

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

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VETERANS ADMINISTRATION .
WASHINGTON, D.C. .
AND .
VETERANS ADMINISTRATION .
VETERANS ADMINISTRATION .
MEDICAL CENTER .
FAYETTEVILLE, ARKANSAS .

Respondents .

and .

Case No. 6-CA-80386

AMERICAN FEDERATION OF .
GOVERNMENT EMPLOYEES, .
AFL-CIO, LOCAL 2201 .

Charging Party .

.....

Christopher J. Ivits, Esquire
For the General Counsel, FLRA

Charles J. Pugh, Esquire
For the Respondents

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 May 25, 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 Authority's 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 and a motion to dismiss the case as moot on or behalf June 15, 1989. Counsel for the General Counsel opposed the motion to dismiss.

Based upon the entire record, and it appearing that there are no genuine issues of material fact, I make the following findings of fact, conclusions of law, and recommendation.

Findings of Fact

The American Federation of Government Employees, AFL-CIO, Local 2201, (the Union) is the representative of certain employees at Respondents' Veterans Administration Medical Center, Fayetteville, Arkansas. On or about May 4, 1988, the Union requested that an agent of Respondent Medical Center provide it with the names and home addresses of all bargaining unit employees represented by the Union. On or about May 5, 1988, Respondent Medical Center refused to furnish the Union with the requested information. This refusal was made pursuant to a policy directive given to Respondent Medical Center by Respondent Veterans Administration, Washington, D.C.

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/}

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

^{1/} The Respondents' answer contests only the "necessary" element and contends that the Union has alternative means of communicating with unit employees.

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 in Farmers Home, there is, needless to say, no point in my entertaining arguments to the contrary.^{2/} To the extent that the Eighth Circuit limited

^{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. 109 S. Ct. 831, 130 LRRM 2272. That disposition does not affect the controlling weight, before me, of the Authority's decision in Farmers Home. Nor does the recent decision in FLRA v. U.S. Department of the Treasury, Financial Management Service, ___ F.2d ___, ___ LRRM ___, No. 87-1107 (D.C. Cir. Sept. 12, 1989), refusing to enforce a similar order by the Authority.

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, Respondent Medical Center was required to furnish the Union with the names and addresses of the employees in the bargaining unit it represents. Its 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).

The refusal to furnish this information having constituted a violation, I must reject the Respondents' defense, and the accompanying motion to dismiss, based on the assertion that in April 1989, a year after the Union's request and more than six months after the complaint was issued in this case, Respondent Medical Center furnished the information to the Union. This assertion, even if true, does not moot the case. Army and Air Force Exchange Service, (AAFES), Fort Carson, Colorado, 17 FLRA 624, 625 n.2 (1985). See also, NLRB v. Raythorn Co., 398 U.S. 25 (1970).

The General Counsel, in response to the motion to dismiss, puts into issue the factual assertion that all of the information requested, and found here to be subject to section 7114(b)(4), has been furnished. However, this issue of fact does not affect the finding, above, that an unfair labor practice has occurred. I shall order the requested information to be furnished, with the understanding that all matters of compliance may be litigated, if necessary, at a

later stage of this proceeding. Cf. Department of Justice, United States Immigration and Naturalization Service, United States Border Patrol, 23 FLRA 239, 240 (1986) (availability of otherwise disclosable data may be determined in compliance stage).

Notwithstanding the apparent violation by Respondent Medical Center, the General Counsel in effect provides it with a defense by taking the position that the Medical Center's refusal to furnish the information was a ministerial act taken at the direction of the Respondent Agency (Veterans Administration, Washington, D.C.) and without having any discretion in the matter. As the Respondent Agency is named in this proceeding and is available to remedy the unfair labor practice, Authority precedent compels dismissal of the complaint against Respondent Medical Center. See United States Department of the Treasury, Internal Revenue Service and Internal Revenue Service, Austin District, and Internal Revenue Service, Houston District, 23 FLRA 774, 779 (1986); Veterans Administration, Washington, D.C., and Veterans Administration Medical Center, Veterans Administration, New Orleans, Louisiana, 29 FLRA 55 (1987) (VA, New Orleans). By the same token, the undisputed direction given by the Respondent Agency to withhold requested names and addresses makes it responsible for the unfair labor practice and subject to the appropriate remedial order. VA, New Orleans, supra. Moreover, its actions constituted the independent violation of section 7116(a)(1) and (5) of improperly interfering with the local bargaining relationship. Id. at 58. Finally, the Respondent Agency's maintenance of a broad policy of withholding names and addresses justifies a broad order prohibiting that policy.

