by preventing the activity from fulfilling its obligations under the Statute.

The Respondents take the position that disclosure of the names and addresses would violate the Privacy Act and that summary judgment should be entered only if the Command is dismissed as a party.

Discussion and Conclusions

I find that the Activity violated section 7116(a)(1), (5) and (8) by refusing to provide the names and home addresses to the Union. The facts herein, as well as all substantive contentions raised by Respondents, save that arising from the Agency-Activity relationship, are substantially the same as were present in the Authority's decision on remand in Farmers Home Administration Finance Office, St. Louis, Missouri, 23 FLRA No. 101 (1986), enforced in part and remanded sub nom. U.S. Department of Agriculture and Farmers Home Administration Finance Office, St. Louis, Missouri v. FLRA, 836 F.2d 1139 (8th Cir. 1988). In that case, the Authority held that the release of names and home addresses of bargaining unit 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). Among other things, the Authority found that "the public interest to be furthered by providing the Union with an efficient method to communicate with unit employees it must represent far outweighs the privacy interests of individual employees in their names and home addresses. . . .[and therefore] its release is not prohibited by law." Moreover, that case and subsequent cases have held that names and home addresses are maintained in the regular course of business" and "reasonably available" even though it would necessary to compile them by reconciling computer data or by extracting them from personnel files. See, e.g. Veterans Administration (Washington, D.C.) and Edith Nourse Rogers Memorial Veterans Hospital (Bedford, Massachusetts), 27 FLRA 775 (1987); Department of the Navy, Naval Submarine Base, New London (New London, Connecticut), 27 FLRA 785 (1987); U.S. Food and Drug Administration, Region VII, Kansas City, Missouri, 27 FLRA 409 (1987). In view of the foregoing and since there is no dispute as to any material fact with respect to the acts of the Activity, it is

concluded that the General Counsel is entitled to summary judgment against the Activity.

Moreover, since Mr. Madrid, admittedly, was the agent of both the Activity and the Command, both are liable for his failure to provide the names and home addresses.^{3/} Based on the foregoing, the General Counsel's motion for summary judgment should be granted. It is therefore recommended that the Authority issue the following:

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 United States Department of Defense, Department of the Air Force, Tactical Air Command, Langley Air Force Base, Virginia; and the United States Department of Defense, Department of the Air Force, Tactical Air Command, 27th Combat Support Group (TAC), Cannon Air Force Base, New Mexico shall:

1. Cease and desist from:

(a) Refusing to furnish, upon request of the American Federation of Government Employees, Local 2308, AFL-CIO, the exclusive representative of a bargaining unit of their

^{3/} I do not rely on the General Counsel's affidavit from Ms. Zimmerman which states that Mr. Madrid was "advised . . . not to submit" the names and addresses by the Command. "Advising" does not constitute an agency directive against providing data. Kansas Army National Guard and National Guard Bureau, 10 FLRA 303, (1982). VA, Washington and VA Medical Center, New Orleans, 29 FLRA No. 6 (1987), relied on by General Counsel for the opposite conclusion, does not refer to "advising" in its text, but rather to instructing. I cannot rely on General Counsel's allegation that the stipulation in that case referred to "advising" in the face of the clear holding in the Kansas Army National Guard case. In addition, the Authority has also upheld a ruling that a claim that an instruction was issued by "AFCMO's labor relations office at Kirkland Air Force Base" was not specific enough. United States Department of Defense, Department of the Air Force and Air Force Plant Representative Office (Department 27), General Dynamics, Fort Worth Division, Fort Worth, Texas, 28 FLRA No. 85 (1985). The affidavit of Ms. Zimmerman was even less specific and does not meet the General Counsel's burden of proof.

employees, the names and home addresses of all employees in the unit.

(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.

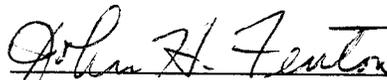
2. Take the following affirmative action in order to effectuate the purposes and policies of the Federal Service Labor-Management Relations Statute:

(a) Furnish the American Federation of Government Employees, Local 2308, AFL-CIO, the exclusive representative of a bargaining unit of their employees, the names and home addresses of all employees in the unit.

(b) Post at their facilities where bargaining unit employees represented by the American Federation of Government Employees, Local 2308, 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 Department of Defense, Department of the Air Force, Tactical Air Command, Langley Air Force Base, Virginia and by the Commanding Officer of the United States Department of Defense, Department of the Air Force, Tactical Air Command, 27th Combat Support Group (TAC), Cannon Air Force Base, New Mexico 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, Region 6, Federal Labor Relations Authority, Federal Office Building, 525 Griffin Street, Suite 926, Dallas, TX 75202 in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

Issued, Washington, D.C., November 16, 1988



JOHN H. FENTON

Chief Administrative Law Judge

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 or fail to furnish, upon request of the American Federation of Government Employees, Local 2308, AFL-CIO, the exclusive representative of a bargaining unit of our employees, the names and home addresses of all employees in the unit.

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, Local 2308, AFL-CIO, the exclusive representative of a bargaining unit of our employees, the names and home addresses of all 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 6, whose address is: Federal Office Building, 525 Griffin Street, Suite 926, Dallas, TX 75202, and whose telephone number is: (214) 767-4996.