

OFFICE OF ADMINISTRATIVE LAW JUDGES

WASHINGTON, D.C. 20424-0001

DEPARTMENT OF HEALTH AND HUMAN SERVICES, SOCIAL SECURITY
ADMINISTRATION

Respondent

and

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, GENERAL
COMMITTEE

Case No.
WA-CA-20937

(50 FLRA No. 50)

Charging Party

Carroll S. Rankin, Jr.

Representative of the Respondent

Barry Nelson

Representative of the Charging Party

Christopher M. Feldenzer

Counsel for the General Counsel

Before: GARVIN LEE OLIVER

Administrative Law Judge

DECISION ON REMAND

On March 29, 1995 the Authority remanded this case for the undersigned to determine whether, and the extent to which, make-whole relief should be granted to adversely affected employees.

Following a conference call with the parties, I conclude that an order directing the Respondent to "make whole" any employee adversely affected by the unilateral implementation of revised performance standards for bargaining unit employees is necessary and appropriate to remedy the violation of the Statute. The purpose

of a "make-whole" remedy is to place individuals who have been adversely affected by an improper action in the situation where they would have been if the improper action had not occurred. This remedy should include backpay for those employees who suffered a withdrawal or reduction of pay, allowances, or differentials as a result of the improper implementation of the performance standards.

For most of the employees who were adversely affected, this remedy will require that they receive the performance ratings that they otherwise would have received if the Statute had not been violated. This remedy also requires the correction of personnel actions that would or would not have been taken but for the violation of the Statute. For example, if as a result of the improper implementation of the standards, an employee was removed or reduced in grade, this remedy will require that the employee be restored to the employee's original position. For those employees who suffered a withdrawal or reduction in pay, allowances, or differentials as a result of the violation of the Statute, the ordered "make-whole" remedy should include backpay. Department of Health and Human Services, Social Security Administration, Dallas Region, Dallas, Texas, 32 FLRA 521 (1988).

Accordingly, based on the findings and conclusions in the October 29, 1993 decision, as supplemented by the above, 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 Health and Human Services, Social Security Administration, shall:

1. Cease and desist from:

(a) Unilaterally implementing revised performance standards for bargaining unit employees while requests of agents of the American Federation of Government Employees, AFL-CIO, the exclusive representative of a unit of its employees, for assistance with a negotiation impasse over the impact and implementation of the matter are pending before the Federal Service Impasses Panel.

(b) Except as otherwise agreed by the American Federation of Government Employees, AFL-CIO, or its duly authorized agents, make whole any bargaining unit employee who was adversely affected by the unilateral implementation of the revised performance standards. This make-whole remedy shall include backpay for any bargaining unit employee who suffered a withdrawal or reduction in pay, allowances, or differentials because of the unilateral implementation of the revised performance standards.

(c) In any like or related manner interfering with, restraining or coercing its employees in the exercise of their 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) Post at its facilities, where bargaining unit employees represented by Council 215, Local 1923, Council 220, the National Council of Social Security Payment Center Locals, and the National Council of Social Security Administration Field Assessment Locals, American Federation of Government Employees, AFL-CIO, are located, copies of the attached Notice on forms furnished by the Federal Labor Relations Authority. Upon receipt of the forms, they shall be signed by the Commissioner, and they shall be posted and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that the Notices are not altered, defaced, or covered.

(b) Pursuant to section 2423.30 of the Authority's Rules and Regulations, notify the Regional Director, Federal Labor Relations Authority, of the Washington Region, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply.

Issued, Washington, DC, April 27, 1995

GARVIN LEE OLIVER

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 unilaterally implement revised performance standards for bargaining unit employees while requests of agents of the American Federation of Government Employees, AFL-CIO, the exclusive representative of a unit of our employees, for assistance with a negotiation impasse over the impact and implementation of the matter are pending before the Federal Service Impasses Panel.

WE WILL NOT in any like or related manner interfere with, restrain or coerce our employees in the exercise of their rights assured by the Federal Service Labor-Management Relations Statute.

WE WILL, except as otherwise agreed by the American Federation of Government Employees, AFL-CIO, or its duly authorized agents, make whole any bargaining unit employee who was adversely affected by the unilateral implementation of the revised performance standards. This make-whole remedy shall include backpay for any bargaining unit employee who suffered a withdrawal or reduction in pay, allowances, or differentials because of the unilateral implementation of the revised performance standards.

(Activity)

Date: _____ 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, Washington Region, Federal Labor Relations Authority, whose address is: 1255 22nd Street, NW, 4th Floor, Washington, DC 20037-1206, and whose telephone number is: (202) 653-8500.