FEDERAL LABOR RELATIONS AUTHORITY

Office of Administrative Law Judges

WASHINGTON, D.C.

SOCIAL SECURITY ADMINISTRATIONBALTIMORE, MARYLAND Respondent

and INTERNATIONAL FEDERATION OFPROFESSIONAL AND TECHNICAL ENGINEERS, AALJ Charging Party

Case No. WA-CA-00104

John A. Carlo, EsquireLorena Peñaloza, EsquireFor the Respondent Sally Tedrow, EsquireFor the Charging Party

Thomas F. Bianco, EsquireFor the General Counsel, FLRA Before: WILLIAM B. DEVANEY Administrative Law Judge

DECISION

Statement of the Case

This proceeding, under the Federal Service Labor-Management Relations Statute (Statute), Chapter 71 of Title 5 of the United States Code, 5 U.S.C. § 7101, *et seq.* (1), and the Rules and Regulations issued thereunder, 5 C.F.R. § 2423.1 *et seq.,* concerns whether, as alleged in the Complaint, Respondent violated §§ 16(a)(5) and (1) of the Statute.

This case was initiated by a charge filed on November 17, 1999 (G.C. Exh. 1(a)) and by an amended charge filed on October 26, 2000 (G.C. Exh. 1(b)). The charges alleged violations of § 16(a)(1), (5), and (8) of the Statute. The Complaint and Notice of Hearing issued on November 30, 2000; alleged violations of § 16(a)(1), (5) and (8) of the Statute; and set the hearing for March 1, 2001 (G.C. Exh. 1(c)). On February 15, 2001, General Counsel moved to amend the complaint by withdrawing allegations that § 16(a)(8) of the Statute had been violated (G.C. Exh. 1(h)). The motion was granted that same day (G.C. Exh. 1(i)).(2)

A hearing was held on March 1, 2, and 21, 2001, in Washington, D.C. before the undersigned. All parties were represented at the hearing, were afforded full opportunity to be heard, to introduce evidence bearing on the issues involved, and were afforded the opportunity to present oral argument which all parties declined. At the conclusion of the hearing April 23, 2001, was fixed as the date for mailing post-hearing briefs which time subsequently was extended, on Motion of Respondent, to which the other parties did not object, for good cause shown, to June 1, 2001. General Counsel, Charging Party and Respondent each timely submitted a brief, received on, or before, June 1, 2001, which have been carefully considered. Upon the basis of the entire record, including my observation of the witnesses and their demeanor, I make the following findings and conclusions:

FINDINGS

1. On October 1, 1999, the International Federation

of Professional and Technical Engineers, Association of Administrative Law Judges (hereinafter, "Union") was certified as the exclusive representative of a nationwide unit of Administrative Law Judges (hereinafter, "ALJs") employed by the Social Security Administration (hereinafter, "SSA" or "Respondent") (Tr. 24, 26). The ALJs work in the Respondent's Office of Hearings and Appeals (hereinafter, "OHA") (Tr. 567-68).

2. OHA, with approximately 140 offices in the United States and Puerto Rico, is responsible for providing hearings for claimants who have been denied benefits under the Social Security Act (Tr. 33, 567). In order to

accomplish its mission, OHA employs about 7,500 persons, including approximately 972 ALJs whose principal duty is to hear and decide the cases filed with OHA (Tr. 141, 567-68). The remaining staff, consisting of attorneys, paralegal specialists, and other support personnel, assist the ALJs in preparing cases for hearing and in the writing of decisions issued after hearings (Tr. 58-61).

3. Prior to 2000, there was not a uniform organizational structure within the offices of OHA. Essentially OHA offices were organized in one of three configurations, the "modified unit process," the "modular process," or the "reconfiguration process." In the "modified unit process", each ALJ was assisted by one or more support staff, specifically assigned to that ALJ (Tr. 57-69, 468). A system, known as the "unit process," where ALJs had supervisory responsibility for support personnel assigned to them, was abolished in the early 1980s (Tr. 460-61). However, some offices continued to assign individual support personnel to assist specific ALJs, even though the ALJ no longer had formal supervisory responsibility (hence, a "'modified' unit process") (Tr. 67, 601-02). Exactly how many offices employed the "modified unit process" is not established in the record, however, Ms. Rita Geier, Respondent's Associate Commissioner for Hearings and Appeals testified that it was less than a majority of OHA's offices (Tr. 602).

