

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

.
VETERANS ADMINISTRATION .
WASHINGTON, D.C. AND VETERANS .
ADMINISTRATION MEDICAL CENTER, .
NEWINGTON, CONNECTICUT .

Respondent .

and .

Case No. 1-CA-00144

NATIONAL ASSOCIATION OF .
GOVERNMENT EMPLOYEES, .
LOCAL R1-109, SEIU, AFL-CIO .

Charging Party .

.
Robert S. Goshdigian, Esq.
For the Respondent

Richard D. Zaiger, Esq.
For the General Counsel

Before: WILLIAM NAIMARK
Administrative Law Judge

DECISION

Statement of the Case

This case arises under the Federal Service Labor-Management Relations Statute, 5 U.S.C. section 7101 et seq. (herein called the Statute). Pursuant to a charge filed on January 29, 1990 by National Association of Government Employees, Local R1-109, SEIU, AFL-CIO (herein called the Union), a Complaint and Notice of Hearing was issued on October 22, 1990 by the Acting Regional Director for Region I, Federal Labor Relations Authority, against Veterans Administration, Washington, D.C. and Veterans Administration, Medical Center, Newington, Connecticut (herein called the Respondent).

The Complaint alleged, in substance, that Respondent violated section 7116(a)(1), (5) and (8) of the Statute by failing and refusing to furnish the Union, upon request, the names and home addresses of bargaining unit employees represented by the Union as required by section 7114(b)(4) of the Statute.

Respondent's Answer, which was duly served on November 15, 1990, admitted as to the Complaint: (a) the jurisdictional allegation therein; (b) that on or about January 2, 1990 the Union, as the exclusive representative of an appropriate unit of Respondent's employees, requested the Respondent to furnish it with the names and home addresses of the bargaining unit employees represented by the Union; (c) that on January 19, 1990 Respondent refused to furnish the requested information to the Union; (d) the names and home addresses of the unit employees which were requested are normally maintained by the Respondent in the regular course of business; (e) that such information is reasonably available to Respondent; (f) that such information does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining.

Respondent's Answer neither admitted nor denied that the information requested is necessary for full and proper discussion, understanding and negotiation of subjects within the scope of bargaining. It averred that the Union has adequate alternative means available to contact its members and disseminate information to them. Further, the Answer denied that disclosure of the requested information is not prohibited by law where adequate means of contacting employees are available to the Union.

Under date of December 31, 1990 General Counsel filed a Motion For Summary Judgment.

By Order dated December 31, 1990 the Regional Director referred the Motion to the Chief Administrative Law Judge pursuant to section 2423.22(b) of the Rules and Regulations. The case was duly assigned to the undersigned for disposition.

Under date of January 8, 1991 Respondent filed its Opposition To Motion For Summary Judgment which has been duly considered.

Respondent contends that the Privacy Act and the Freedom of Information Act prohibit disclosure of names and addresses

to the Union; that section 7114(b)(4) of the Statute allows disclosure of such information only to the extent not prohibited by law. It maintains that the prevailing law is reflected in the case of Federal Labor Relations Authority v. U.S. Department of the Treasury, Financial Management Service, 884 F.2d 1446 (D.C. Cir. 1989), which relied upon the Supreme Court case of U.S. Department of Justice, et al. v. Reporters Committee for Freedom of the Press, et al., 108 S. Ct. 1468. Respondent insists that the courts have concluded the right of the individual outweighed the need for disclosure and therefore the names and addresses need not be disclosed.

It is further argued that the "routine use" exception to the Privacy Act, 5 U.S.C. 552(b)(3) does not apply since there are adequate means of communication between the Union and the employees. Finally, Respondent maintains that even if the Privacy Act does not prohibit release of the information, it has not been shown that such is relevant and necessary to the Union's representational duties as required by the Statute.

The issue involved herein was the subject of considerable detail by the Authority in Farmers Home Administration Finance Office, St. Louis, Missouri, 23 FLRA 788 (1986) 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). The Authority held therein that the names and home addresses must be furnished and that their release is not prohibited by law. It also concluded such data is necessary for unions to fulfill their representational duties under the Statute. The decision analyzed the exceptions to the Privacy Act's bar to disclosure of personal information pertinent to releasing 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 both exceptions applied so as to authorize the release of the data under the Privacy Act.

Despite the decision by the D.C. Circuit in the Department of the Treasury, supra, the Authority has stated it will continue "to look to our earlier decision in Farmers Home Administration for controlling principles in this area." See U.S. Department of the Navy, Portsmouth Naval Shipyard, Portsmouth, New Hampshire, 37 FLRA 515. In the latter decision the Authority explained in detail why it refused to be bound by, or to find applicable, the Circuit Court's ruling in the Department of the Treasury case.

Respondent lays stress upon the fact that the "routine use" exception to the Privacy Act does not apply because OPM in Financial Management Service, supra, indicated it did not approve disclosure if there were adequate means of communication between unions and employees. Further, Respondent insists there are such means available to the Union herein. In the Portsmouth Naval Shipyard case, supra, the Authority concluded it was inappropriate to defer on a labor law issue to the views of an agency (OPM) that is not charged with implementing the Federal sector labor laws while depriving the Authority, which is so charged, of its ability to continue to set policy in this case. Further, the Authority concluded that whether a disclosure is relevant and necessary to a union's function will not depend upon whether alternative means of communications are available.

Based on the foregoing, and the holdings of the Authority as set forth above, I conclude that Respondent's refusal and failure to provide the Union with the names and home addresses of unit employees 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); 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).

Accordingly, the General Counsel's Motion For Summary Judgment is granted. 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 the Veterans Administration, Washington, D.C. and Veterans Administration Medical Center, Newington, Connecticut, shall:

1. Cease and desist from:

(a) Refusing to furnish, upon request of National Association of Government Employees, Local R1-109, SEIU, AFL-CIO, the exclusive representative of an appropriate unit 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 rights assured by the Federal Service Labor-Management Relations Statute.

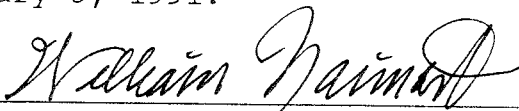
2. Take the following affirmative action in order to effectuate the purposes and policies of the Federal Service Labor-Management Statute:

(a) Furnish National Association of Government Employees, Local R1-109, SEIU, AFL-CIO, the exclusive representative of an appropriate unit of its employees, 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 National Association of Government Employees, Local R1-109, SEIU, 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 the Director, Veterans Administration, Washington, D.C. and Veterans Administration Medical Center, Newington, Connecticut, 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 I, Federal Labor Relations Authority, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

Issued, Washington, D.C., February 8, 1991.


WILLIAM NAIMARK
Administrative Law Judge

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 National Association of Government Employees, Local R1-109, SEIU, AFL-CIO, the exclusive representative of an appropriate unit 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 employees in the exercise of their rights assured by the Federal Service Labor-Management Relations Statute.

WE WILL furnish National Association of Government Employees, Local R1-109, SEIU, AFL-CIO, the exclusive representative of an appropriate unit of our employees, 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 I, whose address is: 10 Causeway Street, Room 1017, Boston, MA 02222-1046, and whose telephone number is: (617) 565-7280.