

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

.....
NAVY RESALE AND SERVICES
SUPPORT OFFICE, FIELD SUPPORT
OFFICE JACKSONVILLE
JACKSONVILLE, FLORIDA

Respondent

and

NATIONAL ASSOCIATION OF
GOVERNMENT EMPLOYEES,
LOCAL R5-82

Charging Party
.....

Case No. 4-CA-10526

Richard R. Giacolone
For the Respondent

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 June 13, 1991, alleged that the Navy Resale and Services Support Office, Field Support Office Jacksonville, Jacksonville, Florida (hereinafter called Respondent), violated Sections 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 Association of Government Employees, Local R5-82, (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 July 2, 1991, admitted as to the Complaint, (a) the

jurisdictional allegation; (b) that on March 27, 1991 the Union, as exclusive representative of an appropriate unit of Respondent's employees requested Respondent to furnish it with the names and home addresses of the bargaining unit employees represented by the Union; (c) that on April 12, 1991 Respondent refused to furnish the requested information to the Union; (d) that the names and home addresses of the unit employees are normally maintained by the Respondent in the regular course of business; (e) that the names and home addresses are reasonably available; and (f) that the requested names and home addresses do not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining.

Respondent's Answer did deny (a) that the requested names and home addresses were necessary for full and proper discussion, understanding and negotiation of subjects within the scope of bargaining, and (b) that the information was not prohibited from disclosure by law.

On July 10, 1991, 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 2422.22(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 on July 22, 1991 served a "Motion to Dismiss General Counsel's Motion for Summary Judgment" and a "Memorandum in Support" of the motion. In its Memorandum in Support of its Motion Respondent did not take issue with the material facts set forth in the Complaint, but rather requested, in essence, that the General Counsel's Motion be denied as a matter of law. In support of its position, Respondent relied primarily on the Circuit Court's decision in 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), wherein the Court of Appeals for the District of Columbia Circuit, citing 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) (Reports Committee), held that the Privacy Act prohibited disclosure of employees' names and home addresses to the employees' exclusive representative. Additionally, Respondent contends that the release of the

employees' names and home addresses could reasonably be expected to endanger the life or physical safety of the employees. Finally, the Respondent adopted the position of the Justice Department set forth in its petition for review of the Authority's decision in Portsmouth Naval Shipyard, 37 FLRA 515.*/

Findings of Fact

The Union is the exclusive representative of a unit of employees appropriate for collective bargaining with Respondent. On March 27, 1991 the Union, by Carolyn Chester, Acting President, requested the names and home addresses of bargaining unit employees. On April 12, 1991, the Respondent denied the Union's request for the home addresses of unit employees.

The names and home addresses of bargaining unit employees are normally maintained by Respondent in the regular course of business, are reasonably available, and do not constitute guidance, advice, counsel or training for management officials or supervisors relating to collective bargaining.

Although denied by Respondent, I find, based particularly upon the Authority's decision in Portsmouth Naval Shipyard, supra, that the names and home addresses are "necessary" since the ability to communicate with employees in the most effective manner has a direct beneficial effect on the bargaining process, and that disclosure of the names and home addresses is not prohibited by law.

Discussion and Conclusions

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

*/ Full citation is as follows:

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); enf. denied, August 13, 1991.

"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. Although the Authority's petition for enforcement of its order in Portsmouth Naval Shipyard, supra, has been denied by the 1st Circuit, there has been no showing that the Authority has deviated from its original holding in the matter. Accordingly, I am under an obligation to continue to follow the Authority's interpretation of the law.

With respect to Respondent's contention that the disclosure of the names and home addresses could reasonably be expected to endanger the life or physical safety of the employees, 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." Dep't of the Navy, U.S. Naval Ordnance Station, Louisville, Kentucky, 33 FLRA 3, 5; Dep't of Energy and Dep't 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 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 Navy Resale and Services Support Office, Field Support Office Jacksonville, Jacksonville, Florida, shall:

1. Cease and desist from:

(a) Refusing to furnish, upon request of National Association of Government Employees, Local R5-82,

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 R5-82, 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 R5-82, 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 Regional Office, whose address is: 1371 Peachtree Street, NE, Suite 122, Atlanta, GA 30367, and whose telephone number is: (404) 347-2324.

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.

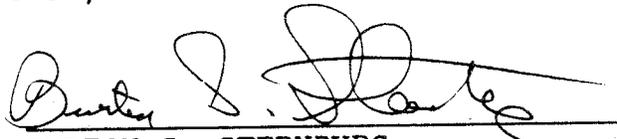
2. Take the following affirmative action in order to effectuate the purposes and policies of the Federal Service Labor-Management Relations Statute.

(a) Furnish National Association of Government Employees, Local R5-82, 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 Commanding Officer 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 of the Atlanta Regional Office, Federal Labor Relations Authority, 1371 Peachtree Street, NE, Suite 122, Atlanta, GA 30367, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

Issued, Washington, DC, August 30, 1991


BURTON S. STERNBURG
Administrative Law Judge