4. Under the "modular process," support staff were organized into "modules" or groups who provided processing functions for a set of ALJs (Tr. 68-70). Unlike in the "modified unit process," support personnel in the "modular" system were not assigned to assist a specific ALJ (*id.*).

5. The "reconfiguration process" placed support personnel in pools (Tr. 66-67). Staff attorneys were placed in decision writing pools, hearing clerks were in pools responsible for typing and scheduling, and other employees were in pools responsible for preparing cases for hearing (Tr. 67-69). Support personnel were not assigned to specific ALJs, although in some offices each ALJ was assigned a specific clerk as a point of contact to which the ALJ could go for resolution of questions regarding the status of cases (Tr. 67).

6. Although the configuration of personnel varied prior to the implementation of a Hearing Process Improvement Plan (HPI), cases were developed in a uniform manner. Cases were assigned to an ALJ on a rotational basis immediately after they were filed and docketed in a hearing office (Tr. 269). After assignment, a legal assistant (whether assigned to a specific ALJ, in a module, or in a pool) would organize the case file for the ALJ assigned (*id.*). At this point, the ALJ would review the file in order to determine whether further development of the case record was necessary (Tr. 269-70). If the ALJ determined that further development was warranted, the case would be returned to the support staff for appropriate action. When the ALJ was satisfied that the case was ready for hearing, the case would be forwarded to a hearing clerk who would schedule the hearing (Tr. 293-95). After the hearing was concluded, the ALJ would issue decision drafting instructions to a decision writer for drafting (Tr. 288-90). The draft decision would be returned to the ALJ for review and editing. After the written decision was completed to the ALJ's satisfaction, the decision would be issued by the ALJ (Tr. 291-93).

7. In August 1999, the Commissioner of SSA announced that beginning in January 2000, the HPI would be implemented (G.C. Exh. 7). HPI was intended to reduce processing times, improve quality and productivity, promote individualized case management, and increase employee job satisfaction (G.C. Exh. 6, unnumbered p. 6; Tr. 569).

8. Under HPI, all OHA offices would have the same organizational structure. The "key element" of the HPI process is the creation of "Processing Groups". A processing group consists of a Group Supervisor, a Senior Attorney Advisor, Case Analysts (Attorneys or Paralegal Analysts) and Case Technicians. Each group would support approximately four ALJs. The Group Supervisors report to the Hearing Officer Director (HOD), who was also responsible for supervision of employees not assigned to a Processing Group. The HOD reports to the Hearing Office Chief Administrative Law Judge (HOCALJ) who is the chief administrative officer for the office. (G.C. Exh. 6,unnumbered pp. 9-11).

9. HPI also required uniform case processing. When a case enters the hearing office, the case is docketed and assigned to a Processing Group. It is not assigned to an ALJ at this time. It is up to the Processing Group to develop the case. The case is screened and analyzed to determine what if any further evidence is needed to prepare the case for hearing and disposition. This may involve contact with the claimant or the claimant's representative. Once the Processing Group determines that the case is ready for hearing, the case is then assigned and forwarded to an ALJ. At this point, the ALJ examines the file and determines if the case is sufficiently developed for hearing. If it is the case will be scheduled for hearing. If not, the case is returned to the Processing Group with instructions for further processing. (G.C. Exh. 6, unnumbered pp. 11-15).

10. After the hearing is completed, the ALJ may decide the case or determine that further record development is required. In the later circumstance, the case will be returned with appropriate instructions to the Processing Group. In any event, once the ALJ is satisfied that the record is complete, the case will be forwarded to an attorney or paralegal specialist in the Processing Group with instructions for drafting a decision. As under the previously existing process, a draft decision will be returned to the ALJ for review and editing. Once the redrafting process is completed and the ALJ is satisfied with the written decision, the decision is signed and issued by the ALJ (G.C. Exh. 6, unnumbered pp. 15-17; *Id.* at Appendix "Administrative Law Judge" at 6-7).

11. HPI established, for the first time in OHA, "benchmarks" which are described as "the maximum time a case should remain at different stages of the process" (Respondent (Res.) Exh. 2, "HPI Plan" at 3). The benchmarks were intended to focus management and employee attention on moving cases in a timely way through each process stage (*id.*).

