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

U.S. MARINE CORPS COMBAT DEVELOPMENT COMMAND QUANTICO MARINE CORPS BASE QUANTICO, VIRGINIA Respondent	
and	Case No. 3-CA-10643
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1786, AFL-CIO Charging Party	

Major Raymond T. Lee, III
For the Respondent

Christopher Feldenzer, Esq.
For the General Counsel

Before: WILLIAM NAIMARK
Administrative Law Judge

DECISION

Statement of the Case

Pursuant to a Complaint and Notice of Hearing issued on September 26, 1991 by the Regional Director for the Washington, D.C. Regional Office of the Federal Labor Relations Authority, a hearing was held before the undersigned on December 13, 1991 at Washington, D.C.

This case arose under the Federal Service Labor-Management Relations Statute, 5 U.S.C. 7101 et seq., (herein called the Statute). It is based on a charge filed by the American Federation of Government Employees, Local 1786,

AFL-CIO[1/], against U.S. Marine Corps Combat Development Command, Quantico Marine Corps Base, Quantico, Virginia (herein called the Respondent).

The Complaint alleged, in substance, that since June 28, 1991 Respondent has refused to furnish the Local 1786 with the names and home addresses of all bargaining unit employees despite the Union's request for such information made on June 17, 1991. Further, that Respondent failed to thus comply with section 7114(b)(4) of the Statute - all in violation of section 7116(a)(1), (5) and (8) of the Statute.

Respondent's Answer, dated October 18, 1991, denied (a) that the information requested is necessary for full and proper discussion, understanding and negotiation of subjects within the scope of collective bargaining, (b) that the information requested is not prohibited from disclosure by law (c) that it violated sections 7116(a)(1), (5) and (6) of the Statute by failing to comply with section 7114(b)(4) thereof.[2/]

All parties were represented at the hearing. Briefs were filed which have been considered.

Upon the entire record herein, from my observation of the witnesses and their demeanor and from all of the testimony and evidence adduced at the hearing, I make the following findings and conclusions:

Findings of Fact

1. At all times material herein the American Federation of Government Employees (AFGE) has been, and still is, the

---

1/ Local 1786 is a constituent of the Marine Corps Council of Locals. The Council is the delegated AFGE bargaining representative, and it delegates autonomy to 15 locals to enforce the national agreement and supplements at their locations.

2/ Respondent's Answer admits that (a) the information requested is normally maintained by Respondent in the regular course of business, (b) the information requested is reasonably available, (c) the information requested does not constitute guidance, advice, counsel or training provided for management officials or supervisors, relating to collective bargaining.

exclusive representative of a nationwide appropriate unit of employees including employees of Respondent herein.

2. At all times material herein Local 1786 has been, and still is, the agent of AFGE for representing unit employees at Respondent's Quantico, Virginia location.

3. Both the Marine Corps and the Union[3/] were parties to a master collective bargaining agreement (MLA) which became effective on April 27, 1985. Said agreement covered the unit employees at Quantico, Virginia. Negotiations commenced in April 1984 and continued until October of that year. During negotiations AFGE proposed that the Marine Corps furnish it with the names and home addresses of all bargaining unit employees. Since the Marine Corps refused to give the home addresses, the parties worked out an arrangement which was set forth in Article 6 of that MLA, sections 7 and 8 thereof as follows:

> Section 7 Employee representatives of the council or the local may solicit on behalf of the union during the nonwork time of the employees involved. The council and local unions may distribute literature to the employees during the nonwork time of the representatives and the employees concerned provided the distribution complies with safety and security practices/regulations and does not cause a problem of litter or congestion.
>
> Section 8 Each activity, upon written request of the local union, will furnish the local union with a semiannual listing of the names and work locations of all bargaining unit employees and a monthly listing of newly-hired employees. Any such written request must be renewed annually.

Nothing appears in the MLA regarding the furnishing of home addresses. The chief negotiator for the Marine Corps, Raymond R. McKay, testified these sections were intended as a substitute for the home addresses of unit employees.