Accordingly, General Counsel's Motion for Summary Judgment is granted in part and is denied in part. Having found that the Veterans Administration, Washington, D.C. violated sections 7116(a)(1), (5) and (8) of the Statute, I recommend that the Authority adopt the following:

ORDER

A. Pursuant to § 2423.29 of the Authority's Rules and Regulations, 5 C.F.R. § 2423.29, and section 7118 of the Statute, 5 U.S.C. § 7118, the Authority hereby orders that the Veterans Administration, Washington, D.C., shall:

1. Cease and desist from:

(a) Directing the Veterans Administration, Veterans Administration Medical Center, Fayetteville, Arkansas, to refuse to furnish the American Federation of Government Employees, AFL-CIO, Local 2201, the names and home addresses of all employees in the unit.

(b) Directing any other component activity of the Veterans Administration to refuse to furnish on request of the exclusive representative of bargaining units of its employees, or designated agents of the exclusive representative for bargaining units of its employees, the names and home addresses of employees in the units they represent.

(c) In any like or related manner, interfering with, restraining, or coercing its employees in the exercise of the rights assured them by the Statute.

(d) In any like or related manner interfering with the local bargaining relationship between the American Federation of Government Employees, AFL-CIO, Local 2201 and the Veterans Administration, Veterans Administration Medical Center, Fayetteville, Arkansas.

(e) In any like or related manner interfering with the local bargaining relationship between any exclusive representative, or designated agent of the exclusive representative, and any component activity of the Veterans Administration.

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

(a) Direct the Veterans Administration, Veterans Administration Medical Center, Fayetteville, Arkansas, to furnish the American Federation of Government Employees, AFL-CIO, Local 2201, the names and home addresses of all employees in the unit.

(b) Post at Veterans Administration, Veterans Administration Medical Center, Fayetteville, Arkansas, 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 Administrator of the Veterans Administration, Washington, D.C., 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) Post at its facilities at Washington, D.C., 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 Administrator of the Veterans Administration, Washington, D.C., 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.

(d) Pursuant to § 2423.30 of the Authority's Rules and Regulations, 5 C.F.R. § 2423.30, notify the Regional Director, Region VI, Federal Labor Relations Authority, Suite 926, 525 Griffin Street, Dallas, TX 75202, in writing, within 30 days from the date of this Order as to what steps have been taken to comply therewith.

B. The allegations of the Complaint against Veterans Administration, Veterans Administration Medical Center, Fayetteville, Arkansas, are dismissed.

Issued: Washington, D.C., November 7, 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 direct the Veterans Administration, Veterans Administration Medical Center, Fayetteville, Arkansas, to refuse to furnish, upon request of the American Federation of Government Employees, AFL-CIO, Local 2201, the names and home addresses of all employees in the unit.

WE WILL NOT direct any other component activity of the Veterans Administration to refuse to furnish on request of the exclusive representative of bargaining units of our employees, or designated agent of such exclusive representative, the names and home addresses of employees in the units they represent.

WE WILL NOT in any like or related manner, interfere with, restrain, or coerce our employees in the exercise of rights assured them by the Federal Service Labor-Management Relations Statute.

WE WILL NOT in any like or related manner, interfere with, the local bargaining relationship between the American Federation of Government Employees, AFL-CIO, Local 2201 and the Veterans Administration, Veterans Administration Medical Center, Fayetteville, Arkansas.

WE WILL NOT in any like or related manner, interfere with the local bargaining relationship between any exclusive representative, or designated agent of the exclusive representative, and any component activity of the Veterans Administration.

WE WILL direct that Veterans Administration, Veterans Administration Medical Center, Fayetteville, Arkansas, furnish the American Federation of Government Employees, AFL-CIO, Local 2201, the names and home addresses of all employees in the unit.

(Agency)

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 VI, whose address is: Federal Office Building, 525 Griffin Street, Dallas, Texas 75202, and whose telephone number is: (214) 767-4996.