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

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| DEPARTMENT OF HEALTH AND HUMAN SERVICES, SOCIAL SECURITY ADMINISTRATION, BALTIMORE, MARYLAND<br><br>Respondent | |
| and | Case Nos. 8-CA-00048<br>8-CA-00077 |
| AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO<br><br>Charging Party | |

Wilson Schuerholz
For Respondent

Barbara J. Lawson
For Charging Party

Deborah S. Wagner, Esq.
For General Counsel of the FLRA

Before: SAMUEL A. CHAITOVITZ
Administrative Law Judge

DECISION

Statement of the Case

This is a proceeding under the Federal Service Labor-Management Relations Statute, 5 U.S.C. § 7101 et seq., hereinafter referred to as the Statute, and the Rules and Regulations of the Federal Labor Relations Authority (FLRA), 5 C.F.R. Chapter XIV, § 2423.1 et seq.

Pursuant to Charges filed by American Federation of Government Employees, AFL-CIO (AFGE) in Case Nos. 8-CA-00048 and 8-CA-00077 against Department of Health and Human Services, Social Security Administration, Baltimore, Maryland (SSA), the General Counsel of the FLRA, by the Regional Director of Region VIII of the FLRA, issued a Complaint and Notice of Hearing alleging that SSA violated

section 7116(a)(1), (5) and (8) of the Statute by failing and refusing to provide AFGE with requested information and by failing and refusing to bargain with AFGE about the relocation and move of an office. SSA filed an answer denying it had violated the Statute.

A hearing in this matter was conducted before the undersigned in San Diego, California. AFGE, SSA and General Counsel of the FLRA were represented and afforded a full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence and to argue orally. Briefs were filed and have been fully considered.

Based upon the entire record in this matter,1/ my observation of the witnesses and their demeanor, and my evaluation of the evidence, I make the following:

## Findings of Fact

At all material times AFGE has been the certified collective bargaining representative for a nationwide unit of SSA employees, including those located at SSA's Teleservice Center in San Diego, California (TSC). AFGE delegated to the National Council of SSA Field Operations Locals (Council) AFGE's authority to represent it in collective bargaining for certain of SSA's employees, including those employees located in SSA's San Francisco Region. This delegation to the Council has been recognized by SSA.

AFGE Local 2879 acts as agent for the Council for the purpose of representing in collective bargaining the employees of SSA's San Francisco Region, including the employees located in the TSC.

On June 11, 1982, AFGE and SSA entered into a collective bargaining agreement covering the nationwide unit, which was in effect until January 24, 1990. Another collective bargaining agreement covering the nationwide unit went into effect on January 25, 1990.

At all material times the TSC has been located in a federal building in downtown San Diego. The TSC answers

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1/ General Counsel of the FLRA filed a Motion To Correct Transcript which was not opposed. Accordingly, said Motion is GRANTED and a copy of it is attached hereto as Appendix A.

telephonic inquiries from the public concerning various aspects of Social Security, such as helping people file claims, changes of address, or reporting missing checks. There had been rumors as far back as 1986 that the TSC office would be moving.

In October 1988 a new toll free (800) number was established for use by the general public and an increase in the volume of calls was anticipated. In July of 1988, in anticipation of this change, TSC hired sixteen or seventeen new employees. Because of this increase in staff size and the limited size of its facilities, TSC had to temporarily place about eight employees in the multi-purpose room, a room which had normally been used for breaks, lunches and training classes. Assigning the employees to the multi-purpose room substantially reduced the portion of the room that could be used for breaks, lunches, etc.

AFGE Local 2879 asked to bargain about the changes in terms and conditions of employment related to the crowding and the assignment of the employees to the multi-purpose room. AFGE Local 2879 withdrew its request to so bargain because the union understood that the TSC was moving in October of 1988, and it would rather bargain about the move. On August 18, 1988, Cathy Jo Roberts, Manager of the TSC, sent a memorandum to Dan Brant, AFGE Local 2879 representative, acknowledging the union's withdrawal of its request to bargain and stating that the parties "agreed that the relocation bargaining will be undertaken when we know where the new office site is located."

Although the TSC did not move in October 1988, it was common knowledge among the employees that the office was anticipating a move in the near future.

