

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

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BUREAU OF INDIAN AFFAIRS,  
WASHINGTON, D.C.

and

BUREAU OF INDIAN AFFAIRS,  
NAVAJO AREA, GALLUP,  
NEW MEXICO

and

Case No. 76-CA-10599

BUREAU OF INDIAN AFFAIRS,  
ALBUQUERQUE AREA,  
ALBUQUERQUE, NEW MEXICO

Respondents

and

NATIONAL COUNCIL OF BUREAU  
OF INDIAN AFFAIRS EDUCATORS,  
LOCAL 4524, AFT, AFL-CIO

Charging Party

. . . . .  
John G. Combs, Labor Relations Officer  
and Gerald J. Rachelson, Esq.  
For the Respondent

Timothy J. Sullivan, Esq.  
For the General Counsel

Before: SALVATORE J. ARRIGO  
Administrative Law Judge

DECISION

Statement of the Case

This case arose under the Federal Service Labor-  
Management Relations Statute, Chapter 71 of Title 5 of the  
U.S. Code, 5 U.S.C. section 7101, et seq. (herein the  
Statute).

Upon an unfair labor practice charge having been filed by the captioned Charging Party against the captioned offices of the Bureau of Indian Affairs, herein jointly referred to as Respondent, the General Counsel of the Federal Labor Relations Authority, herein the Authority, by the Regional Director for the Denver Regional Office, issued a Complaint and Notice of Hearing alleging Respondent violated section 7116(a)(1), (5) and (8) of the Statute when Respondent failed and refused to furnish the employees' exclusive collective bargaining representative, herein the Union, with the names and home addresses of all bargaining unit employees in Respondent's Navajo and Albuquerque, New Mexico Area which the Union requested. Respondent moved to dismiss the Complaint (which the General Counsel opposed) and also filed an Answer to the Complaint, which was later amended, in which some of the allegations in the Complaint were admitted and others denied.

Subsequently, counsel for the General Counsel filed a Motion for Summary Judgment and supporting documents with the Regional Director for the Denver Regional Office and the matter was transferred to the Office of Administrative Law Judges for ruling pursuant to section 2423.22(b) of the Authority's Rules and Regulations. Thereafter, Respondent filed its own Motion for Summary Judgment with a supporting brief and moved to have the case held in abeyance to which the General Counsel filed an opposition. Based upon my review and evaluation of the entire record before me, I make the following.

#### Findings of Fact

1. The unfair labor practice Complaint and Notice of Hearing issued under 5 U.S.C. § 7101-7135 and 5 CFR Chapter XIV.
2. The National Council of Bureau of Indian Affairs Educators, Local 4524, AFT, AFL-CIO (the Union) is a labor organization under 5 U.S.C. § 7103(a)(4).
3. The Bureau of Indian Affairs, Washington, D.C. (Respondent B.I.A.) is an agency under 5 U.S.C. § 7103(a)(3).
4. The Bureau of Indian Affairs, Navajo Area, Gallup, New Mexico (Respondent Navajo) is an agency under 5 U.S.C. § 7103(a)(3).
5. The Bureau of Indian Affairs, Albuquerque Area, Albuquerque, New Mexico (Respondent Albuquerque) is an agency under 5 U.S.C. § 7103(a)(3).

6. The unfair labor practice charge herein was filed by the Union with the Denver Regional Director on March 28, 1991.

7. A copy of the charge was served on the Respondent.

8. At all times material John Combs occupied the position of Labor Relations Officer, Bureau of Indian Affairs.

9. At all times material John Combs was a supervisor or management official under 5 U.S.C. § 7103(a)(10) and (11).

10. At all times material John Combs was acting on behalf of Respondent B.I.A.

11. At all times material John Combs was acting on behalf of Respondent Navajo.

12. At all times material John Combs was acting on behalf of Respondent Albuquerque.

13. The Union is the exclusive representative of two units of Bureau of Indian Affairs employees appropriate for collective bargaining.

14. On October 3, 1990, the Union requested, in a letter to Respondent Navajo's Area Personnel Officer, that it be furnished with the names and home addresses of unit employees in the Navajo Area.

15. On October 3, 1990, the Union requested, in a letter to Respondent Albuquerque's Area Labor Relations Specialist, that it be furnished with the names and home addresses of unit employees in the Albuquerque Area.

16. The information described in paragraphs 14 and 15 is normally maintained by the Respondent in the regular course of business.

17. The information described in paragraphs 14 and 15 is reasonably available.

18. The information described in paragraphs 14 and 15 is necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining.

19. The information described in paragraphs 14 and 15 does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining.

20. The information described in paragraphs 14 and 15 is not prohibited from disclosure by law.

21. On or after October 3, 1990, Respondent Navajo referred the Union's request described above regarding the Navajo Area to Respondent B.I.A., thereby delegating the responsibility for responding to the request to its agent, Respondent B.I.A.

22. On or after October 3, 1990, Respondent Albuquerque referred the Union's request described above regarding the Albuquerque Area to Respondent B.I.A., thereby delegating the responsibility for responding to the request to its agent, Respondent B.I.A.

23. On October 31, 1990, and at all times since, Respondent, by John Combs, denied the Union's requests for the information described above.