12. HPI was a significant reorganization of OHA. Nineteen new position descriptions were created affecting approximately 80 per cent of OHA employees (Tr. 430, 465, Res. Exh. 3). Many of the new positions were filled competitively from both within and without OHA (Tr. 467, 705). Of those filled from within OHA, approximately one-third of the existing support staff received promotions (Tr. 486).(3) In addition, some of the hires and promotions required that personnel relocate (Tr. 599, 705). However, neither the position descriptions nor the principal duties of the ALJs, *i.e.*, hearing and deciding cases, were affected by HPI (Tr.469).

13. During the development of HPI, Respondent briefed the Union's predecessor organization, the Association of Administrative Law Judges (AALJ), on the HPI initiative (Tr. 506-07). The AALJ was a professional organization that had no collective bargaining rights (Tr. 24-25). By letter dated October 26, 1999, approximately 3 weeks after its certification as exclusive representative of the ALJs, the Union requested bargaining over HPI (G.C. Exh. 3). Receiving no response, the Union sent a second letter on November 12, 1999, reiterating its request to bargain over HPI (G.C. Exh. 4). On November 16, representatives of the Union received a briefing on HPI (Tr. 30-31). By letter dated that same day, however, Ms. Geier, SSA's Associate Commissioner of Hearing and Appeals, informed the Union that Respondent had no obligation to bargain with the Union over HPI because the impact on the ALJs was *de minimis* (G.C. Exh. 5).

14. HPI was not implemented in all OHA offices at once but was implemented in three stages. Phase 1 was to commence in January 2000, however, implementation was delayed in some locations while the agency engaged in bargaining with the National Treasury Employees Union and the American Federation of Government Employees, the exclusive representatives of non-ALJ employees of OHA (Tr. 72-73, 576). Phase 1 implementation was completed by May of 2000 (Tr. 576). Phase 2 was implemented in October 2000 and Phase 3 commenced in November 2000 (Tr. 575-76, 578). Respondent never bargained over HPI with the Union.

CONCLUSIONS

Respondent consistently has contended that it had no obligation to bargain with the Union because the impact on bargaining unit employees was *de minimis*. For the reasons that follow, I find that the impact on the unit employees was more than *de minimis* and therefore, that Respondent was obligated to bargain over the impact and implementation of HPI, and that it violated § 16(a)(5) and (1) of the Statute by refusing to bargain. Accordingly, it is recommended that Respondent be ordered to bargain upon request with the Union, to cease and desist from similar violations of the Statute, and to post an appropriate notice. However, I find that, under the relevant standards, a *status quo ante* remedy is not appropriate.

A. Respondent was obligated to bargain over the impact and implementation of HPI

1. Applicable Principles

Under § 16(a)(5) and (1) of the Statute, prior to implementing a change in conditions of employment of bargaining unit employees, an agency is required to provide the exclusive representative with notice of the change and the opportunity to bargain over those aspects of the change that are within the duty to bargain. *United States Army Corps of Eng'rs, Memphis Dist., Memphis, Tenn.*, 53 FLRA 79, 81 (1997). It is not contested that implementation of HPI involves the exercise of management rights under § 6(a) of the Statute and is not substantively negotiable. *(See* G.C. Brief at 19.) It is well established, however, that there is a duty to bargain under § 6(b)(2) and (3) of the Statute over the impact and implementation of the exercise of management rights. *Dep't of Veterans Affairs, Veterans Affairs Med. Ctr., Nashville, Tenn.*, 50 FLRA 220, 221-22 (1995). The obligation to bargain over the impact and implementation of the exercise of a management right arises whenever there is more than a *de minimis* effect on conditions of employment. *Dep't of Health and Human Serv., Social Security Admin.*, 24 FLRA 403, 407-08 (1986) (SSA).

Respondent defends its refusal to bargain only on the grounds that the impact on the ALJs was not more than *de minimis*. In assessing whether the effect of a decision on conditions of employment is more than *de minimis*, the Authority looks to the nature and extent of either the effect, or the reasonably foreseeable effect, of the change on bargaining unit employees' conditions of employment. Equitable considerations will also be taken into account in balancing the various interests involved. *Gen. Serv. Admin., Region 9, S. F., Calif.*, 52 FLRA 1107, 1111 (1997) (*citation omitted)*. In order to trigger a bargaining obligation the effect need not be "substantial," but only more than *de minimis*. *Portsmouth Naval Shipyard, Portsmouth, N.H.*, 45 FLRA 574, 575 n.2 (1992).

