

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

.....
DEPARTMENT OF VETERANS AFFAIRS, .
VETERANS AFFAIRS MEDICAL CENTER, .
MEMPHIS, TENNESSEE .

Respondent .

and .

Case No. AT-CA-20381

NATIONAL ASSOCIATION OF .
GOVERNMENT EMPLOYEES, AFL-CIO .

Charging Party .

.....

Linda J. Norwood, Esquire
For the General Counsel

Jerry D. Stringer, Esquire
Ronald H. Dooley
For the Respondent

Before: BURTON S. STERNBURG
Administrative Law Judge

DECISION

Statement of the Case

The unfair labor practice complaint, which issued on May 15, 1992, alleged that the Department of Veterans Affairs, Veterans Affairs Medical Center, Memphis, Tennessee (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 National Association of Government Employees, AFL-CIO, (hereinafter called the Union), the exclusive representative of a unit of Respondent's employees appropriate for collective bargaining, the home addresses of bargaining unit employees represented by the Union.

Respondent's Answer to the Complaint, which was duly served on or about June 4, 1992, admitted as to the Complaint, (a) the jurisdictional allegation; (b) that on

January 29, 1992, the Union, as exclusive representative of an appropriate unit of Respondent's employees, requested Respondent to furnish it with the home addresses of bargaining unit employees; (c) that since February 4, 1992, Respondent has refused to furnish the requested information to the Union; (d) that the requested information is "contained in one or more files" maintained by Respondent; (e) that the requested information is reasonably available; and (f) 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 allegations (1) that the requested information is not prohibited from disclosure by law, and (2) that the information is necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of bargaining.

On June 16, 1992, Counsel for the General Counsel filed a Motion for Summary Judgement which was transferred by the Regional Director for the Atlanta, Georgia Region, 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 Administrative Law Judge for disposition pursuant to Section 2423.19(k) and Section 2423.22(b)(3) of the Authority's Rules and Regulations.

Respondent on July 2, 1992 served an "Opposition To Counsel For The General Counsel's Motion For Summary Judgement" wherein it takes the position that the disclosure of the employee's home addresses without the employees' 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 employees. Inasmuch as there has been no showing by the General Counsel that the Union cannot reach or communicate with the employees by any other means, the Respondent urges that the motion for summary judgement be denied.

Findings of Fact

The Union is the exclusive representative of an appropriate unit of Respondent's employees working at the Veterans Affairs Medical Center, Memphis, Tennessee.

On January 29, 1992 the Union requested the Respondent to furnish it with the home addresses of the bargaining unit employees. Since February 4, 1992, Respondent has refused to furnish 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, and 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 files 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, the Authority has not deviated from its original holding in the matter. U.S. Dep't of Veterans Affairs, Long Beach Medical Center, Long Beach, California, 45 FLRA No. 11. 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 addresses of the unit employees to the Union, and the refusal to do so violated Sections 7116(a)(1), (5) and (8) of the Statute.

Based on the foregoing findings and conclusions, the General Counsel's Motion for Summary Judgment is 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 Department of Veterans Affairs, Veterans Affairs Medical Center, Memphis, Tennessee, shall:

1. Cease and desist from:

(a) Refusing to furnish, upon request of National Association of Government Employees, AFL-CIO, the exclusive representative of certain of its employees, the home addresses of the employees 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:

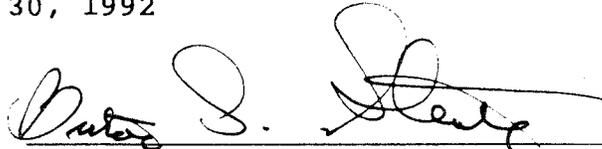
(a) Furnish the National Association of Government Employees, AFL-CIO, the exclusive representative of certain of its employees, the home addresses of the employees in the bargaining unit which were requested by the National Association of Government Employees, AFL-CIO on January 29, 1992.

(b) Post at its facilities where bargaining unit employees represented by the National Association of Government Employees, AFL-CIO, 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 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, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

Issued, Washington, DC, July 30, 1992


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 National Association of Government Employees, AFL-CIO, the exclusive representative of certain of our employees, the home addresses of the employees 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 the National Association of Government Employees, AFL-CIO, the exclusive representative of certain of our employees, the home addresses of the employees in the bargaining unit which were requested by the National Association of Government Employees, AFL-CIO on January 29, 1992.

(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.