

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

.
DEPARTMENT OF VETERANS AFFAIRS.
MEDICAL CENTER
BUTLER, PENNSYLVANIA
Respondent
and Case No. 2-CA-10120
NATIONAL ASSOCIATION OF
GOVERNMENT EMPLOYEES,
AFL-CIO, LOCAL R3-74
Charging Party
.

Homer D. Byrd, Esq.
For the Respondent
Barbara S. Liggett, Esq.
For the General Counsel
Before: WILLIAM NAIMARK
Administrative Law Judge

DECISION

Statement of the Case

This case arises under the Federal Service Labor-Management Relations Statute, 5 U.S.C. section 7101, et seq., (herein called the Statute). It is based on a charge filed on December 14, 1990 by the National Association of Government Employees, Local R3-74 (herein called the Union) against the Department of Veterans Affairs Medical Center, Butler, Pennsylvania (herein called the Respondent). Pursuant thereto a Complaint and Notice of Hearing was issued by the Regional Director, Federal Labor Relations Authority, Boston, Massachusetts Region.

The Complaint alleged, in substance, that Respondent violated section 7116(a)(1), (5) and (8) of the Statute by failing and refusing to furnish the Union, upon request, the names and addresses of bargaining unit employees represented

by the Union as required by section 7114(b)(4) of the Statute.

Respondent's Answer, which was duly served on April 15, 1991, admitted as to the Complaint, (a) the jurisdictional allegations therein; (b) that on or about December 3, 1990 the Union requested the Respondent to furnish it with the names and home addresses of all bargaining unit employees represented by the Union; (c) that on December 11, 1990 Respondent refused to furnish the requested information to the Union, (d) that such information does not constitute guidance, advice, counsel or training provided for management officials or supervisors relating to collective bargaining.

The said Answer denied that the information requested is necessary for full and proper discussion, understanding and negotiation of subjects within the scope of collective bargaining. It also denied that the information requested is not prohibited from disclosure by law. Respondent averred that there is no Privacy Act "routine use" under 5 U.S. Code section 552a.(b)(3) for such unauthorized disclosure; that release under section 552 would constitute a clearly unwarranted invasion of personal privacy and constitute an exception to FOIA disclosure requirements. The Answer also averred that the Union has alternative means with which to communicate with unit members.^{1/}

Respondent's Amended Answer, which was duly served on June 26, 1991, admitted as to the Complaint: (a) that the names and addresses of bargaining unit employees which were requested are maintained by the Respondent in the normal course of business;^{2/} (b) that such information is reasonably available to Respondent.^{3/}

^{1/} Respondent's contentions are further delineated in its Reply to the Motion For Summary Judgment which is dated June 14, 1991. They are substantially similar to its averments in its Answer.

^{2/} Respondent also averred that it makes no attempt to keep accurate or current addresses for the unit employees and cannot represent they are current or accurate.

^{3/} While admitting the information is reasonably available, Respondent also stated that it does not attempt to maintain accurate or current addresses for the unit employees and cannot represent they are current or accurate.

Under date of May 2, 1991 General Counsel submitted a Motion For Summary Judgment.

By Order dated May 2, 1991 the Regional Director referred the Motion to the Chief Administrative Law Judge pursuant to section 2423.22(b) of the Rules and Regulations. The case was duly assigned to the undersigned for disposition.

Respondent insists that the disclosure of home addresses without employees' consent is prohibited by the Privacy Act, 5 U.S.C. 552. Further, that the "routine use" exception to the Privacy Act, 5 U.S.C. 552a.(b)(3) does not apply when there are alternative means available for the Union to contact the employees. In support thereof, Respondent cites Federal Labor Relations Authority v. U.S. Department of the Treasury, 884 F.2d 1446 (D.C. Cir. 1989).

The issue involved herein was the subject of considerable detail by the Authority in Farmers Home Administration Finance Office, St. Louis, Missouri, 23 FLRA 788 (1986) enforced in part and remanded sub nom. U.S. Department of Agriculture and Farmers Home Administration Finance Office, St. Louis, Missouri v. FLRA, 836 F.2d 1139 (8th Cir. 1988). The Authority held therein that the names and home addresses must be furnished and that their release is not prohibited by law. It also concluded such data is necessary for unions to fulfill their representational duties under the Statute. The decision analyzed the exceptions to the Privacy Act's bar to disclosure of personal information pertinent to releasing employees' names and home addresses; exception (b)(2) concerning the Freedom of Information Act and exception (b)(3) relating to "routine use" of information. The Authority found both exceptions applied so as to authorize the release of the data under the Privacy Act.

