

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

.....
DEPARTMENT OF THE INTERIOR,
WASHINGTON, D.C.

and

NATIONAL PARK SERVICE,
DENVER SERVICE CENTER,
DENVER, COLORADO

and

NATIONAL PARK SERVICE,
ROCKY MOUNTAIN REGIONAL
OFFICE, DENVER, COLORADO

Respondents

and

Case Nos. 7-CA-80556
7-CA-80557

AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES,
AFL-CIO, LOCAL 3628

Charging Party

.....

Timothy Sullivan, Esquire
For the General Counsel, FLRA

Gerald J. Rachelson, 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

addresses of bargaining unit employees represented by the Union.

On or about September 27, 1988, Counsel for the General Counsel moved for summary judgment. 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 October 14, 1988, 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 American Federation of Government Employees, AFL-CIO, Local 3628 (the Union) is the exclusive representative of certain employees at Respondents' Denver Service Center and Rocky Mountain Regional Office facilities in Denver, Colorado. On or about April 25, 1988, the Union requested that an agent of Respondents provide it with the names and mailing addresses of all bargaining unit employees represented by the Union. On or about May 20, 1988, and at all times since, Respondents have refused to furnish the Union with the requested information. Respondent Interior directed Respondents Service Center and Regional Office to refuse to provide this data.

Discussion, Conclusions, and Recommendations

The names and mailing addresses of bargaining unit employees are normally maintained by Respondents in the regular course of business,^{1/} 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 Respondents' contention that the addresses it maintains in its personnel files may not be current does not affect their obligation to furnish what they have.

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 "routing 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).

I further find that Respondents Service Center and Regional Office were prevented by Respondent Interior from fulfilling their obligations imposed by section 7114(b)(4) of the Statute. In this connection it is noted that Respondents admit that Respondent Interior instructed Respondents Service Center and Regional Office not to furnish the requested names and addresses of the unit employees employed by Respondents Service Center and Regional Office. Accordingly, inasmuch as the Respondents Service Center and Regional Office were acting ministerially and without discretion in the matter, I shall, pursuant to established Authority policy, dismiss the complaint with respect to Respondents Service Center and Regional Office. Veterans Administration, Washington, D.C. and Dallas Veterans Administration Medical Center, Veterans Administration, Dallas, Texas, 31 FLRA 740, 750 (1988).

However, with respect to Respondent Interior, which was responsible for directing Respondents Service Center and

Regional Office not to furnish the Union with the requested information, I find that it improperly prevented them from complying with section 7114(b)(4) of the Statute and improperly interfered with the local bargaining relationship between the Union and Respondents Service Center and Regional Office. In view of the foregoing, I further conclude that Respondent Interior, by virtue of its preventing Respondents Service Center and Regional Office from complying with section 7114(b)(4) of the Statute and interfering with the local bargaining relationship, violated sections 7116(a)(1), (5) and (8) of the Statute. Veterans Administration, Washington, D.C. and Dallas Veterans Administration Medical Center, supra.

Accordingly, the General Counsel's Motion For Summary Judgment is hereby granted against Respondent Interior, and it is recommended that the Authority issue the following Order:

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 Department of the Interior, Washington, D.C., shall:

1. Cease and desist from:

(a) Directing the National Park Service, Denver Service Center, Denver, Colorado and National Park Service, Rocky Mountain Regional Office, Denver, Colorado, to refuse to furnish the American Federation of Government Employees, Local 3628, AFL-CIO, the exclusive representative of certain of its employees, the names and addresses of all employees in the bargaining units it represents.

(b) Directing other component activities of the Department of the Interior to refuse to furnish on request of the exclusive representative of bargaining units of its employees or the designated agents of the exclusive representative for bargaining units of its employees the names and addresses of employees in the units they represent.

(c) In any like or related manner interfering with, restraining or coercing employees in the exercise of their 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) Direct the National Park Service, Denver Service Center, Denver, Colorado and National Park Service, Rocky Mountain Regional Office, Denver, Colorado, to furnish the American Federation of Government Employees, Local 3628, AFL-CIO, the exclusive representative of certain of its employees, the names and addresses of all employees in the bargaining units it represents.

(b) Post at its facilities at the National Park Service, Denver Service Center, Denver, Colorado and National Park Service, Rocky Mountain Regional Office, Denver, Colorado, where bargaining unit employees represented by the American Federation of Government Employees, Local 3628, 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 a responsible official of the Department of the Interior, 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) Pursuant to section 2423.30 of the Authority's Rules and Regulations, notify the Regional Director, Region VII, Federal Labor Relations Authority, Denver, Colorado, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

It is further ordered that the allegations in the complaint against National Park Service, Denver Service Center, Denver, Colorado, and National Park Service, Rocky Mountain Regional Office, Denver, Colorado, are dismissed.

Issued, Washington, D.C., March 29, 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 National Park Service, Denver Service Center, Denver, Colorado and National Park Service, Rocky Mountain Regional Office, Denver, Colorado, to refuse to furnish the American Federation of Government Employees, Local 3628, AFL-CIO, the exclusive representative of certain of our employees, the names and addresses of all employees in the bargaining units it represents.

WE WILL NOT direct other component activities of the Department of the Interior to refuse to furnish on request of the exclusive representative of bargaining units of its employees or the designated agents of the exclusive representative for bargaining units of its employees the names and addresses of employees in the units they represent.

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 direct the National Park Service, Denver Service Center, Denver, Colorado and National Park Service, Rocky Mountain Regional Office, Denver, Colorado, to furnish the American Federation of Government Employees, Local 3628, AFL-CIO, the exclusive representative of certain of its employees, the names and addresses of all employees in the bargaining units 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 VII, whose address is: 535 - 16th Street, Suite 310, Denver, Colorado, and whose telephone number is: (303) 844-5224.