

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NATIONAL TREASURY EMPLOYEES)
 UNION, et al.,)
)
 Plaintiffs,)
)
 v.)
)
 CLAYTON YEUTTER, Secretary of)
 Agriculture, et al.,)
)
 Defendants.)

Civil Action
 No. 88-2515, 88-2668
 (Consolidated)

FILED
JAN 18 1990

JAMES F. DAVEY, Clerk

MEMORANDUM OPINION

The National Treasury Employees Union ("NTEU") and the National Association of Agricultural Employees ("NAAE"), which are collective bargaining representatives for certain employees of the U.S Department of Agriculture ("USDA" or "the government"), have moved for summary judgment on the constitutionality of various aspects of the USDA's Drug Free Workplace Program (the "plan" or "program"). Specifically, the plaintiff unions have asked this court to make permanent the preliminary injunction it entered against the USDA's plan subjecting various members of the plaintiffs' collective bargaining units to random urinalysis testing for drugs.¹ The government defendants, the Secretary of Agriculture and other officers, have in turn filed a cross motion

¹The plaintiffs have also moved for a permanent injunction against other types of urinalysis testing for drugs specified in the plan, including applicant testing and post-accident testing. Neither of these provisions of the plan was addressed by this court's earlier ruling. Finally, the plaintiffs again ask the court to find that the plan's proposed "reasonable suspicion" testing of all USDA employees is unconstitutional under the Fourth Amendment.

(W)

for summary judgment that essentially seeks to remove any obstacles to implementing the urinalysis testing program.

After balancing the employees' privacy interests against the government's asserted interests in support of the various aspects of the testing program, this court permanently enjoins the USDA from implementing the random urinalysis testing provisions of the plan as applied to non-management Plant Protection and Quarantine Officers, and computer specialists. The court, however, grants the defendants' motion for summary judgment on the remaining counts of the underlying complaints in this consolidated action.²

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NTEU is the collective bargaining representative of about 812 employees of the USDA's Food and Nutrition Service ("FNS"). All of the employees represented by NTEU will be subject to the program's post-accident and "reasonable suspicion" urinalysis testing for drugs. A total of five employees represented by NTEU will be subject to random urinalysis testing for drugs. These employees fall into two job categories, motor vehicle operators (three employees) and computer specialists (two employees). At least one of the employees in each of the two job

²As detailed below, the court finds that the USDA's reasonable suspicion and post-accident testing provisions are reasonable under the appropriate Fourth Amendment balancing test. The court lifts its injunction against the testing of motor vehicle operators and grants the defendants' motion for summary judgment in regard to motor vehicle operators. The court finds that the plaintiffs lack standing to challenge the internal applicant testing provisions of the plan and that their objections to the testing provision under the Civil Service Reform Act and the Rehabilitation Act are premature at this time.

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ORDER

Upon consideration of the plaintiffs' motion for summary judgment, the defendants' cross motion for summary judgment, the respective oppositions and replies filed by the parties, the entire record herein, and for the reasons set forth in the accompanying memorandum opinion, it is by the court, this 17th day of January 1990,

ORDERED that the plaintiffs' motion for summary judgment is granted in part and denied in part; and it is further

ORDERED that the defendants' cross motion for summary judgment is granted in part and denied in part; and it is further

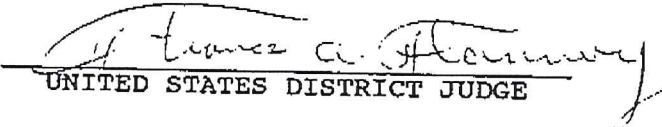
ORDERED that defendants are permanently enjoined from conducting proposed random urinalysis testing as set forth in the United States Department of Agriculture's Department Personnel Manual Supplement 792-3 ("DPM Supp. 792-3") for the testing of computer specialists and plant protection and quarantine officers; and it is further;

(2)

ORDERED that plaintiffs' motion for summary judgment seeking a permanent injunction of the defendants' proposed "reasonable suspicion" drug testing as set forth in DPM Supp. 792-3 is denied; and it is further

ORDERED that the plaintiffs' motion for summary judgment seeking a permanent injunction of the USDA's proposed post-accident or unsafe practice urinalysis testing is denied, provided that a written record is generated by every supervisor indicating the specific grounds that an employee is suspected of having caused a triggering accident following any instance when such testing is required; and it is further

ORDERED that the court's preliminary injunction enjoining the random testing of motor vehicle operators is dissolved and the defendants' motion for summary judgment on this issue is granted.


UNITED STATES DISTRICT JUDGE