

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

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ARMY AND AIR FORCE EXCHANGE SERVICE, DALLAS, TEXAS
and
ARMY AND AIR FORCE EXCHANGE SERVICE, FORT LEAVENWORTH KANSAS
and
Respondents
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO, LOCAL 738
Charging Party
.....

Case No. 7-CA-90064

Janis E. Baldwin, Esq.
For the Respondents

Bruce Conant, 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 VII, issued a Complaint and Notice of Hearing alleging Respondents violated section 7116(a)(1), (5) and (8) of the Statute when Respondents failed and refused to furnish the American Federation of Government Employees, AFL-CIO, Local 738 (herein the Union) with the names and home addresses of bargaining unit employees which the Union had requested. Respondents filed an Answer to the Complaint in which some of the allegations were admitted and others denied.

Subsequently, counsel for the General Counsel filed a Motion for Summary Judgment with supporting documents and a brief in support of the motion. The matter was then transferred to the Office of Administrative Law Judges for ruling pursuant to section 2423.22(b) of the Rules and Regulations of the Authority. Respondents filed no opposition to counsel for the General Counsel's motion for summary judgment. Based upon my review and evaluation of the entire record before me, I make the following:

Findings of Fact

1. The charge in this proceeding was filed by the Union on November 2, 1988, and thereupon was properly served upon Respondents.

2. At all times material the Union is, and has been, a labor organization within the meaning of 5 USC 7103(a)(4).

3. At all times material Respondents are, and have been, agencies within the meaning of 5 USC 7103(a)(3).

4. At all times material the Union has been an agent of, and affiliated with, the American Federation of Government Employees (AFGE), AFL-CIO, which is the exclusive representative of a worldwide, consolidated unit of employees of the Army and Air Force Exchange Services (AAFES), which unit includes various employees employed at the Fort Leavenworth, Kansas Post Exchange. Said employees are covered by a world-wide collective bargaining agreement in effect between AFGE and Respondent Dallas.

5. At all times material Donald Streeter, herein Streeter, has occupied the position of Chief, Labor Relations Office, at Respondents' Dallas, Texas, facility, and has been, and is now, a supervisor and/or management official within the meaning of 5 USC 7103(a)(10) and/or (11), and an agent of Respondents.

6. At all times material Charles L. Ward, herein Ward, has occupied the position of Exchange Manager at Respondents' Fort Leavenworth, Kansas, facility, and has been, and is now, a supervisor and/or management official within the meaning of 5 USC 7103(a)(10) and/or (11), and an agent of Respondents.

7(a). On or about September 28, 1988, and October 20, 1988, the Union, in writing, requested Respondents to furnish it the names and home addresses of all bargaining unit employees working at Respondents' Fort Leavenworth, Kansas, facility.

(b). The information requested in paragraph 7(a), above, is normally maintained by Respondents in the regular course of business.

(c). The information requested in paragraph 7(a), above, is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining.

(d). The information requested in paragraph 7(a), above, does not constitute guidance, advice, counsel, or training for management officials or supervisors, relating to collective bargaining.

8(a). On or about October 12, 1988, and at all times since, Respondents, through Streeter and/or Ward, have failed and refused to provide the Union with the data described in paragraph 7(a), above, which was requested on September 28, 1988.

(b). On or about October 26, 1988, and at all times since, Respondents, through Ward, have failed and refused to provide the Union with the data described in paragraph 7(a), above, which was requested on October 20, 1988.

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), contends Respondents violated section 7116(a)(1), (5) and (8) of the Statute when Respondents refused to supply the Union with the names and home addresses of all bargaining unit employees. Respondents deny in their Answer that providing the data requested is not prohibited by law. It would appear therefore that Respondents essentially contend the

requirements of section 7114(b)(4) of the Statute have not been met in that Respondents are presumably prohibited by the Privacy Act, 5 U.S.C. § 552a, from releasing the data.

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 involved, or its authorized 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 found the disclosure of the names and home addresses of bargaining unit employees to the exclusive representative was not prohibited by the Privacy Act. Thus the Authority held at 793:

"On balance, we find 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. Disclosure of the requested information would not constitute a clearly unwarranted invasion of personal privacy and does not fall within the (b)(6) exemption to the FOIA. Since the information does not fall within the exemption, its disclosure is required under the FOIA and, under exception (b)(2) to the Privacy Act, its release is not prohibited by law."

Accordingly, I conclude Respondents' defense to the failure and refusal to provide the Union with the names and home addresses of unit employees as requested by the Union to be without merit. See also United States Department of the Navy and Philadelphia Naval Shipyard v. FLRA, 840 F.2d 1131 (3d Cir. 1988), enforcing Philadelphia Naval Shipyard, 24 FLRA 37 (1986); Department of Health and Human Services,

Social Security Administrative v. FLRA, 833 F.2d 1129 (4th Cir. 1987), affirming Department of Health and Human Services, Social Security Administration, 24 FLRA 543 (1986) and United States Department of Defense, Departments of the Army and Air Force, Army and Air Force Exchange Service, Dallas, Texas, 32 FLRA 968 (1988). I further conclude Respondents were obligated under section 7114(b) of the Statute to furnish the Union with the names and home 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 the General Counsel's motion for summary judgment. Therefore, I recommend 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 Army and Air Force Exchange Service, Dallas, Texas and Army and Air Force Exchange Service, Fort Leavenworth, Kansas, shall:

1. Cease and desist from:

(a) Refusing to furnish, upon request of the American Federation of Government Employees, AFL-CIO, Local 738, 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 at the Fort Leavenworth, Kansas facility.

(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.

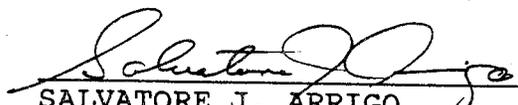
2. Take the following affirmative action in order to effectuate the purposes and policies of the Federal Service Labor-Management Relations Statute:

(a) Furnish the American Federation of Government Employees, AFL-CIO, Local 738, the exclusive representative of certain of its employees, the names and home addresses of all employees in the bargaining unit it represents at the Fort Leavenworth, Kansas facility.

(b) Post at its facilities where bargaining unit employees represented by the American Federation of Government Employees, AFL-CIO, Local 738 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 Commander, Army and Air Force Exchange Service, Dallas, Texas or his designee 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 VII, Federal Labor Relations Authority, 535 16th Street, Suite 310, Denver, CO 80202 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: September 21, 1989
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 HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT refuse to furnish, upon request of the American Federation of Government Employees, AFL-CIO, Local 738, 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 at the Fort Leavenworth, Kansas facility.

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 738, 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 at the Fort Leavenworth, Kansas facility.

(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 VII, whose address is: 535 16th Street, Suite 310, Denver, CO 80202, and whose telephone number is: (303) 844-5224.