#### Discussion and Conclusions

The General Counsel contends that the Authority's decisions in Farmers Home Administration Finance Office, St. Louis, Missouri, 23 FLRA 788 (1986), and U.S. Department of the Navy, Portsmouth Naval Shipyard, Portsmouth, New Hampshire, 37 FLRA 515 (1990) (Portsmouth Naval Shipyard), enforcement denied sub nom. FLRA v. U.S. Department of the Navy, Portsmouth Naval Shipyard, Portsmouth, New Hampshire, 941 F.2d 49 (1st Cir. 1991), are dispositive of the issues in this case. The General Counsel asserts that, consistent with these decisions, the Respondent's admitted failure to furnish the Union with the requested information violates section 7116(a)(1), (5), and (8) of the Statute.

Respondent denies that the information sought is necessary for full and proper discussion, understanding, and negotiations of subjects with the scope of collective bargaining and denies that the disclosure of the data is not prohibited by law. Respondent essentially argues that

Portsmouth Naval Shipyard was wrongly decided by the Authority.<sup>1/</sup>

The arguments raised by Respondent are not significantly different from those considered and rejected by the Authority in Portsmouth Naval Shipyard and cases which followed thereafter and the Authority has indicated it would adhere to its decision in Portsmouth Naval Shipyard. See U.S. Department of the Navy, Supervisors of Shipbuilding, Conversion and Repair, Portsmouth, Virginia, 43 FLRA 1003 (1992); U.S. Department of State, Bureau of Consular Affairs, Passport Services, 43 FLRA 369 (1991); and U.S. Department of the Navy, Naval Public Works Center, San Diego, California, 42 FLRA 860 (1991). Indeed, similar decisions of the Authority were enforced in FLRA v. U.S. Department of the Navy, Navy Resale & Services Support Office, Field Support Office, Auburn, Washington, et al., Nos. 90-70511 & 90-70535, et al., (9th Cir. Mar. 18, 1992) and FLRA v. Department of Commerce, National Oceanographic and Atmospheric Administration, National Ocean Service, Nos. 90-1852 & 90-1859, (4th Cir. Jan. 1992).

In view of the Authority's holdings in the above case I conclude Respondent's defenses to the failure and refusal to provide the Union with the names and home addresses of unit employees as requested by the Union to be without merit. I further conclude Respondent Navajo and Respondent Albuquerque were obligated under section 7114(b) of the Statute to furnish the Union with the names and home addresses of unit employees as requested. Counsel for the General Counsel contends that by the failure and refusal to provide the requested data Respondent BIA, Respondent Navajo and Respondent Albuquerque violated section 7116(a)(1), (5) and (8) of the Statute and Respondent BIA violated 7116(a)(1) and (5) of the Statute. The record herein reveals that the requests for the data were made to Respondent Navajo and Respondent Albuquerque and the refusal to comply with the requests was the act of Respondent BIA, having been delegated the "responsibility to respond to the request" and acting as an "agent" on behalf of Respondent Navajo and

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<sup>1/</sup> In its Motion to Hold Case In Abeyance Respondent suggests that it is not an effective utilization of resources to continue to process cases involving a names and address issue since the matter is presently being considered by various Courts of Appeals and, in all probability, will ultimately reach the Supreme Court for resolution.

Respondent Albuquerque. Therefore, I find that Respondent Navajo and Respondent Albuquerque, as principles responsible for the conduct of their agent, each violated section 7116(a) (1), (5) and (8) of the Statute by their failure and refusal to provide the Union with the names and home addresses of unit employees as requested. However, as Respondent BIA was merely acting as an "agent" for Respondent Navajo and Albuquerque, in these particular circumstances I find no basis for finding a separate violation against Respondent BIA. Accordingly, I shall grant counsel for the General Counsel's Motion for Summary Judgment against Respondent Navajo and Respondent Albuquerque<sup>2/</sup> and I recommend the Authority issue the following:

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 Bureau of Indian Affairs, Navajo Area, Gallup, New Mexico and the Bureau of Indian Affairs, Albuquerque Area, Albuquerque, New Mexico, each shall:

1. Cease and desist from:

(a) Refusing to furnish, upon request of the National Council of Bureau of Indian Affairs Educators, Local 4524, AFT, AFL-CIO, the exclusive representative of certain of its employees, the names and home addresses of all employees in the bargaining unit it represents as requested.

(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) Upon request furnish the National Council of Bureau of Indian Affairs Educators, Local 4524, AFT,

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<sup>2/</sup> In view of the foregoing and to the extent applicable, Respondent's Motion to Dismiss, Motion for Summary Judgment and Motion to Hold Case In Abeyance are denied.

AFL-CIO, the exclusive representative of certain of its employees, the names and home addresses of all employees in the bargaining unit it represents as requested.

(b) Post at its facilities were bargaining unit employees represented by the National Council of Bureau of Indian Affairs Educators, Local 4524, AFT, AFL-CIO, are located in the Navajo Area and the Albuquerque Area, 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 chief executive officer for the Bureau of Indian Affairs, Navajo Area and the Albuquerque Area, 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 Denver Regional Office, 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, March 30, 1992

  
SALVATORE J. ARRIGO  
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 Council of Bureau of Indian Affairs Educators, Local 4524, AFT, AFL-CIO, the exclusive representative of certain of our employees, the names and home addresses of all employees in the bargaining unit it represents as requested.

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, upon request of the National Council of Bureau of Indian Affairs Educators, Local 4524, AFT, AFL-CIO, the exclusive representative of certain of our employees, the names and home addresses of all employees in the bargaining unit it represents as requested.

\_\_\_\_\_  
(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, Denver Regional Office, whose address is: 1244 Speer Boulevard, Suite 100, Denver, CO 80204, and whose telephone number is: (303) 844-5224.