4. The aforesaid MLA expired on April 27, 1988. On April 1, 1988 McKay wrote C.E. Smith, Acting President, Council 240, that management, in preparing to renegotiate

---

3/ For the purposes of simplification, the word "Union" will be used as a collective term to include AFGE and/or Local 1786 as appropriate.

the MLA, was reviewing the agreement to determine if any provisions were illegal or outside the scope of bargaining.

5. By letter dated June 2, 1988 Smith replied and notified McKay that the Union was "exercising our right to withdraw from the agreement all matters which have been or may be construed as waivers of the union's rights"; that those matters included representation, bargaining, designation of stewards, and the like. Smith concluded by stating that the Union was preparing negotiations for a renewed MLA.

6. McKay responded in writing on June 21, 1988 to the Union's letter of June 2. He advised Smith that while management did not dispute the Union's right to terminate permissive provisions upon the MLA's expiration, the Union must specify any such provision. Further, that since the June 2 letter did not give such specific notice, its notice of June 2 cannot be viewed as changing any provision of the MLA. Finally, McKay requested that the Union identify as soon as possible which provision it intends to terminate so that there could be no misunderstandings or unnecessary litigation resulting from any changes to the MLA. No written response was made by the Union to the June 21 letter from McKay to Smith.

7. During 1989 the parties met to discuss a pending grievance. They were also in the middle of a ground rules dispute. The chief spokesman for the Union in respect to the negotiations for the new MLA was James B. Jones. He was employed by the National office and serviced Local 1786. Jones testified there was some discussion re the status quo of the agreement; that he told McKay the Union was withdrawing its waivers as it had notified management: that McKay said the Marine Corps was not asking for any waivers and this was a matter to be discussed at the bargaining table.

8. On January 8, 1990 the Marine Corps received from the Uuion "Proposals for 1988-199 [sic] Renegotiation" which dealt with the new or successor MLA between the parties. In Article 6, section 8, as proposed by the Union, it was provided that the activity, upon request, would furnish the local union with a semi-annual listing of the names, addresses, and work locations of all bargaining unit employees.

9. Negotiations between the parties for the new MLA commenced in April 1990 and were concluded in June of that year. Jones testified that in April 1990 he told McKay that

the Union would not grant any waivers except on a clear and explicit basis which was expressly stated; that statutory rights would not be bargained upon unless a substantial offer was made for them.

10. Record facts show that in the spring of 1990 McKay spoke up at a negotiating session re the Union's proposed change in Article 6, section 8, requiring the activity to furnish addresses of employees.4/ McKay questioned Jones re the inclusion in Article 6, section 8 of the term "address" in place of "work locations" which was in the prior MLA. He stated that if the term referred to home addresses, he thought the Union understood management's position on home addresses. Whereupon Jones said that this language was written some time ago, and commented "We don't mean home addresses here, we'll change that. That's a typo. Let us go back and change that for you."

11. The Marine Corps submitted its first counter-proposal to the Union for the new MLA on April 26, 1990. It eliminated the word "addresses" from Article 6, section 8, and both section 7 and 8 were replications of the language in those sections of the expired MLA.

12. The Union submitted a counterproposal on April 30, 1990. Its Article 6, section 8 contains the same language as in Article 6, section 7 of the earlier MLA, which provided, in substance, that the union's representatives could solicit on behalf of the Union during nonwork time and distribute literature if it did not cause a problem of litter or congestion.

Article 6, section 9 of the counterproposal provides, as was true in Article 6, section 8 of the earlier MLA that each activity, upon request of the local union, would furnish the names and work locations of bargaining unit employees.

4/ The recitation herein of this discussion represents the credited version of what was stated by these individuals. McKay's testimony in this regard was direct, straight-forward and clearly recollected. Jones testified that he had no personal recollection of, and could not remember, any discussion regarding names and addresses during negotiations. He did testify that the union made no change to Article 6 of the MLA and "carried it over intact." Further, that it was her recollection that they rolled over Article 6 of the old MLA.

