

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

.....
DEPARTMENT OF DEFENSE,
DEPARTMENT OF THE NAVY,
WASHINGTON, D.C. AND
DEPARTMENT OF DEFENSE,
DEPARTMENT OF THE NAVY,
PENSACOLA NAVY EXCHANGE,
PENSACOLA, FLORIDA

Respondents

and

Case No. 4-CA-80807

UNITED FOOD AND COMMERCIAL
WORKERS UNION, LOCAL 1657
AFL-CIO-CLC, BIRMINGHAM,
ALABAMA

Charging Party

.....
Robert R. Giacalone, Esquire
For the Respondent

Linda J. Norwood, Esquire
For the General Counsel

Before: ELI NASH, JR.
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 an unfair labor practice charge filed May 31, 1988 and first amended on October 27, 1988 by the United Food and Commercial Workers Union, Local 1657, AFL-CIO-CLC, Birmingham, Alabama (herein called the Union), a Complaint and Notice of Hearing was issued on October 31, 1988 by the Regional Director, Region IV, Federal Labor Relations Authority against Department of Defense, Department of the Navy, Washington, D.C. and Department of Defense, Department of the Navy, Pensacola Navy Exchange, Pensacola, Florida, (herein

called Respondent Exchange and Respondent Agency or Respondents).

The Complaint alleged that Respondents respectively and collectively violated section 7116(a)(1), (5) and (8) of the Statute by failing and refusing to provide the Union, upon request, with the names and home addresses of all Union bargaining unit employees as required by section 7114(b)(4) of the Statute; and, that Respondent Agency violated section 7116(a)(1), (5) and (8) of the Statute by interfering with the bargaining relationship between Respondent Exchange and the Union by instructing the Activity not to supply the Union with the requested information.

Respondents filed an Answer admitting that the Union is the exclusive representative of certain employees located in Respondent's Exchange; that the Union, on or about March 25, 1988 and again on May 11, 1988; requested the names and home addresses of all bargaining unit employees in the above-described unit who were employed at the Respondent Exchange; Respondents' denied that the requested information is normally maintained by it in the regular course of business; that the requested information is readily available; that it is necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining, and that Respondent Exchange denied the Union's request for the above requested names and home addresses that the requested information does not constitute guidance, advice, counsel or training for management officials or supervisors relating to collective bargaining. Finally, Respondents' denied that Respondent Exchange denied the information under instruction from Respondent Agency.

On December 30, 1988, the Regional Director, Region IV referred Counsel for the General Counsel's Motion for Summary Judgment to the Chief Administrative Law Judge for disposition. Counsel for the General Counsel asserted, in essence, that the Motion for Summary Judgment should be granted since material factual disputes exist and further that Respondents' defenses fail as a matter of law. And, that the alleged facts were sufficient to establish a violation of section 7116(a)(1), (5) and (8) of the Statute. The Chief Administrative Law Judge granted the parties until January 20, 1989 to file responses in the matter.

Pursuant to the Chief Administrative Law Judge's directive Respondents filed a Motion To Dismiss General Counsel's Motion for Summary Judgment in the matter. Respondents' opposition to the Motion for Summary Judgment

states inter alia that Respondents violated employee personal privacy; a potential for misuse of the information in the future; the "routine use" under the Privacy Act; the adequacy of alternative means. Finally, Respondents requested a hearing to introduce evidence concerning the "sufficiency of the means available to the Union to communicate" with unit employees.

Findings of Fact

1. The Union is the exclusive representative of certain of Respondents' employees located at Respondent Exchange.

2. The Union on March 25 and May 11, 1988 respectively, requested that Respondents furnish it with the names and home addresses of all unit employees within the above-mentioned bargaining unit.

3. The requested information is normally maintained by Respondents in the regular course of business, is reasonably available, and could not constitute guidance, counsel or training provided for management officials or supervisors relating to collective bargaining.

4. Respondents' Answer to the Complaint, establishes that the Union requested and Respondent Exchange refused to furnish it with the names and home addresses of bargaining unit employees.

Conclusions

Since the decision in Farmers Home Administration Finance Office, St. Louis, Missouri, 23 FLRA 788 (1986), the Authority and courts have reviewed the Authority's holding regarding the furnishing of names and home addresses of bargaining unit employees to exclusive representatives on innumerable occasions.^{1/} An examination of only some of

^{1/} See Farmers Home Administration Finance Office, St. Louis, Missouri, supra, 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), petition for cert. filed, 57 U.S.L.W. 3186 (U.S. Aug. 26, 1988) (No. 88-349). See also United States Department of the Navy and Philadelphia

(footnote continued)

those cases and court decisions leaves little doubt that those tribunals consider the information "necessary" under section 7114(b)(4) of the Statute and also that names and home addresses should be furnished to the exclusive representative upon request.

