

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

.....
SOCIAL SECURITY ADMINISTRATION, .
SOUTHEASTERN PROGRAM SERVICE .
CENTER, BIRMINGHAM, ALABAMA .

Respondent .

and .

Case No. 4-CA-90775 .

AMERICAN FEDERATION OF .
GOVERNMENT EMPLOYEES .

Charging Party .
.....

Richard M. Friedman
For Respondent

Richard S. Jones, Esq.
For General Counsel of the FLRA

Before: SAMUEL A. CHAITOVITZ
Administrative Law Judge

DECISION

Statement of the Case

The unfair labor practice complaint in this case alleges that Social Security Administration, Southeastern Program Service Center, Birmingham, Alabama (SSA Birmingham) violated section 7116(a)(1), (5), and (8) of the Federal Service Labor-Management Statute, 5 U.S.C. § 7101 et seq. (Statute) by refusing to furnish American Federation of Government Employees (AFGE), the exclusive representative of certain of SSA Birmingham's employees, the names and addresses of bargaining unit employees. SSA Birmingham filed an answer denying it had violated the Statute.

On or about December 21, 1990 General Counsel of the FLRA filed a Motion for Summary Judgment which was transferred by the Regional Director of Federal labor Relations Authority (FLRA) Region IV to the Chief

Administrative Law Judge, pursuant to section 2423.22(b)(1) of the FLRA's Rules and Regulations, 5 C.F.R. § 2423.1 et seq.

SSA Birmingham filed an Opposition to Motion for Summary Judgment on December 28, 1990. SSA Birmingham did not take issue with the material facts, except to raise an issue of alternative means of communications, but requested that the motion be denied as a matter of law based upon FLRA v. Department of the Treasury, Financial Management Service, 884 F.2d 1446 (D.C. Cir. 1989), cert. denied 110 S. Ct. 863 (1990) (Dep't of the Treasury) and United States Department of Justice v. Reporters Committee for Freedom of the Press, 109 S. Ct. 1468 (1989) (Reporters Committee).

On December 28, 1990 the Chief Administrative Law Judge issued an Order granting all parties hereto until January 25, 1991 to file additional responses.

On December 28, 1990 SSA Birmingham filed a Motion to Stay Proceedings "until the disputed issue of law in this case has been conclusively resolved by the courts of appeal or by the Supreme Court".

This case was assigned to the undersigned for disposition pursuant to section 2423.19(k) and section 2423.22(b)(3) of the FLRA's Rules and Regulations.

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

Findings of Fact

AFGE is the exclusive collective bargaining representative of an appropriate nationwide unit of employees of the Social Security Administration (SSA). AFGE Local 2206 is an agent of AFGE representing unit employees in SSA Birmingham.

On July 27, 1989, and August 3, 1989, AFGE Local 2206, by its President Odessa M. Washington requested the names and home addresses of employees in the bargaining unit employed at SSA Birmingham. It is undisputed that the requested names and addresses are reasonably available, are necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of bargaining, and

do not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining. The names and addresses are normally maintained by a component of the Department of Health and Human Services (HHS) other than SSA Birmingham.

On July 31, 1989, and August 7, 1989 SSA Birmingham, by George F. Sedberry, its Labor Relations Specialist, denied the request for the names and addresses and since July 31, 1989, SSA Birmingham has refused to supply AFGE Local 2206 with the requested information.

Discussion and Conclusions of Law

The decision in this case is controlled by U.S. Department of the Navy, Portsmouth Naval Shipyard, Portsmouth, New Hampshire, 37 FLRA 515 (1990) (Portsmouth Naval Shipyard), application for enforcement filed sub nom. FLRA v. U.S. Department of the Navy, Portsmouth Naval Shipyard, Portsmouth, New Hampshire, No. 90-1949 (1st Cir. Oct. 1, 1990). For the reasons fully set forth in Portsmouth Naval Shipyard, supra, the release of the names and home addresses of bargaining unit employees is "necessary" within the meaning of the Statute and is not "prohibited by law". In Portsmouth Naval Shipyard, supra, the FLRA rejected the reasoning of the D.C. Circuit in Dep't of the Treasury, supra, because the D.C. Circuit did not harmonize the Statute, the Freedom of Information Act, and the Privacy Act.