On May 11, 1988 SSA Region IX, the San Francisco Region, sent a Request for Space Form SF-81 and a Space Requirement Worksheet Form SF-81A for the TSC to the local real estate office of General Services Administration (GSA).

On February 2, 1989, SSA Region IX, submitted a revised SF-81 for the TSC to the GSA local real estate office. The covering letter requested that the TSC office be in the central area of San Diego so that there would be adequate public transportation because TSC employs many blind employees.

In the early part of 1989 Roberts discussed the move at a staff meeting of TSC employees and she stated that the

selection had been narrowed to seven sites, that she had visited all seven and none had free parking.

By memorandum dated March 21, 1989 AFGE Local 2879 Assistant Representative Phyllis Jenkins asked Roberts to bargain about the move. This memorandum stated that on March 13, 1989, the union became aware that no parking would be provided at the "new office locations". Roberts responded by letter dated March 27, 1989, stating that management has not yet made any decision concerning the location of the new office and thus there had been no change. This letter went on to say that when a decision was made TSC would notify the union and consider "any proposals regarding parking at that time."

In October 1989 a TSC Supervisor, Louise Lynch, told a group of TSC employees that a lease had been signed and she described, in detail what the office space looked like and she indicated that she was not sure about the parking situation.

A lease was signed by GSA on October 6, 1989 for 8920 square feet of office space on the ninth floor of 401 West A Street, San Diego, California together with two parking spaces. On October 10, 1989, this lease was sent to the Facilities Services and Management Section of SSA Region IX. The person in SSA Region IX who seemed to be handling this matter was Miyo Yashimoto. On November 21, 1989, SSA Region IX sent a copy of this lease to the "Teleservice Center Manager".

By memorandum dated October 19, 1989, AFGE Local 2897 Representative Dan Brant advised Roberts that on or about October 16, 1989, the union learned the site had been selected for the TSC. Pursuant to section 7114 of the Statute AFGE Local 2897 asked Roberts to furnish, (1) all packages submitted to GSA concerning the site selection and/or relocation of TSC; (2) copies of signed or unsigned leases; (3) a copy of the latest floor plan or layout of the proposed site; (4) and data regarding the number of parking spaces which could be available in the building. The union indicated it needed the requested information so it could evaluate the change so it can properly formulate its "counter proposals". AFGE Local 2897 pointed out that floor plans are completely negotiable and TSC should not implement the change so as to interfere with negotiations.

By letter dated October 23, 1989, Roberts responded to the above memorandum stating that, although a move is

planned, she had no "proposal of change" to give the union and therefore the union's request for information was premature. She went on to say that in the near future she would be able to give the union a "specific proposal related to moving . . ." and the union could resubmit its information request at that time.

By memorandum dated October 25, 1989 to Roberts, Brant repeated AFGE Local 2879's demand for the information stating that the request was not premature because it seemed that the exact site of the relocation has been identified, as has the approximate date of the move, and that an inspection of these premises was planned for November 13, 1989. Brant went onto say that the union needed the information requested and any further delay in providing it would interfere with the union's ability to properly negotiate about the move.

By letter dated October 26, 1989 Roberts sent Brant her "final reply" to the union's prior two "letters". Roberts stated that she had no proposals to give the union about the move and that the union would be provided notice as soon as specifics were available. Roberts also stated that no inspection was planned and if there is any such inspection which the union is entitled to attend, notice will be given.

In October 1989 Roberts checked with the SSA Region IX personnel with whom she had been dealing concerning the move and Roberts was told there was no information.

Sometime after October 20, in mid to late October, an employee saw a floor plan, drawn in colored pencil, lying on Supervisor Lynch's desk. This was and is thought to be the plan of the floor plan for the new office because it matched the description of the new office space previously described by Lynch. This floor plan also matches the floor plan of the new office space that was leased for TSC.

The employee advised Brant of the floor plan that was observed and on November 8, 1989, Brant again wrote to Roberts advising her that the union became aware on November 3, 1989, that a floor plan existed for the new TSC space. Brant stated that the refusal to supply the requested information was being viewed as bad faith bargaining. Brant then requested to bargain about the substance and impact and implementation of the relocation. He also requested that there be no further implementation of the change until negotiations have resulted in an agreement. Brant stated that ground rules and the union's "counter proposals" would follow.

