

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

.
UNITED STATES CUSTOMS SERVICE .
REGION IV, MIAMI DISTRICT .
MIAMI, FLORIDA .

Respondent .

and .

Case No. 4-CA-90558

NATIONAL TREASURY EMPLOYEES .
UNION .

Charging Party .

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Maria D. Capo, Esquire
For the Respondent

Steven P. Flig, Esquire
For the Charging Party

Linda J. Norwood, Esquire
For the General Counsel

Before: BURTON S. STERNBURG
Administrative Law Judge

Decision

Statement of the Case

The unfair labor practice complaint, which issued on August 9, 1989, alleged that United States Customs Service, Region IV, Miami District, Miami, Florida, (hereinafter called Respondent) violated Section 7116(a)(1), (5) and (8) of the Federal Service Labor-Management Relations Statute, 5 U.S.C. Section 7101 et seq., (hereinafter called the Statute), by refusing to furnish the National Treasury Employees Union, (hereinafter called the Union), the exclusive representative of certain of Respondent's employees, the names and home addresses of bargaining unit employees represented by the Union.

Respondent's Answer to the Complaint, which was duly served on September 21, 1989, admitted as to the complaint,

(a) the jurisdictional allegations; (b) that on or about May 10, 1989 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 May 22, 1989 Respondent refused to furnish the requested information to the Union; (d) the names and home addresses of the unit employees are normally maintained by the Respondent in the regular course of business; and (e) that such information is readily available.

Respondent's Answer denied having any knowledge as to (a) whether the requested information was necessary for full and proper discussion, understanding and negotiation of subjects within the scope of bargaining; and (b) whether the information requested does not constitute guidance, advice, counsel or training for management officials or supervisors, relating to collective bargaining.

On December 20, 1990, Counsel for the General Counsel filed a Motion for Summary Judgment which was transferred by the Regional Director, Region IV, Federal Labor Relations Authority, to the Chief Administrative Law Judge, pursuant to section 2423.22(b)(1) of the Federal Labor Relations Authority's Rules and Regulations. Subsequently the matter was assigned to the undersigned for disposition pursuant to section 2423.19(k) and section 2423.22(b)(3) of the Authority's Rules and Regulations.

Respondent served it "Response to Motion for Summary Judgment and Cross Motion for Summary Judgment" on January 7, 1991. Thereafter, on January 14, 1991 the Charging Party filed a "Submission in Support of the General Counsel's Motion for Summary Judgment".

In support of its Cross Motion for Summary Judgment Respondent did not take issue with the material facts, but requested that the General Counsel's Motion be denied as a matter of law. In support of its position, Respondent cited FLRA v. Dep't 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), in which the Court of Appeals for the District of Columbia Circuit held that the Privacy Act prohibited disclosure of employees' names and home addresses to the employees' exclusive representatives in light of the Supreme Court's decision in United States Dep't of Justice v. Reporters Committee for Freedom of the Press, 109 S. Ct. 1468 (1989) (Reporters Committee). Additionally, Respondent contended that due to the

existence of a narco-terrorist threat in the Miami District, the release of the employees' names and home addresses could reasonably be expected to endanger the life or physical safety of the employees. In such circumstances, according to Respondent, the FOIA exempts the release of the employees' names and home addresses.

Findings of Fact

The Union is the exclusive representative of employees of Respondent in an appropriate unit. Chapter 137 of the Union has been delegated the authority to represent unit employees located at Respondent's Miami District Offices, Miami, Florida.

On or about May 10, 1989, Chapter 137, by its President Reta Grant, requested the names and home addresses of the bargaining unit employees within the Miami District. On May 22, 1989, Respondent denied the Union's request for the name and addresses.

It is undisputed that the names and addresses of the unit employees are normally maintained by Respondent in the regular course of business and are reasonably available. While not admitted or denied by Respondent, I find, based particularly upon the Authority's decision in U.S. Department of the Navy, Portsmouth Naval Shipyard, Portsmouth, New Hampshire, 37 FLRA 515, 532, 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) (hereinafter called Portsmouth, Naval Shipyard), that the names and addresses are "necessary" since the ability to communicate with employees in the most effective manner has a direct beneficial effect on the bargaining process. Finally, although again not admitted or denied by Respondent, I find that it is obvious that the names and addresses do not constitute guidance, advice, counsel or training for management officials or supervisors, relating to collective bargaining.

Discussion and Conclusions of Law

The decision in this case is controlled for the most part by the Authority's decision in Portsmouth Naval Shipyard, supra, wherein the Authority found that the release of bargaining unit employees' names and home addresses is "necessary" within the meaning of the Statute and is not "prohibited by law". The Authority further

concluded in Portsmouth Naval Shipyard, supra, that it would not apply the approach of the D.C. Circuit in Dep't of the Treasury, supra, because, among other things, the D.C. Circuit did not harmonize the Federal Service Labor-Management Relations Statute, the Freedom of Information Act, and the Privacy Act.

With respect to Respondent's contention that the disclosure of the names and home addresses could reasonably be expected to endanger the life and physical safety of the customs inspectors who are involved in narcotics interdiction, I find that such contention, which is unsupported by any evidence, to be nothing more than mere speculation. "Mere speculation that information might be misused in the future does not equate with a clear and present danger" Department of the Navy, U.S. Naval Ordnance Station, Louisville, Kentucky, 33 FLRA 3, 5; Department of Energy and Department of Energy, Pittsburgh Energy Technology Center, 33 FLRA 249, 251.

The Union's request for the names and home addresses of unit employees satisfies the requirements of Section 7114(b)(4) of the Statute. Therefore, Respondent was required to provide the data requested by the Union, and the refusal to do so violated Sections 7116(a)(1), (5) and (8) of the Statute.

Based upon the foregoing findings and conclusions, the General Counsel's Motion For Summary Judgment is hereby granted and it's 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 United States Customs Service, Region IV, Miami District, Miami, Florida shall:

1. Cease and desist from:

(a) Refusing to furnish, upon request of the National Treasury Employees Union, 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.

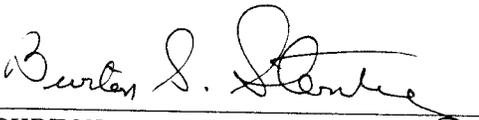
2. Take the following affirmative action in order to effectuate the purposes and policies of the Federal Service Labor-Management Relations Statute:

(a) Furnish the National Treasury Employees Union, 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 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 Miami District 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, March 14, 1991.


BURTON S. STERNBURG
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 National Treasury Employees Union, 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 the National Treasury Employees Union, 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, Region IV, whose address is: 1371 Peachtree Street, NE, Suite 122, Atlanta, GA 30367, and whose telephone number is: (404) 347-2324.