2. The impact of HPI on the ALJs was more than *de minimis*

Upon reviewing the entire record, I conclude that the impact of HPI on the ALJs was more than *de minimis*. This conclusion is based on three considerations: (1) the assignment of cases to ALJs later in case handling process; (2) the establishment of benchmarks; and (3) elimination in some offices of dedicated staff to ALJs.[(4)]

a. The case handling process

Although implementation of HPI did not change the principal duties of the ALJs, it significantly altered how those duties would be carried out. Specifically, prior to

the implementation of HPI, cases were assigned to an ALJ immediately after docketing. The ALJ would conduct a preliminary review of the case to determine if further

development was necessary. Further development would be effected by support staff in accordance with the ALJ's instructions. Under HPI, upon docketing the case is assigned to a Processing Group. It is up to the Processing Group to determine the extent to which further case development is required and to take the

necessary action. Only after the case is certified as ready for hearing is the case assigned to an ALJ. The ALJ then reviews the file for the first time. The ALJ may return the case to the Processing Group if the ALJ determines the case is not fully developed and ready for hearing.

This change has more than a *de minimis* impact. The ALJs, who are ultimately responsible for deciding the case, receive the case at a different stage of processing than under the previous system. Under HPI, the ALJ no longer has the opportunity to direct the development of the case from the beginning. Although the ALJ has the authority to order further development after receipt from the processing group, reviewing the work of others is a different task than performing the task oneself. In that regard, the record indicates that under HPI, ALJs were receiving cases both underdeveloped (a record insufficient for hearing) and overdeveloped (unnecessary documentation had been sought). *See* G.C. Exh. 9, Appendix 2 at 16). This evidence supports the conclusion that processing cases under HPI changed the conditions under which the ALJs performed their duties.(5)

b. Benchmarks

HPI establishes "benchmarks" as "management tools" that set "the maximum time a case should remain at different stages of the process" (Res. Exh. 2, "HPI Plan" at 3). Benchmarks are to "focus management and employee attention on moving cases in a timely way through each process stage, thus reducing the overall processing time" (*id.*). The establishment of benchmarks has more than a *de minimis* effect on the conditions of employment of the ALJs because it creates a reasonable expectation that employee performance will be measured against these targets.

Although ALJs are not subject to performance appraisals (5 U.S.C. § 4301(2)(D), 5 C.F.R. § 930.211), performance-based actions may be taken against ALJs. *See Soc. Security Admin. v. Anyel*, 58 MSPR 261, 267 (1993); *see also Soc. Sec. Admin. v. Goodman*, 19 MSPR 321, 329-331 (1984) (*Goodman*). Such actions may be predicated on productivity levels. See *Goodman*, 19 MSPR at 330-31. In addition, productivity may be a factor in other personnel decisions affecting ALJs such as promotions to Chief ALJ positions and transfers (Tr. 112-13, 308-310).(6)

Respondent contends that the benchmarks are only intended as diagnostic tools to determine problems in the case handling system and are not intended to be used as support for disciplinary actions against the ALJs. However, such assurances are only given through the testimony of Respondent's officials. There are no non-litigation inspired statements of this policy in the record. *See United States Equal Employment Opportunity Comm.*, 40 FLRA 1147, 1154-55 (1991) (agency assurances to the contrary did not eliminate reductions in force as reasonably foreseeable consequences of reduced personnel ceilings). Moreover, similar assurances were obtained for employees in other bargaining units only through impact and implementation bargaining over HPI. Accordingly, it is concluded that it was reasonably foreseeable that benchmarks could be used as a basis for personnel actions, and therefore, the establishment of benchmarks constitutes a change in conditions of employment that is more than *de minimus*.

c. The elimination of dedicated staff

Although the evidence is inconclusive with respect to extent, it is undisputed that prior to the implementation of HPI, some OHA offices operated under a "modified unit" system in which specific staff members were assigned to a specific ALJ. Under this system, an ALJ would have a staff of three or four individuals, generally an attorney, a legal assistant and a clerk, who would be responsive to that ALJ for assistance at all stages of the case processing (Tr. 57-60). This practice was eliminated under HPI. Under HPI, a Processing Group would be assigned to support approximately four ALJs. Therefore, instead of staff assigned to support one and only one ALJ, HPI required that ALJs could have different staff supporting different cases, and staff would be responsible for cases assigned to different ALJs.