On November 9, 1989 Brant's supervisor, Bill Yust, said that Roberts had told him to tell Brant that there was no floor plan in existence. Brant asked Yust if this was in response to the request for information or the request to bargain. Yust replied that he believed it was in response to the bargaining request. Brant responded that the union required a written response to the bargaining response. Brant said he knew there was a floor plan because it had been seen by employees. Yust said that the only floor plan he had seen showed just the outer walls. Brant asked Yust to advise Roberts that the union wanted a written response to the bargaining request. Later that same day Yust advised Brant that Roberts had told Yust to tell Brant that Roberts had already responded to this bargaining request.

Beginning in October 1989 Roberts was working part-time because of a difficult pregnancy. Relatively unexpectedly, on November 21, 1989, Roberts was instructed by her doctor to stop work.

On November 27, 1989 Mary Donatto was detailed from the Chula Vista District Office and temporarily promoted to the position of Manager of the TSC. On January 14th, Donatto's promotion was made permanent. During October, November and December of 1989 Donatto did not discuss the work situation at the TSC with Roberts.

During the middle to the latter part of December Donatto learned about the move because she started to receive calls from the SSA Regional Office. On January 17, 1990, Donatto provided AFGE Local 2879 with written notice that TSC was moving to 401 West A Street, Suite 900, in San Diego. This notice also stated that flexitime was being eliminated in the TSC and that the move was scheduled for March 5, 1990. During January 1990 Donatto also provided AFGE Local 2879 with a copy of the lease and the floor plan.

The move was delayed and was rescheduled to June 1990 and rescheduled again to August 1990, and even that date was in doubt. At the time of the hearing it had not yet been accomplished.

AFGE Local 2879 provided the TSC with 140 to 160 proposals concerning the move. In preparing the union's proposals Brant called the building manager to inquire about the availability of parking and the building manager advised Brant that no parking was available, but if this had been raised in April 1989, there had been plenty of parking available and the agency could have negotiated for it.

AFGE Local 2879 requested bargaining in accordance with Section 5A2 of Article 4, Negotiations During the Term of the Agreement on Management Initiated Changes, of the then new collective bargaining agreement. This Article provides that such bargaining should not exceed five days unless both sides agree. The parties met and bargained for five days during late February and March of 1990 and were unable to reach agreement. In addition to parking, other matters about which the union wished to negotiate, but which TSC claimed were covered by the lease, included smoking, floor coverings, drinking fountains, seating arrangements, and a number of safety and health issues.

The parties reached impasse on about fifty-three of the union's proposals, including a number which TSC contended could not be bargained because they were covered by the lease, and on April 4, 1990, AFGE Local 2879 requested the assistance of the Federal Service Impasses Panel (FSIP). On April 11 FSIP acknowledged receipt of this request.

Discussion and Conclusions of Law

The complaint in this case alleges that on October 19, 1989 AFGE Local 2879 asked for certain information which, on October 23, 1989, TSC refused to provide and that on November 8, 1989 AFGE Local 2879 asked to bargain over the proposed relocation and on November 9, 1989 TSC refused to bargain about the relocation. The complaint alleges that the failure to provide the information described above violated section 7116(a)(1), (5) and (8) of the Statute and the refusal to bargain, as described above, violated section 7116(a)(1) and (5) of the Statute.2/

Relocating an office gives rise to an obligation to bargain about the procedures to be followed in implementing the relocation and appropriate arrangements for employees affected by the move, hereinafter called impact and implementation bargaining. E.g., Social Security Administration,

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2/ Although it might be of interest to muse and consider whether AFGE Local 2879 was entitled to notice of the relocation during the earlier stages of the process and to receive information and to bargain about the relocation during such earlier stages, these issues are not before me and will not be considered herein. See Department of the Air Force, 343rd Combat Support Group, Eielson Air Force Base, Alaska, 39 FLRA No. 50 (1991).

Office of Hearings and Appeals, Region II, New York, New York, 19 FLRA 328 (1985), (OHA); and Department of the Treasury, Internal Revenue Service, Dallas District, 19 FLRA 979 (1985), (Dallas IRS).

