

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
NAVY CBC EXCHANGE
CONSTRUCTION BATTALION CENTER
GULFPORT, MISSISSIPPI

Respondents

and

Case No. 4-CA-90054

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: JESSE ETELSON
Administrative Law Judge

DECISION

Statement of the Case

The unfair labor practice complaint alleges, in substance, that Respondents violated section 7116(a)(1), (5) and (8) of the Federal Service Labor-Management Relations Statute, (the Statute), by refusing to provide the Charging Party (Union), the agent of the exclusive representative of certain of Respondents' employees, with the names and home addresses of bargaining unit employees represented by the Union.

On or about March 8, 1989, Counsel for the General Counsel moved for summary judgment against Respondent Navy CBC Exchange. The Regional Director transferred the motion to the Chief Administrative Law Judge, pursuant to section 2423.22(b)(1) of the Regulations, and it was assigned to the undersigned for disposition pursuant to section 2423.19(k) and section 2423.22(b)(3) of the Regulations. Respondents served their opposition on March 13, 1989, requesting that judgment be granted in their favor.

Based upon the entire record, and it appearing that there are no genuine issues of material fact and that the General Counsel is entitled to summary judgment as a matter of law, I make the following findings of fact, conclusions of law, and recommendation.

Findings of Fact

The United Food and Commercial Workers Union, Local 1657, AFL-CIO, CLC, Birmingham, Alabama, (the Union) is the exclusive representative of certain employees at Respondents' Gulfport Navy CBC Exchange, Gulfport, Mississippi. On or about August 11, 1988, the Union requested that an agent of Respondents provide it with the names and home addresses of all bargaining unit employees represented by the Union. On or about October 19, 1988, and at all times since, Respondent Exchange has refused to furnish the Union with the requested information.

Discussion, Conclusions, and Recommendations

The names and mailing addresses of bargaining unit employees are normally maintained by Respondents in the regular course of business, are reasonably available, are necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining, and do not constitute guidance, advice, counsel, or training for management officials or supervisors relating to collective bargaining.^{1/}

^{1/} While the Respondents' answer denies all of these elements with respect to the requested data, it is clear from its opposition papers that it contests only the "necessary" element and contends that a material factual issue exists as to the Union's alternative means of communicating with unit employees.

The decision in this case is controlled by the Authority's decision in Farmers Home Administration Finance Office, St. Louis, Missouri, 23 FLRA 788 (1986) (Farmers Home), 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 Farmers Home the Authority held that "the statutory requirement concerning sufficiency of a request under section 7114(b)(4) is satisfied for requests such as that involved here [for names and addresses] when a general written request for the information is made. A precise explication of the reasons for the request involved here is not necessary." The Authority also emphasized that names and addresses of bargaining unit employees should be provided whether or not alternative means of communication are available. The Authority stated, "We will not review the adequacy of alternative methods of communication on a case-by-case basis."

In Farmers Home, the Authority gave full consideration to the many issues raised by requiring disclosure of names and addresses of federal employees. The Authority analyzed the interplay of the Statute, the Privacy Act, and the Freedom of Information Act, and concluded that, "the release of names and home addresses to the Union is not prohibited by law, is necessary for the Union to fulfill its duties under the Statute, and meets the other requirements of section 7114(b)(4)." The Authority's decision in Farmers Home analyzed the two exceptions to the Privacy Act's bar to disclosure of personal information pertinent to the release of employees' names and home addresses: exception (b)(2), concerning the Freedom of Information Act, and exception (b)(3), relating to "routine use" of information. The Authority found that both exceptions to the Privacy Act's bar applied so as to authorize release of the information under the Privacy Act.

To the extent that the Eighth Circuit enforced the Authority's order, there is, needless to say, no point in my entertaining arguments to the contrary.^{2/} To the extent

^{2/} On January 13, 1989, the Supreme Court vacated the judgment of the Eighth Circuit and remanded the case to that court for further consideration in light of the respondent agency's recent "routine use" regulations. 57 U.S.L.W. 3470, 130 LRRM 2272. That disposition does not affect the controlling weight, before me, of the Authority's decision in Farmers Home.

that the Eighth Circuit limited enforcement of the Authority's order -- by requiring disclosure of the names and addresses of only those employees who do not request their employers to keep the information confidential -- the Authority has now spoken in response to that limitation. The Authority has rejected an employing activity's request that it adopt the Eighth Circuit's limitation, and has ordered the activity to provide the information as requested. Department of the Navy, Naval Plant Representative Office, Sikorsky Aircraft (Stratford, CT), 32 FLRA 675 (1988).

Consistent with the Authority's decision in Farmers Home, Respondents were required to furnish the Union with the names and addresses of the employees in the bargaining unit it represents. Their refusal to do so violated section 7116(a)(1), (5) and (8) of the Statute. See also United States Department of the Navy and Philadelphia 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); Veterans Administration, Washington, D.C. and Dallas Veterans Administration Medical Center, Dallas, Texas, 31 FLRA 740 (1988).

As the motion for summary judgment is directed only against Respondent Exchange, and as the motion papers accept the Respondents' denial that Respondent Exchange acted upon orders or instructions from Respondent Navy and also note that the collective bargaining relationship is at the local (Exchange) level, I shall recommend that the allegations in the complaint against Respondent Navy be dismissed. See U.S. Department of Defense, U.S. Department of the Navy, Washington, D.C., 28 FLRA 859 (1987).

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, Navy CBC Exchange, Construction Battalion Center, Gulfport, Mississippi, 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.

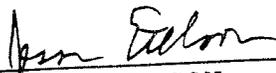
(b) Post at its facilities where bargaining unit employees represented by the United Food and Commercial Workers Union, Local 1657, AFL-CIO, CLC, are located, copies of the attached Notice on forms to be furnished by the Federal Labor Relations Authority. Upon receipt of such forms, they shall be signed by the Commander of the Department of Defense, Department of the Navy, Navy CBC Exchange, Construction Battalion Center, Gulfport, Mississippi, 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 unfair labor practices by Respondent Department of

Defense, Department of the Navy, Washington, D.C., is
dismissed.

Issued, Washington, D.C., April 26, 1989.



JESSE ETELSON
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.