For those ALJs operating under a modified unit system, this constitutes a more than *de minimus* change in conditions of employment. The lines of communication between an ALJ and the staff responsible for his or her support was changed dramatically, a fact Respondent does not specifically deny. *See Defense Logistics Agency, Defense Depot Tracy, Tracy, Calif.*, 39 FLRA 999, 1010-11 (1991) (change that affected lines of communication between employees and Employee Assistance Counselors had more than a *de minimis* effect). Respondent's reliance on *United States Dep't of Health and Human Serv., Soc. Sec. Admin., Balt., Md.*, 36 FLRA 655 (1990) is misplaced. There the Authority found that implementation of a policy that resulted only in changing the individuals with whom employees would work, and thereby terminating personal working relationships, had a *de minimis* effect on conditions of employment. 36 FLRA at 667. In this case, the relevant effect is not the termination of personal relationships, but a restructuring of the functional relationship between ALJs and support staff.

Respondent principally argues that this change is *de minimis* because it affects only a portion of the bargaining unit. Citing *SSA*, 24 FLRA at 408, Respondent asserts that although not a controlling factor, the number of employees affected is to be considered in a *de minimis* analysis. However, in *SSA* the Authority held that consideration of the number of employees affected would be "applied primarily to expand rather than limit the number of situations where bargaining will be required," *i.e.*, a change found not bargainable in a limited context may require bargaining where its effect is widespread. *SSA*, 24 FLRA at 408. *SSA* does not hold, as Respondent suggests (Brief at 18), that the limited extent of a change is sufficient to render the change *de minimis*. Accordingly, Respondent's attempt to minimize the impact of the elimination of dedicated staff by emphasizing its limited extent is unsupported by *SSA* and therefore unavailing.

3. Respondent refused to bargain over the implementation of HPI and therefore violated the Statute

It is undisputed that, after receiving two requests from the Union, Respondent expressly refused to bargain over the impact and implementation of HPI. Respondent defends its refusal to bargain only on the grounds that HPI had no more than a *de minimis* effect on the conditions of employment of bargaining unit members. As discussed above, HPI had more than a *de minimis* effect and, therefore, Respondent violated § 16(a)(5) and (1) of the Statute.

B. A *Status Quo Ante* Remedy is not appropriate

Where an agency has failed to bargain over the impact and implementation of a management decision, the Authority evaluates the appropriateness of a *status quo ante* remedy (SQA) on a case-by-case basis, "carefully balancing the nature and circumstances of the particular violation against the degree of disruption in government operations that would be caused by such a remedy." *Fed. Corr. Inst.*, 8 FLRA 604, 606 (1982) (*FCI*). In this connection, the Authority considers: (1) whether, and when, an agency notified the union concerning the change; (2) whether, and when, the union requested bargaining over procedures for implementing the change and/or appropriate arrangements for employees adversely affected by the change; (3) the willfulness of the respondent's conduct in failing to bargain; (4) the nature and extent of the impact upon adversely affected employees; and (5) whether, and to what extent, an SQA would disrupt the respondent's operations. *Id.*

With respect to the first and second factors, the unique circumstances of this case must be taken into account. The Union was not certified as the exclusive representative until October 1, 1999. However, the Union's predecessor organization had been briefed on the HPI initiative and the Union had received the Executive Summary issued with the public announcement of HPI in August 1999. It is therefore evident that the Union knew of the proposed change, the Respondent was aware that the Union knew of the change, and the Union requested bargaining shortly after its certification. Accordingly, I reject both the Union's contention that it did not receive adequate notice and the Respondent's contention that the Union delayed requesting bargaining.

With respect to the third *FCI* factor, it is beyond serious dispute that Respondent's refusal to bargaining was willful. The Respondent expressly denied an unambiguous request to bargain, asserting that it had no obligation to bargain under the Statute because HPI had only a *de minimis* impact on conditions of employment. In that regard, the Authority has held that if a respondent's actions are otherwise intentional, then the respondent's erroneous belief that it had no duty to bargain does not support a conclusion that the respondent's actions were not "willful" for the purposes of *FCI*. *See United States Dep't of Energy, Western Area Power Admin., Golden, Colo.*, 56 FLRA 9, 13 (2000).