13. Two more counterproposals by the Union concerning the new MLA were submitted dealing with Article 6 of the MLA, one on May 10, 1990 and the other on May 23, 1990. Both documents contained the same language entitling the Union to solicit and distribute literature. They also both provided that the activity would furnish the local union the work locations of all unit employees.

14. The new MLA was executed on June 19, 1990, effective on November 8, 1990 (Respondent's Exhibit 5). It contained the same language with respect to Article 6, sections 7 and 8 as in the prior MLA. As set forth in section 8 the Marine Corps agreed to furnish, upon request, the Union with the names and work locations of bargaining unit employees.

15. In a letter dated June 17, 1991 the Union requested that the Marine Corps provide Local 1786 with the names and home addresses of all bargaining unit employees in order to adequately represent these employees.

16. The Marine Corps replied by letter dated June 28, 1991. It denied the request, referring to the Privacy Act and the MLA.

Conclusions

The principal issue herein is whether the Union waived its right to obtain the home addresses of the bargaining unit employees which it requested of the Marine Corps on June 17, 1991. It is contended by the General Counsel that there was no such waiver, either expressly made or through bargaining history; that the refusal by Respondent to furnish that data was in derogation of section 7114(b) of the Statute and constituted a violation of section 7116(a)(1), (5) and (8) thereof.

Respondent's position, in short, is that the Union waived its right to the home addresses by agreeing to the quid pro quo contractual provision of Article 6, sections 7 and 8 of the 1990 MLA, by virtue of the bargaining history as it did in the 1985 MLA.[5/] Further, that there was not a

---

5/ Respondent also raised the defense of the Privacy Act in insisting that the home addresses are not releasable. In view of the Authority's decisions in respect to this contention, this defense is rejected. See Farmers Home (Footnote continued on next page.)

valid withdrawal of any such prior waiver by the Union of its right to the data as contended by the Union. Respondent lays particular stress on the Authority's decision in Marine Corps Logistics Base, Albany, Georgia, et al., 38 FLRA 632 (1990) which it deems dispositive of the issue herein.

In the Marine Corps case the Authority was confronted with the question as to whether the Union, by reason of the bargaining history, waived its right to the home addresses. The governing MLA, whose pertinent provisions (Article 6, sections 7 and 8) are the same as in the newest MLA (1990), granted certain rights to the Union in exchange for receiving the home addresses of unit employees. The Authority determined that the evidence showed that the Union accepted management's offer of greater distribution rights and a semi-annual history of names and work locations of unit employees, and dropped its demand for their home addresses. Thus, it concluded that the Union unmistakably waived for the life of the contract its statutory right to the names and home addresses of unit employees, that it accepted a palatable substitute in return for abandoning its own demand.6/

Turning to the present case, it must be determined whether the "bargaining history" warrants the conclusion, as was reached in the Marine Corps case, supra, that the Union waived its statutory right to the home addresses. Since the case herein involves the same entities as in the Marine Corps case, with the same provisions in the 1991 MLA as were

---

(Footnote continued from previous page.)
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); U.S. Department of the Navy, Portsmouth Naval Shipyard, Portsmouth, New Hampshire, 37 FLRA 515 (1990) and cases cited therein.

6/ The Authority rejected certain contentions made by the General Counsel in its disposition of the case. It was argued by General Counsel that the contract did not reflect the right gained by the union in the quid pro quo - the contractual right to distribute literature in employees' work areas. Further, that the union had a statutory right to home addresses, as distinguished from its contractual right thereto.

present in the 1985 MLA, consideration must be given to the total bargaining relations inclusive of what transpired during negotiations for the 1990 MLA.

General Counsel makes several arguments in insisting that, while the Authority found that the parties in negotiating the prior MLA agreed to substitute certain rights granted the Union in exchange for the Union's waiving its right to home addresses, such is not true in regard to the present MLA. It is contended that no bargaining history regarding the 1991 MLA supports a waiver by the Union for the home addresses.