Respondents' arguments in brief, in my view, raise no new issues. It is therefore, my opinion that Farmers Home Administration Finance Office, St. Louis, Missouri, supra, and the cited court cases are dispositive of all arguments raised by these Respondents. As a result of the holdings in the cited cases, I am constrained to find that Respondents' defenses for its failure and refusal to furnish the Union with the requested information lacks merit. That being so, it is concluded that Respondent Activity was obligated under section 7114(b)(4) of the Statute to furnish the names and home addresses of the bargaining unit employees upon request. Refusing to do so, even for the reasons asserted by Respondent Activity constitutes a violation of section 7116(a)(1), (5) and (8) of the Statute.

In addition to alleging Respondent Exchange violated the Statute, Counsel for the General Counsel maintained that Respondent Agency, in essence, interfered with the bargaining relationship between the Respondent Exchange and the Union, thereby further violating the Statute.

Respondents Answer denies that the requested information was not furnished to the Union because of any instructions from Respondent Agency. Consequently, there is no evidence

(footnote 1 continued)

Naval Shipyard v. FLRA, 840 F.2d 1131 (3rd Cir. 1988), enforcing Philadelphia Naval Shipyard, 24 FLRA 37 (1986); U.S. Department of the Air Force, Scott Air Force Base, Illinois v. FLRA, 838 F.2d 229 (7th Cir. 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), 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).

of any such instructions from Respondent Agency. Furthermore, the Authority has held that the existence of a policy by an Agency not to supply names and home addresses does not establish a prima facie case against the Agency. See, U.S. Department of Defense, Department of the Air Force and Department of the Air Force, Carswell Air Force Base, Texas, 28 FLRA 895 (1987); U.S. Department of Defense, United States Department of the Navy, Washington, D.C., 28 FLRA 859 (1987), United States Marine Corps, Washington D.C. and Marine Corps Reserve Support Center, Kansas City, Missouri and Marine Corps Finance Center, Kansas City, Missouri and Marine Corps Central Design and Programming Activity, Kansas City, Missouri and American Federation of Government Employees, AFL-CIO, Local 2904, 30 FLRA 300 (1988). The direction of the Authority seems clearly to be that more than a mere policy is necessary to establish a violation based on Agency interference in names and address cases. In my opinion, more than a mere allegation in the complaint would be necessary to establish a prima facie case herein. Accordingly, it is recommended that the Complaint insofar as it alleges a violation of section 7116(a)(1), (5) and (8) of the Statute against the Respondent Agency be dismissed.

Based on the foregoing, the General Counsel's Motion For Summary Judgment against Respondent Exchange is granted. 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 Labor-Management Relations Statute, the Department of Defense, Department of the Navy, Washington, D.C. and Department of Defense, Department of the Navy, Pensacola Navy Exchange, Pensacola, Florida, shall:

1. Cease and desist from:

(a) Refusing to furnish, upon request of the United Food and Commercial Workers Union, Local 1657, AFL-CIO-CLC, Birmingham, Alabama, 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:

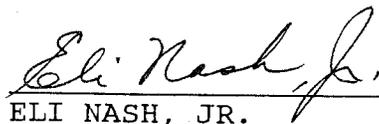
(a) Furnish the United Food and Commercial Workers Union, Local 1657, AFL-CIO-CLC, Birmingham, Alabama, with the names and home addresses of all employees in the bargaining unit it represents.

(b) Post at its facilities where bargaining unit employees represented by the United Food and Commercial Workers Union, Local 1657, AFL-CIO-CLC, 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 of the Department of Defense, Department of the Navy, Washington, D.C. and Department of Defense, Department of the Navy, Pensacola Navy Exchange, Pensacola, Florida, 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, in writing, within 30 days from the date of this Order as to what steps have been taken to comply.

IT IS FURTHER ORDERED that the portion of the Complaint alleging unlawful interference by the Respondent Agency with the collective bargaining relationship between the Respondent Exchange and the Union be, and it hereby is, dismissed.

Issued, Washington, D.C., March 24, 1989.



ELI NASH, JR.
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 to furnish, upon request of the United Food and Commercial Workers Union, Local 1657, AFL-CIO, CLC, Birmingham, Alabama, 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 our employees in the exercise of their rights assured them by the Federal Service Labor-Management Relations Statute.

WE WILL furnish the United Food and Commercial Workers Union, Local 1657, AFL-CIO, CLC, Birmingham, Alabama, with 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., Suite 736, Atlanta, GA 30367, and whose telephone number is: (404) 347-2324.