Concerning the fourth *FCI* factor, I find that while the impact of HPI on the ALJs is more than *de minimis*, the effect is, nonetheless, somewhat limited. In that regard, although the environment in which the ALJs perform their duties is altered, their principal duties are not changed. Further, implementation of HPI has no effect on the ALJ's pay, benefits, or hours of duty, nor are the ALJs subject to relocation as a result of HPI. *See United States Dep't of Defense, Dep't of the Army, Headquarters, Fort Sam Houston, Tex.*, 8 FLRA 623, 625 (1982) (impact of unilateral change in duties that did not effect the grade or pay of employees was minimal and did not warrant an SQA). On the other hand, although there is nothing in the record to indicate that the newly-established benchmarks have been used in making personnel decisions affecting the ALJs, the potential for such use remains. However, any such impact can be remedied by a "make whole" remedy for any employee so effected.

With regard to the final FCI criterion, I find that an SQA would create substantial disruption to the Respondent's operations. The record establishes that HPI has been implemented in all of the approximately 140 OHA offices nationwide and has affected work assignments for approximately 4000 support staff personnel. In that regard, HPI has created new positions, and employees have been hired or promoted into these positions. Further, some of these personnel actions required employees to relocate.

In addition to personnel considerations, HPI fundamentally changed the way cases were processed. HPI

has been in effect for almost 2 years in Phase 1 offices

and a year in Phase 2 and 3 offices. It is foreseeable

that an abrupt return to the previous case processing systems would result in delays and other processing difficulties. (Tr. 426-27, 494, 609.) This would significantly affect the Respondent's mission, which is to provide direct services to the public in the form of hearing and deciding appeals from claimants who have been denied benefits under the Social Security Act.

Any remedy must effectuate the purposes of the Statute. See 5 U.S.C. § 7105(g)(3); *see also United States Dep't of Justice, Bureau of Prisons, Safford, Ariz.*, 35 FLRA 431, 444 (1990). Two competing purposes are implicated in this case. One purpose of an SQA is "to deter the Respondent and future parties from failing to satisfy their duty to bargain, and reduce any incentive that may exist to unilaterally implement changes in conditions of employment and then refuse to negotiate over all pertinent aspects of the impact and implementation of the changes." *Fed. Bureau of Prisons, Fed. Corr. Inst., Bastrop, Tex.*, 55 FLRA 848, 857 (1999). On the other hand, § 7101(b) of the Statute requires that the Statute be "interpreted in a manner consistent with an effective and efficient Government."

The willful nature of Respondent's violation makes deterrence a significant factor in this case. However, I find that the disruption that would be caused by an SQA, affecting other employees as well as the public[(7)], outweighs that consideration, and it is recommended that the Authority not order an SQA in this case. *See, e.g Fed. Aviation Admin.*, 23 FLRA 209, 218 (1986) (SQA not appropriate because rescinding agency reorganization would be overly disruptive); *Dep't of the Treasury, Internal Revenue Serv., Jacksonville District, Jacksonville, Fla.*, 15 FLRA 1014, 1016 (1984); *see also Dep't of the Army, Dugway Proving*

Ground, Dugway, Utah, 23 FLRA 578, 584 (1986) (SQA not appropriate where it would have adverse impact on other employees). However, if any ALJs are adversely affected by personnel actions made in reliance of the benchmarks established in HPI, those employees should be made whole to the extent practicable. Accordingly, consistent with applicable law, any disciplinary actions affected in reliance on benchmarks should be rescinded, and the employee made whole for any lost pay or benefits.(8) Further, if any employees were denied promotions or transfers in whole or in part because of a failure to meet benchmarks, these employees should receive priority consideration for the next promotion or transfer for which they apply.

General Counsel requests that a notice be posted in all OHA offices and that it be signed by the Commissioner of SSA. Such posting is appropriate.

Consistent with the foregoing, it is recommended that the Authority adopt the following:

ORDER

Pursuant to § 2423.41 of the Authority's Regulations, 5 C.F.R. § 2423.41, and section 18 of the Statute, 5 U.S.C. § 7118, the Social Security Administration shall:

- Cease and desist from:

(a) Unilaterally implementing the Hearing Process Improvement Plan without fulfilling its obligation to bargain with the International Federation of Professional and Technical Engineers, Association of Administrative Law Judges, concerning the impact and implementation of the Hearing Process Improvement Plan.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of rights assured them by the Statute.

2. Take the following affirmative action in order to effectuate the purposes and policies of the Statute:

a) Upon request, bargain with the International Federation of Professional and Technical Engineers, Association of Administrative Law Judges over the impact and implementation of the Hearing Process Improvement Plan.