In the subject case it is clear that AFGE Local 2879 was entitled to bargain about the impact and implementation of the relocation of the TSC once such a relocation was decided upon. The complaint states that TSC's refusal, on or about November 9, 1989, to bargain about the relocation of the TSC, in response to AFGE Local 2879's request to bargain, constituted a violation of the agency's statutory obligation to bargain about the impact and implementation of the relocation.

TSC's Manager Roberts, refused to bargain because she was apparently unaware, on November 9, 1989, that a lease on new space had been entered into by GSA and had been transmitted to and received by SSA Region IX sometime soon after October 10, 1989. I conclude that the lease was received in SSA Region IX soon after October 10, 1989, because the record herein contains the transmittal letter for the lease dated October 10, 1989, from GSA to SSA Region IX. In the normal course of business such a mailed item, within the same city, in this case San Francisco, would be received within a few days, presumably before October 19, 1989. In this regard I note that, although Roberts checked, sometime in October, with her superiors in SSA Region IX and was not advised of the existence of the lease, no evidence was submitted and no claim was made that the lease had not, in fact, been received at SSA Region IX by October 19, 1989.

In light of the foregoing, I conclude that by November 8, 1989, when the demand to bargain was made, SSA had made sufficient decisions and taken sufficient steps concerning the relocation of TSC to oblige it to bargain with AFGE Local 2879 concerning the relocation. The fact that Roberts apparently did not know of the existence of the lease or that a site for the relocation had been chosen did not free SSA from its obligation to bargain with AFGE Local 2879 concerning the impact and implementation of the relocation.

The FLRA has held that in determining whether a change in conditions of employment requires bargaining, the facts and circumstances in each case would be examined. In this regard, I conclude that reasonably foreseeable impact of the relocation of the TSC upon employees was far more than de minimis. Defense Logistics Agency, Defense Depot Tracy, Tracy, California, 39 FLRA No. 86 (1991), and Department of

Health and Human Services, Social Security Administration, 24 FLRA 403 (1986).

Roberts, as Manager of the TSC, was SSA's agent for bargaining with AFGE Local 2879 concerning matters at TSC and therefore SSA was obliged to keep her, or her successor, advised and informed of all matters relevant to the obligation to bargain. I reject any interpretation of the Statute that would permit SSA avoid its bargaining obligation by keeping its own agent uninformed. Such interpretation would be inconsistent with the purposes of the Statute and would permit an agency to easily avoid its most fundamental statutory obligations. Accordingly, I conclude that by having and keeping all information concerning the signing of the lease and the relocation in the regional office did not relieve SSA of its obligation to bargain, through its agent TSC, concerning the impact and implementation of the relocation.

SSA seems to argue that because it did not decide to relocate the TSC, but rather that GSA decided to relocate the TSC, SSA did not have to bargain about the impact and implementation of the relocation, or at least it did not have the same full bargaining obligation as it would have had SSA decided to relocate the TSC. SSA seems to base this position upon the argument that the right of a union to engage in impact and implementation bargaining hinges upon an agency exercising a management right under section 7106 of the Statute. Because this relocation was a GSA decision and not a SSA decision, it is argued that SSA did not exercise a management right under section 7106 and therefore no right was created for the AFGE Local 2879 to bargain about the impact and implementation of the move. SSA argues, therefore, that OHA, supra, and Dallas IRS, supra, are inapposite.

The relationship between an agency and GSA during a move or relocation is a complex one. Whether GSA or the agency initiates the process, both participate in and contribute to it. In all cases GSA is the leasing agent for the agency and the agency, through the Form SF-81s and other communications, makes its needs and requirements known to GSA. In light of this relationship, when a decision to relocate an agency is made, it is usually impossible to separate which parts of the decision were made by GSA and which parts by the agency. Further, in light of the effect such relocation has on the employees relocated, it would make no sense to base the bargaining obligation over the impact and implementation of the relocation upon which agency initiated the

process. Rather, the employing agency must bargain over the impact and implementation of the relocation, to the extent of its authority. In this regard, Dallas IRS, supra, was a case in which GSA advised the agency it would have to move. Id. at 988.

