

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

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SOCIAL SECURITY ADMINISTRATION .  
Respondent .  
and .  
AMERICAN FEDERATION OF .  
GOVERNMENT EMPLOYEES, AFL-CIO .  
Charging Party .  
.....

Case No. 3-CA-80245

Ana de la Torre, Esquire  
For the General Counsel  
  
Mr. Richard A. Matthews  
For the Respondent  
  
Mr. Barry Nelson  
For the Charging Party  
  
Before: BURTON S. STERNBURG  
Administrative Law Judge

DECISION

Statement of the Case

This is a proceeding under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the U.S. Code, 5 U.S.C. Section 7101, et seq., and the Rules and Regulations issued thereunder.

Pursuant to a charge filed on February 9, 1988, by the American Federation of Government Employees, AFL-CIO, (hereinafter called the Union), a Complaint and Notice of Hearing was issued on May 25, 1988, by the Regional Director for Region III, Federal Labor Relations Authority,

Washington, D.C. The Complaint alleges that the Social Security Administration, (hereinafter called the Respondent or SSA), violated Sections 7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute, (hereinafter called the Statute), by virtue of its actions in refusing to bargain with the Union over the payment of relocation expenses for employees selected under merit promotion procedures and/or other recruitment actions.

A hearing was held in the captioned matter on October 4, 1988, in Washington, D.C. At the opening of the hearing the parties agreed to allow the Respondent to amend its Answer to the Complaint and admit all the factual allegations set forth in the Complaint. Additionally, the parties submitted three joint exhibits. The first exhibit consisted of the formal papers, the second exhibit was the parties current collective bargaining agreement and the third exhibit was the Union's request to bargain on the relocation expenses for various unit employees. The hearing was then closed and the parties given thirty days to submit post hearing briefs. The Union and the Respondent subsequently submitted post hearing briefs which have been duly considered.

Upon the basis of the above described record, I make the following findings of fact, conclusions and recommendations.

#### Findings of Fact

At all times material herein, the Union has been certified as the exclusive representative of separate appropriate nationwide consolidated units consisting of Respondent's professional and non-professional employees.

By letter dated December 16, 1987, to Respondent, the Union requested negotiations and forwarded proposals concerning the payment of relocation expenses for unit employees selected under merit promotion procedures and/or other recruitment actions.

By letter dated February 1, 1988, Respondent, through its agent Peter D. Spencer, refused to negotiate with the Union over the payment of relocation expenses.

At all times material herein, the Union and Respondent have been parties to a national collective bargaining agreement which reads in pertinent part as follows:

Article 7  
Duration of Agreement

### Section 1 - Effective Date

This agreement will be implemented and become effective when it has been approved, ratified and signed by the parties, including review pursuant to 7114(c) of the CSRA of 1978.

### Section 2 - Duration of Agreement

This agreement will remain in full force and effect for 3 years from its effective date and automatically renew itself from year to year thereafter. However, either party may give written notice and a list of proposals to the other party not more than 120 or less than 90 calendar days prior to the expiration date of its intention to reopen and amend, modify or terminate the agreement. Such notice must be accompanied by written proposals for renegotiation as applicable. Negotiations shall begin no later than thirty (30) calendar days after these conditions have been met.

### Section 3 - Reopener

Negotiations during the term of this agreement to add to, amend or modify this agreement may be conducted only by mutual consent of the parties.

### Article 4

#### Negotiations During the Term of the Agreement

### Section 1 - General

The Administration will provide the Union reasonable advance notice prior to implementation of changes affecting conditions of employment subject to bargaining under 5 USC 71. Upon notice from the Administration of a proposed change, the designated union representative will notify the designated management representative of its desire to consult and/or negotiate on the change. (Emphasis added).

The Union will submit written proposals if applicable within a reasonable period after notice of the proposed change. Bargaining will begin as soon as possible, and will not exceed ten (10) working days. All issues not resolved at that time may be referred to the Federal Service Impasses Panel for resolution under its rules.

## Section 2 - National Level

A. The parties agree that notice of proposed Administration-wide or intercomponent changes will be dealt with by the parties at the National level. For notification at the National level the Associate Commissioner, OMBP, or the designated management representative will provide the Spokesperson, General Committee, or designated AFGE Local 1923 or Council representative with timely notice and seven copies of proposed management initiated changes. (Emphasis added.)