SSA Birmingham, in addition to contending that the FLRA erred in Portsmouth Naval Shipyard, supra, argues that the union may not compel release of the home addresses unless there are no adequate alternative means of communication, and since there is no contention that there is such an alternative means of communication there is an issue of material fact. This argument is rejected. The FLRA, in Portsmouth Naval Shipyard, supra, discusses the relationship of a union and the employees it represents and the special effectiveness of communication between the union and such employees when the union can communicate with the employees at their home, "away from the workplace and potential surveillance by management." Id. at 527-528. In light of the uniqueness of the communication permitted by having the home addresses of the employees in the unit, as recognized by the FLRA, there are no "adequate alternate means of communication". However if an agency were to contend there was such an unusual situation and that there did exist an adequate alternate means of communication, the burden would necessarily be upon the agency to establish such a situation

existed rather than upon the General Counsel of the FLRA to establish that such a situation did not exist, a negative fact.

In the subject case SSA Birmingham does not allege that there is such an adequate alternate means of communication, but rather argues an issue of fact exists because the General Counsel of the FLRA did not allege and prove that there was no adequate alternate means of communication. This approach is rejected based on the FLRA's reasoning as discussed above.

In its answer SSA Birmingham, in denying the information requested is normally maintained by SSA Birmingham in the regular course of business, states that the information "is normally maintained by another component of HHS." SSA Birmingham, in its answer, admits that the information is reasonably available. In light of the foregoing, I conclude that, for the purposes of section 7114(b)(4) of the Statute, the names and addresses were maintained by the agency in the normal course of business. Cf. Department of Defense Dependents Schools, Washington, D.C., and Department of Defense Dependents Schools, Germany Region, 19 FLRA 790 (1985).

Based upon the reasoning in Portsmouth Naval Shipyard, supra, I conclude that the request for the names and home addresses of unit employees satisfies the requirements of section 7114(b)(4) of the Statute. I conclude further that SSA Birmingham was required to provide the data requested by AFGE Local 2206 and the refusal to provide this data violated section 7116(a)(1), (5) and (8) of the Statute.

In light of all of the foregoing, I conclude no purpose would be served by staying the proceedings herein and, accordingly, the Motion to Stay Proceedings is hereby denied.

Based on the foregoing findings and conclusions, the Motion for Summary Judgment is hereby granted 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 Social Security Administration, Southeastern Program Service Center, Birmingham, Alabama shall:

1. Cease and desist from:

(a) Refusing to furnish, upon request of the American Federation of Government Employees, Local 2206, the exclusive representative of certain of its employees, the names and home addresses of all such employees.

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

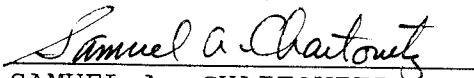
2. Take the following affirmative action in order to effectuate the purposes and policies of the Federal Service Labor-Management Relations Statute:

(a) Furnish the American Federation of Government Employees, Local 2206, the exclusive representative of certain of its employees, the names and home addresses of all such employees.

(b) Post at its facilities 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 Center Director 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 IV, Federal Labor Relations Authority, Atlanta, Georgia, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

Issued, Washington, DC, February 14, 1991.


SAMUEL A. CHAITOVITZ
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 the American Federation of Government Employees, Local 2206, the exclusive representative of certain of our employees, the names and home addresses of all such employees.

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

WE WILL furnish the American Federation of Government Employees, Local 2206, the exclusive representative of certain of our employees, the names and home addresses of all such employees.

(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, NE, Suite 122, Atlanta, GA 30367, and whose telephone number is: (404) 347-2324.