(b) Rescind any disciplinary actions taken against employees in reliance of benchmarks established by the Hearing Process Improvement Plan and make such employees whole for any pay and benefits lost as a result of such actions.

(c) For any employee denied a promotion or a requested transfer based the benchmarks established by the Hearing Process Improvement Plan, give that employee priority consideration for the next promotion or transfer, respectively, for which the employee applies.

(d) Post at all offices of the Office of Hearings and Appeals 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 Commissioner, Social Security Administration, and shall be posted and maintained for sixty (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 ensure that such Notices are not altered, defaced, or covered by any other material.

(e) Pursuant to § 2423.41(e) of the Authority's Regulations, 5 C.F.R. § 2423.41(e), notify the Regional Director of the Washington Region, Federal Labor Relations Authority, Tech World Plaza North, 800 K

Street, N.W., Suite 910, Washington, D.C. 20001, in writing, within thirty (30) days from the date of this Order, as to what steps have been taken to comply.

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WILLIAM B. DEVANEY

Administrative Law Judge

Dated: January 31, 2002

Washington, DC

NOTICE TO ALL EMPLOYEES

POSTED BY ORDER OF THE

FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the Social Security Administration violated the Federal Service Labor-Management Relations Statute and has ordered us to post and abide by this notice.

We hereby notify bargaining unit employees that:

WE WILL NOT unilaterally implement the Hearing Process Improvement plan without fulfilling our obligation to bargain with the International Federation of Professional and Technical Engineers, Association of Administrative Law Judges, concerning the impact and implementation of the Hearing Process Improvement Plan.

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

WE WILL, upon request, bargain with the International Federation of Professional and Technical Engineers, Association of Administrative Law Judges over the impact and implementation of the Hearing Process Improvement Plan.

WE WILL, rescind any disciplinary actions taken against employees in reliance of benchmarks established by the Hearing Process Improvement Plan and make such employees whole for any pay and benefits lost as a result of such actions.

WE WILL, for any employee denied a promotion or a requested transfer based the benchmarks established by the Hearing Process Improvement Plan, give that employee priority consideration for the next promotion or transfer, respectively, for which the employee applies.

_____

(Respondent/Activity)

Dated: _____ By: _____

(Signature) (Title)

This Notice must remain posted for sixty (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 of compliance or with any of its provisions, they may communicate directly with the Regional Director, Washington Region, Federal Labor Relations Authority, whose address is: Tech World Plaza North, 800 K Street, N.W., Washington, DC, 20001-8000, and whose telephone number is: 202-482-6700.

1. For convenience of reference, sections of the Statute hereinafter are, also, referred to without inclusion of the initial, "71", of the statutory reference, *i.e.*, Section 7116(a)(2) will be referred to, simply, as, "§ 16(a)(2)".

2. The withdrawn portions of the complaint alleged that the Respondent failed to provide the Charging Party with certain data requested under § 14(b)(4) of the Statute.

3. OHA employs approximately 5,000 non-ALJ employees (Tr. 141, 567-68).

4. General Counsel and the Union also argue that the functional reorganization and restructuring of positions inevitably resulted in a decline, even if temporary, in the quality of case processing and decision writing. I do not decide whether those factors considered by themselves constitute a change in conditions of employment that is more than *de minimis*. The factors identified are more than sufficient to trigger a bargaining obligation.

5. Some of this testimony appeared to be offered to demonstrate that HPI is inefficient. However, whether HPI is an efficient system of case processing is not before me and I make no such judgment. The only question before me is whether and to what extent HPI changed conditions of employment of the ALJs.

6. Transfers are a matter of serious concern to the ALJs. SSA ALJs are often hired at locations other than that preferred by the ALJ. After two years in their first hearing office, ALJs may request a transfer, which is granted or denied at SSA's discretion. (Tr. 113-114, 308-10).

7. The effect on the public is particularly significant. For example, in Fiscal Year 2001, OHA anticipated making final dispositions in over 500,000 cases (Tr. 98).

8. Employees are not entitled to have disciplinary actions rescinded to the extent that such discipline would have been appropriate and lawful despite the Respondent's improper implementation of benchmarks. *United States Dep't of Justice, United States Immigration and Naturalization Serv., El Paso Dist. Office*, 39 FLRA 1431, 1438 (1991).