1. Negotiations over conditions of employment that impact on all six (6) components will be represented by the following negotiations and will be designated by the appropriate AFGE Council and Local 1923.

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|-----|---|---|
| (a) | Local 1923  | 1 |
| (b) | AFGE National Council<br>of SSA Payment Centers                   | 1 |
| (c) | AFGE National Council<br>of SSA Field Operations                  | 1 |
| (d) | AFGE National Council<br>of SSA Office of Hearings<br>and Appeals | 1 |
| (e) | AFGE National Council of<br>Data Operations Centers               | 1 |
| (f) | AFGE National Council of<br>Field Assessment                      | 1 |

2. Negotiations over conditions of employment that impact on less than six (6) but more than one (1) component shall be represented by one (1) negotiator designated by each affected component.

### Section 3 - Component Level

The parties agree that notice of proposed changes which affect only one component (Field, Program Service Centers, Headquarters, Hearings and Appeals, Field Assessment Offices, Data Operation Centers) will be matters dealt with by the parties at the component level. The designated management representative will provide the designated union representative timely notice of proposed component-wide management initiated changes. (Emphasis added.)

Negotiations over conditions of employment that impact on one (1) component shall be represented by at least two (2) negotiators (but not less than the number of management's negotiators) designated by the appropriate council president.

### Section 4 - Regional/Program Service Centers/ Data Operations Centers Changes

The parties agree that notice of proposed changes which affect only one Field Operations Region, Field Assessment Region, Hearings and Appeals Region, Program Service Center, and Data Operations Center, will be given to the Union and upon request negotiated at that level. The designated management representative will provide the designated union representative with timely notice of proposed management initiated changes. (Emphasis added.) Negotiations over conditions of employment that impact on the above entities will be represented by two (2) negotiators (but not less than the number of management's negotiators) designated by the appropriate union official.

A designated union representative representing the Union in negotiations under the terms of this agreement, who would otherwise be in duty status will be authorized official time and shall be entitled to reimbursement for travel and per diem expenses, as required by 5 USC 71. However, the Union may be represented by additional negotiators in a non-duty status.

## Section 5 - Modification of Time Frames

All time frames under this Article may be modified by mutual consent.

### Discussion and Conclusions

The General Counsel and the Union take the position that the duty to bargain in good faith imposed by the Statute requires an agency to bargain during the term of a collective-bargaining agreement on negotiable union - initiated proposals concerning matters which are not contained in the agreement, unless during the negotiation of the agreement the Union clearly and unmistakably waived its right to bargain about the subject matter involved. In support of their position they rely on the Authority's decisions in Internal Revenue Service, 29 FLRA 162 and Missouri National Guard Office of the Adjutant General, Jefferson City, Missouri, 31 FLRA 1244. Inasmuch as the General Counsel and the Union find no clear and unmistakable waiver in the collective bargaining agreement, they contend the Respondent violated Sections 7116(a)(1) and (5) of the Statute when it refused the Union's request to bargain over the payment of relocation expenses for employees selected under merit promotion procedures and/or other recruitment actions.

The Respondent on the other hand takes the position that the contract contains a waiver by the Union of its alleged right to initiate mid-term contract bargaining. Additionally, the Respondent contends that the Authority has misinterpreted the Statute and that in the absence of changes initiated by the Respondent, it, the Respondent, is under no obligation to bargain with the Union during the term of a collective bargaining agreement.

Taking the Respondent's defenses in reverse order, I find based upon the Authority's decisions cited above that Respondent is indeed obligated to bargain over union initiated mid-term proposals unless the subject matter of such proposals are contained in the collective bargaining agreement.

With respect to the Respondent's waiver defense, I find, contrary to the contention of the Respondent, that the language appearing in Articles 7 and 4 of the parties collective bargaining agreement falls short of establishing a clear and unmistakable waiver by the Union of its right to

initiate mid-term bargaining over subjects not included in the agreement. Thus, I read Article 4 to merely set forth the procedure to be followed when Respondent elects to initiate a change in a condition of employment during the term of the collective bargaining agreement. Moreover, Article 4 makes no mention whatsoever of the Union's right to initiate mid-term bargaining on subjects not included in the agreement.