Despite the decision by the D.C. Circuit in the Department of the Treasury, supra, the Authority has stated it will continue "to look to our earlier decision in Farmers Home Administration for controlling principles in this area." See U.S. Department of the Navy, Portsmouth Naval Shipyard, Portsmouth, New Hampshire, 37 FLRA 515. In the latter decision the Authority explained in detail why it refused to be bound by, or to find applicable, the Circuit Court's ruling in the Department of the Treasury case.

It is also urged by Respondent that the disclosure is not necessary since alternative means of communication are available. However, in Portsmouth Naval Shipyard, supra,

the Authority concluded that whether disclosure is relevant and necessary to a union's function will not depend upon whether alternative means of communication are available.

Respondent also lays stress on the assertion that it makes no attempt to keep accurate or current addresses for its employees; that it cannot represent such addresses to be current or accurate. This factor, even if established, does not relieve the employer from its obligation to provide the data within its possession. See U.S. Department of the Interior, U.S. Bureau of Mines, Washington, D.C., 37 FLRA 799, 801 (1990).

Based on the foregoing, and the holdings of the Authority as set forth above, I conclude that Respondent's refusal and failure to provide the Union with the names and home addresses of unit employees violated section 7116(a)(1), (5) and (8) of the Statute. See also United States Department of the Navy and Philadelphia Naval Shipyard v. FLRA, 840 F.2d 1131 (3rd Cir. 1988), enforcing Philadelphia Naval Shipyard, 24 FLRA 37 (1986); U.S. Department of the Air Force, Scott Air Force Base, Illinois v. FLRA, 838 F.2d 229 (7th Cir. 1988), affirming Department of the Air Force, Scott Air Force Base, Illinois, 24 FLRA 226 (1986); Department of Health and Human Services, Social Security Administration v. FLRA, 833 F.2d 1129 (4th Cir. 1987), affirming Department of Health and Human Services, Social Security Administration, 24 FLRA 543 (1986); Department of Health and Human Services, Social Security Administration and Social Security Administration Field Operations, New York Region, 24 FLRA 583 (1986); Department of Health and Human Services, Social Security Administration, 24 FLRA 600 (1986).

Based on the foregoing, the General Counsel's Motion For Summary Judgment is granted. 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 the Department of Veterans Affairs Medical Center, Butler, Pennsylvania, shall:

1. Cease and desist from:

(a) Refusing to furnish, upon request of the National Association of Government Employees, Local R3-74,

the exclusive representative of the bargaining unit employees, the names and home addresses of such employees.

(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.

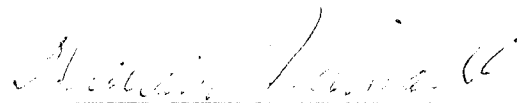
2. Take the following affirmative action in order to effectuate the purposes and policies of the Federal Service Labor-Management Relations Statute:

(a) Furnish the National Association of Government Employees, Local R3-74, the exclusive representative of the bargaining unit employees, the names and home addresses of such employees.

(b) Post at its facilities where bargaining unit employees represented by the National Association of Government Employees, Local R3-74, 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 Director, Department of Veterans Affairs Medical Center, Butler, Pennsylvania, 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 Boston Regional Office, Federal Labor Relations Authority, 10 Causeway Street, Room 1017A, Boston, MA 02222-1046, 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 4, 1991



WILLIAM NAIMARK
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 Association of Government Employees, Local R3-74, the exclusive representative of the bargaining unit employees, the names and home addresses of such employees.

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 Association of Government Employees, Local R3-74, the exclusive representative of the bargaining unit employees, the names and home addresses of 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, Boston Regional Office, whose address is: 10 Causeway Street, Room 1017A, Boston, MA 02222-1046, and whose telephone number is: (617) 565-7280.