

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

DEPARTMENT OF THE NAVY
NAVAL RESALE ACTIVITY,
NAVAL AIR STATION-MEMPHIS
MILLINGTON, TENNESSEE

Respondent

and

Case No. 4-CA-90632

NATIONAL ASSOCIATION OF
GOVERNMENT EMPLOYEES,
LOCAL R5-66, AFL-CIO

Charging Party

Richard S. Jones, Esquire
For the General Counsel

Mr. Richard R. Giacolone
For the Respondent

Before: JESSE ETELSON
Administrative Law Judge

DECISION

This is another in the series of "names and addresses" cases that may have to await some action by the Supreme Court for final resolution. There is nothing unusual about this particular case, and the Respondent has raised only one argument that is not familiar to me. Counsel for the General Counsel moved for summary judgment, the motion was duly transferred to the Chief Administrative Judge, and the Respondent filed an opposition to the motion, labelled by the Respondent as a "motion to dismiss General Counsel's motion for summary judgment."

The case was assigned to me for disposition pursuant to section 2423.19(k) and section 2423.22(b)(3) of the Authority's Regulations. Based on the entire record, and it appearing that there are no genuine issues of material fact, I find and conclude as follows.

Findings of Fact

National Association of Government Employees, Local R5-66, AFL-CIO (the Union) is the exclusive bargaining representative for a unit of the Respondent's employees that is appropriate for collective bargaining. On June 1, 1989, the Union, by its president, requested that the Respondent provide it with the names and home addresses of the employees the Union represents. This request stated that it was necessary in order for the Union to "fulfill our representational obligations." The Respondent normally maintains these names and addresses in the regular course of business and they are reasonably available.

On June 9, 1989, the Respondent informed the Union that it declined to furnish the information requested, "because of our concern for the privacy of the employees involved." This letter also stated that "[t]here should be alternate means available to you for obtaining this information." The Union filed a timely unfair labor practice charge alleging the Respondent's refusal to provide the information and the Authority's Regional Director issued an unfair labor practice complaint.

Discussion, Conclusions, and Recommendation

The Respondent contests its obligation under section 7114(b)(4) of the Federal Service Labor-Management Relations Statute (the Statute) to furnish the names and home addresses on two grounds. First, it denies that such data is "necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining." Second, it asserts that furnishing of the names and addresses is prohibited by law--by the Privacy Act, 5 U.S.C. §552a. The Respondent asserts that this case is inappropriate for summary judgment in favor of the General Counsel because, if given the opportunity, it would prove that the Union had alternate means to accomplish the purposes for which it seeks the data and that, in connection with the Privacy Act defense, some employees may have particularly strong reasons for fearing the release of their home addresses, including fear of violence or harassment from the Union or from separated or former spouses.

This case is controlled by U.S. Department of the Navy, Portsmouth Naval Shipyard, Portsmouth, New Hampshire, 37 FLRA 515 (1990), 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, the names and home addresses of bargaining unit employees are "necessary" within the meaning of section 7114(b)(4)(B) of the Statute and their release is not "prohibited by law."

Portsmouth Naval Shipyard requires my rejection of the Respondent's contention that it should be given an opportunity to prove that the Union has alternative means of communicating with the employees it represents. For the Authority expressly reaffirmed there (Id. at 522-23, 539) its previous doctrine that the question of whether disclosure of data is relevant and necessary to a union's representational functions is to be considered without regard to the availability of alternative means of communication.

With respect to the Respondent's suggestion that special circumstances might be present here to warrant protection of certain employees from disclosure of their home addresses to the Union, none of the potentially provable "facts" recited by the Respondent are "material" under applicable law. Thus, the Respondent asserts that some employees have unlisted phone numbers and "may" use Post Office boxes to secure their privacy. (As to the latter, such boxes presumably would constitute the addresses to which the Union is entitled.) The Respondent also asserts that some of their divorced or separated spouses "may have abused them or their children," that such employees "may simply wish to conceal their current location" from their divorced or separated spouses, and that such spouses "may" be currently employed by the Respondent and could "gain access to the home addresses through their involvement in union activity or through the failure of the union to safeguard this information."

All of this is too speculative to require a hearing. The only aspect that warrants further comment is the Union's responsibility to prevent unauthorized and inappropriate use of data released to a union for the limited purpose of performing its representational functions. The Authority has recognized such a responsibility and the consequences to unions who disregard it. See Army and Air Force Exchange Service (AAFES), Fort Carson, Colorado, 25 FLRA 1060, 1063 (1987); U.S. Equal Employment Opportunity Commission, Washington, D.C., 20 FLRA 357, 362 (1985); Department of the Air Force, Scott Air Force Base, Illinois, 38 FLRA 410, 435 (1990). Should a real situation develop in which special

precautions need to be taken to insure the safety of an employee in her or his home, appropriate steps should be and can be taken. Portsmouth Naval Shipyard, however, does not permit the potential for such situations to govern the general applicability of the Statute's disclosure provisions.

For all of these reasons, the General Counsel's Motion for Summary Judgment is granted. I conclude that the Respondent has violated sections 7116(a)(1), (5), and (8) of the Statute and recommend 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 Department of the Navy, Naval Resale Activity, Naval Air Station-Memphis, Millington, Tennessee, shall:

1. Cease and desist from:

(a) Refusing to furnish, upon request of National Association of Government Employees, Local R5-66, 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 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:

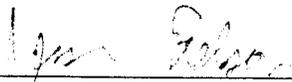
(a) Furnish National Association of Government Employees, Local R5-66, AFL-CIO, the exclusive representative of certain of its employees, the names and home addresses of all employees in the bargaining unit it represents.

(b) Post at its facilities where bargaining unit employees represented by National Association of Government Employees, Local R5-66, 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 Commanding Officer of the Department

of the Navy, Naval Resale Activity, Naval Air Station-Memphis, Millington, Tennessee 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, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

Issued, Washington, DC, April 8, 1991.



JESSE ETELSON
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 R5-66, AFL-CIO, 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 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 R5-66, AFL-CIO, the exclusive representative of certain 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, Atlanta Region, whose address is: 1371 Peachtree Street, N.E., Suite 122, Atlanta, GA 30367, and whose telephone number is: (404) 347-1032.