While Article 7, Section 3, entitled "Reopener" does make modification of, amendment to, and addition to the agreement subject to the "mutual consent of the parties," such language, in the opinion of the undersigned does not constitute a clear and unmistakable waiver. Thus, it does not bar mid-term negotiations but merely states that unless the parties "mutual consent" the product of any such mid-term negotiations may not be added to the existing contract. Nor does it bar the execution of a separate agreement covering any newly negotiated matters. To the extent that Respondent relies upon the Authority's decision in Missouri National Guard Office, supra, in support of its position that the cited contract provisions evidence a waiver of the Union's right to initiate mid-term bargaining I find such position to be without merit. Thus, in the Missouri National Guard case the preamble to the contract, clearly and unmistakably provided for a waiver by the union there involved of any right to mid-term bargaining.<sup>1/</sup>

Accordingly, having concluded that the Union has the right to initiate mid-term bargaining over conditions of employment not included in the existing collective bargaining agreement and that the current collective bargaining agreement does not contain a clear and unmistakable waiver of such right, I find that the Respondent's refusal to negotiate with the Union over the payment of relocation expenses for unit employees selected under merit promotion procedures and/or other recruitment actions violated Sections 7116(a)(1) and (5) of the Statute.

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<sup>1/</sup> The preamble read, in pertinent part: "The following Articles constitute the entire Agreement, and there shall be no side agreements or understandings, written or implied, other than those embodied in the agreement. The parties have had full opportunity to raise any and all issues during negotiations, and this Agreement represents the sum total of the terms and conditions which the Parties agree to abide by for its duration."

In view of the above findings, it is hereby recommended that the Federal Labor Relations Authority issued the following order designed to effectuate the purposes and policies of the Statute.

ORDER

Pursuant to Section 2423.29 of the Authority's Rules and Regulations and section 7118 of the Federal Service Labor-Management Relations Statute, the Social Security Administration, shall:

1. Cease and desist from:

(a) Refusing to bargain with the American Federation of Government Employees, AFL-CIO, the exclusive representative of its employees, on negotiable proposals submitted by the Union during the term of an existing collective bargaining agreement, where the proposals do not concern matters covered by the agreement and the Union did not clearly and unmistakably waive its right to bargain on such mid-term proposals during negotiation of the agreement.

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

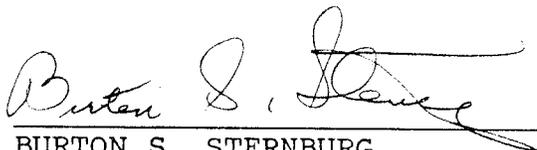
2. Take the following affirmative actions in order to effectuate the purposes and policies of the Statute.

(a) Upon request, bargain with the American Federation of Government Employees, AFL-CIO, on negotiable proposals submitted by the Union during the term of existing collective bargaining agreement, where the proposals do not concern matters covered by the agreement and the Union did not clearly and unmistakably waive its right to bargain on such mid-term proposals during negotiation of the agreement.

(b) Post at its offices where unit employees are employed 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 they 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 ensure 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, Region III, Federal Labor Relations Authority, 1111-18th Street, N.W., P.O. Box 33758, Washington, D.C. 20033-0758, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

Issued, Washington, D.C., April 11, 1989

  
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 negotiate with the American Federation of Government Employees, AFL-CIO, the exclusive representative of our employees, on negotiable proposals submitted by the Union during the term of an existing collective bargaining agreement, where the proposals do not concern matters covered by the agreement and the Union did not clearly and unmistakably waive its right to bargain on such mid-term proposals during negotiation of the agreement.

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

WE WILL, upon request, negotiate with the American Federation of Government Employees, AFL-CIO, on negotiable proposals submitted by the Union during the term of an existing collective bargaining agreement where the proposals do not concern matters covered by the agreement and the Union did not clearly and unmistakably waive its right to bargain on such mid-term proposals during negotiation of the agreement.

\_\_\_\_\_  
(Agency)

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, Region III, whose address is: 1111 - 18th Street, N.W., 7th Floor, P.O. Box 33758, Washington, D.C. 20033-0758, and whose telephone number is: (202) 653-8500.