

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

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SOCIAL SECURITY ADMINISTRATION.
HEMET BRANCH OFFICE
HEMET, CALIFORNIA
Respondent
and Case No. 8-CA-10120
AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES,
AFL-CIO
Charging Party
.

Richard Friedman
For the Respondent
Lisa C. Lerner, 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 May 2, 1991, alleged that the Social Security Administration, Hemet Branch Office, Hemet, California (hereinafter called the 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 American Federation of Government Employees, AFL-CIO, (hereinafter called the Union), the exclusive representative of certain of Respondent's employees, the telephone number and home address of a bargaining unit employee represented by the Union.

Respondent's Amended Answer to the Complaint, which was duly served on or about May 30, 1991, admitted as to the Complaint, (a) the jurisdictional allegation; (b) that on December 10 and 18, 1990, the Union, as exclusive representative of an appropriate unit of Respondent's employees, requested Respondent to furnish it with the home address and telephone number of a bargaining unit employee who had been served with a notice of proposed removal; (c) that since December 19, 1990, Respondent refused to furnish the requested information to the Union; (d) that the requested information is normally maintained by the Respondent in the regular course of business; (e) that the requested information is reasonably available; (f) that the requested information is necessary for full and proper discussion, understanding and negotiation of subjects within the scope of bargaining; and (g) that the requested information does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining.

Respondent's Answer did, however, deny the allegation that the requested information is "not prohibited" from disclosure by law.

On July 29, 1991, Counsel for the General Counsel filed a Motion for Summary Judgment which was transferred by the Acting Regional Director, Region VIII, Federal Labor Relations Authority, to the Chief Administrative Law Judge for decision, 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, on August 5, 1991 served an "Opposition To Motion For Summary Judgment" wherein it takes the position that the disclosure of an employee's home address without the employee's consent is prohibited by the Privacy Act, 5 U.S.C. 552. Respondent, citing Federal Labor Relations Authority v. U.S. Dep't of the Treasury, 884 F.2d 1446 (D.C. Cir. 1989), further argues that the "routine use" exception to the Privacy Act does not apply when there are alternative means available for the Union to contact the employee. Inasmuch as there has been no showing by the General Counsel that the Union cannot reach or communicate with the employee by any other means, the Respondent urges that the Motion for Summary Judgment be denied.

Findings of Fact

The Union is the exclusive representative of a nationwide unit of Respondent's employees, including those employees working at Respondent's Hemet, California facility.

On December 10 and 18, 1990 the Union requested the Respondent to furnish it with the home address and telephone number of bargaining unit employee E. Ann Koehler who, apparently due to the fact that she had been absent from the workplace since February 1990, had been issued a notice of proposed removal by the Respondent on December 5, 1990. Despite the fact that the Union stated it needed the above information in order to represent Ms. Koehler in a "potential grievance", Respondent on December 19, 1990, denied the request on the ground that "it would be a violation of the Privacy Act to release the . . ." requested information.

It is undisputed that the requested information, is normally maintained by the Respondent in the regular course of business, is reasonably available, is necessary for full and proper discussion, understanding and negotiation of subjects within the scope of bargaining, and that the requested information does not constitute guidance, advice, counsel, or training provided 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 U.S. Department of the Navy, Portsmouth Naval Shipyard, Portsmouth New Hampshire, 37 FLRA 515, (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), Application for Enforcement denied, No. 90-2014 (1st Cir., August 13, 1991), 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 also determined that the release of the addresses is generally required without regard to whether alternative means of communication are available to the Union. Naval Facilities Engineering Command, S.W. Division, San Diego, California, 41 FLRA No. 89. 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 First 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.

The Union's request for the home address of the unit employee satisfies the requirement of Section 7114(b)(4) of the Statute. Therefore, Respondent was required to provide the address of the unit employee to the Union, and the refusal to do so violated Sections 7116(a)(1), (5) and (8) of the Statute.

With respect to Respondent's refusal to honor the Union's request for the home telephone number of Ms. Koehler, I cannot find, as urged by the General Counsel, that such refusal was violative of the Statute. In reaching its conclusion that the release of employees' home addresses was necessary in order to enable the Union to discharge its representational responsibilities, the Authority noted, among other things, that the Union could better serve the employees since a free exchange of information is more likely to take place away from the workplace and potential surveillance by management, and that employees could "protect their individual privacy interests by discarding unsolicited mail from the Union and requesting that their names be deleted from the union's mailing list". Farmers Home Administration Finance Office, St. Louis, Missouri, 23 FLRA 788, 796 and 798.

Having received an employee's home address the Union would then have unrestricted access to the employee for purposes of conducting its representational responsibilities and therefore would have no "necessity" for the employee's telephone number. Absent a showing that the requested information is "necessary" in order for the Union to perform its representational duties, Section 7114(b) of the Statute does not compel disclosure of such information. Moreover, and in any event, having possession of an employee's name and home address the Union would have ready access through the telephone book to the employee's telephone number. Finally, unlike the mail, the employee could not protect his privacy interests by ignoring or "discarding" unwanted or crank telephone calls. In view of the above considerations, I find that the Respondent did not violate the Statute by

refusing the Union's request to make Ms. Koehler's home telephone number available. Accordingly, it is recommended that this part of the complaint be dismissed.

Based on the foregoing findings and conclusions, the General Counsel's Motion for Summary Judgment is granted in part and dismissed in part, 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, Hemet Branch Office, Hemet, California, shall:

1. Cease and desist from:

(a) Refusing to furnish, upon request of American Federation of Government Employees, AFL-CIO, the exclusive representative of certain of its employees, the home address of an employee in the bargaining unit.

(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.

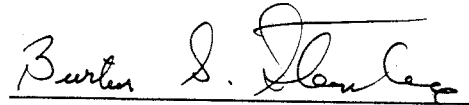
2. Take the following affirmative action in order to effectuate the purposes and policies of the Federal Service Labor-Management Relations Statute.

(a) Furnish American Federation of Government Employees, AFL-CIO, the exclusive representative of certain of its employees, the home address of an employee in the bargaining unit which was requested by the American Federation of Government Employees, AFL-CIO on December 10 and 18, 1990.

(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 Branch Manager 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 San Francisco Regional Office, Federal Labor Relations Authority, 901 Market Street, Suite 220, San Francisco, California 94103, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

Issued, Washington, DC, September 25, 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 American Federation of Government Employees, AFL-CIO, the exclusive representative of certain of our employees, the home address of an employee in the bargaining unit.

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 American Federation of Government Employees, AFL-CIO, the exclusive representative of certain of our employees, the home address of an employee in the bargaining unit which was requested by the American Federation of Government Employees, AFL-CIO on December 10 and 18, 1990.

(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, San Francisco Regional Office, whose address is: 901 Market Street, Suite 220, San Francisco, California 94103, and whose telephone number is: (415) 744-4000.