In urging the foregoing contention, General Counsel adverts to the Union's letter to management prior to the negotiations for the 1991 contract wherein the Union withdrew "all matters which have been or may be construed as waivers of the union's rights." Further, that this was followed up, during the discussion of a grievance in 1989, with a similar statement by Union representative Jones to management spokesman McKay that the Union was withdrawing its waiver.

A union may well be entitled to depart from its concessions made in prior and expired agreements, and thus withdraw any previous waivers to statutory rights. Several factors are persuasive, however, that the Union's actions do not comport with a withdrawal of its waiver to obtain the home addresses which it agreed to in negotiating the earlier MLA. In its letter of June 21, 1988 management stated it did not dispute the Union's right to terminate permissive provisions of the prior MLA. Nevertheless, it asked the Union to specify which provisions the bargaining representative desired to terminate. It is significant that the Union did not respond to this request; that no mention was made by the Union of the specific items which it desired to eliminate from the previous MLA or that the Union considered the quid pro quo exchange to be abandoned.7/

7/ See and compare Department of Transportation, Federal Aviation Administration, Los Angeles, California, 15 FLRA 100. The union therein notified the agency upon the expiration of a contract, that it no longer desired to be bound by the provision which required management to consult rather than bargain with the union. The Authority concluded that such waiver did not continue after the termination of the agreement since the union indicated it no longer desired to be bound by that specific provision.

In addition to the foregoing, the Union's subsequent conduct belies its contention that the "bargaining history" in respect to the 1990 MLA demonstrates that it did not waive its right to home addresses. While it is urged that the Union did not acquiesce in the continuation of the waiver so as to be carried over to the new agreement. I do not agree. After the Union submitted its proposals in January 1990 for the new renegotiations, McKay questioned Jones in respect to the term "addresses" in Article 6, section 8. He told Jones that management's position was that while it would give work locations of employees, as expressed in the prior MLA, it would not give the home addresses; whereupon Jones replied that the term "addresses" did not mean "home addresses" and that the Union would change the language. Thereafter the Union submitted a counterproposal on May 10, 1990 and another on May 23, 1990, both of which deleted any reference to "addresses". The provision in Article 6, section 8, as set forth in the Union's proposal for the new LRA, provided for management to furnish work locations of employees as in the 1985 MLA. The Union's proposals in each instance also provided for management to allow the union to solicit and distribute literature (Article 6, section 7) as was continued in the earlier MLA.

While the original intent of the Union may have been to refrain from waiving its statutory right to home addresses, its conduct during negotiations is inconsistent therewith. Management insisted during negotiations for the 1990 agreement that the guid pro quo, which formed the basis for the grant to the Union in the prior MLA, should continue in the new MLA. The Union's representative acceded to McKay's refusal to furnish the home addresses and agreed to continue the previous arrangement. That this was accepted by the Union is apparent from: (a) the Union's willingness to delete from its counterproposals any obligation by management to furnish "addresses" and to continue the same language in Article 6, sections 7 and 8 as furnished in those sections of the 1985 MLA; (b) the admissions by Jones that the Union made no change, that it rolled over Article 6, sections 7 and 8 and kept them intact in the 1990 MLA; (c) the execution by the parties of the new agreement with the same provisions which were agreed upon as the guid pro quo by the parties previously.

The foregoing factors, although the General Counsel argues otherwise, convince me that the Union waived its statutory right to the home addresses of the unit employees. Its failure to specify any prior waiver of its right to such

data, as well as its subsequent conduct during negotiations for the 1990 MLA, indicates that it consented and agreed to continue the arrangement made in 1984-1985. Accordingly, I conclude Respondent has not failed to comply with section 7114(b) of the Statute by refusing to furnish the home addresses of unit employees, and that it has not violated section 7116(a)(1), (5) and (8) of the Statute as a result thereof. Accordingly, it is recommended that the Authority issue the following Order:

ORDER

It is hereby ordered that the Complaint in Case No. 3-CA-10643 be, and the same hereby is, dismissed.

Issued, Washington, DC, May 22, 1992

WILLIAM NAIMARK
Administrative Law Judge