SSA contends that it did engage in impact and implementation bargaining concerning the relocation of the TSC, with AFGE Local 2879, during late February and March of 1990, and that AFGE Local 2879 raised all the issues during negotiations that it would have raised back during November of 1989, when its request to negotiate was refused by Roberts. Thus SSA argues AFGE Local 2879 was not prejudiced by the delay and it still had sufficient time and opportunity to bargain about the relocation before it was implemented.

I reject the foregoing contention. Because I have concluded that on November 8, 1989, when Brant submitted his request to bargain about the relocation, SSA was obligated under the Statute to bargain about the relocation, SSA violated the Statute when, on November 9 it refused to negotiate.3/ Section 7116(b)(3) of the Statute provides that when negotiations are required, the parties are required, among other things, to meet at reasonable times and convenient places. SSA did not offer to meet at reasonable times and convenient places; rather, it simply rejected the request. The fact that more than three months later SSA officially advised AFGE Local 2879 of the relocation and then, upon the union's request, the parties did start negotiations in February of 1990, some four months after AFGE Local 2879 made a timely request to bargain, did not satisfy SSA's obligation to meet and negotiate with AFGE Local 2879 pursuant to the union's November 1989 request.

The delay occasioned by SSA's actions was unreasonable and violated its statutory obligation to meet at reasonable times, which obligation includes meeting reasonably promptly.

SSA's contention that somehow AFGE Local 2879 was not prejudiced by the unreasonable delay before bargaining began is similarly rejected. Circumstances and situations change with time. The mere fact that the parties may have bargained about the same matters in March of 1990 as the

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3/ Apparently Roberts felt that SSA was not obliged to bargain about the relocation until SSA made some proposals to AFGE Local 2879. Further, she seemed to keep confusing the request to bargain with the request for information.

union would have asked to bargain about in November 1989 does not mean that the circumstances were the same at both times or that the same opportunities and situations existed in February 1990 as existed in November 1989. The record fails to establish that AFGE Local 2879 was not in fact prejudiced by such a delay. Further it is too difficult to establish that the union was, in fact, prejudiced by the delay because no bargaining took place during November 1989 and it can not be established what could, or would, have been agreed upon had negotiations started promptly. Similarly, it can not be established that the union was not, in fact, prejudiced by SSA's delay in bargaining about the relocation. In light of the foregoing, I must conclude that an unreasonable delay in commencing negotiations constitutes a violation of the statutory obligation to bargain, and lack of prejudice is no defense because such a finding would be too tenuous and imprecise.

SSA argues that because the parties started bargaining in February 1990, pursuant to Article 4 of the collective bargaining agreement and because Article 4 of the 1990 collective bargaining agreement and Article 4 of the predecessor agreement which was presumably in effect during November of 1989 this matter should be disposed of as a matter of contract interpretation, presumably through a grievance and arbitration procedure, and not under the statutory unfair labor procedures. Any waiver of AFGE Local 2879's statutory right to bargain about the impact and implementation of the move must be clear and unmistakable. See Department of the Navy, Marine Corps Logistics Base, Albany, Georgia, 39 FLRA No. 91 (1991), (Marine Corps Logistics Base), and U.S. Government Printing Office, 29 FLRA 1272 (1987). In the subject case neither of the Article 4s constituted such a waiver, or even a modification, of the union's right to bargain over the relocation. Rather, both Article 4s set forth the agreed upon procedures for bargaining about changes, but neither constitute a waiver or modification of the union's underlying right to bargain. Marine Corps Logistics Base, supra.

In the subject case, on November 9, 1989, SSA denied the request to bargain. The dispute is not whether the bargaining procedures followed constituted a violation of a statutory or contractual obligation. Such a dispute might very well be more appropriately resolved under the contractual procedures. Accordingly, I reject the argument that the issue in this case, whether SSA violated the Statute when it refused, on November 9, 1989, to bargain about the relocation of the TSC, should be resolved under contract procedures. On the contrary, I conclude, in the

absence of a waiver or modification of this right, that whether SSA violated the Statute is more appropriately resolved pursuant to the procedures set forth in the Statute.

Finally, apparently many of the items that were submitted to FSIP involved proposals that SSA contended were determined by the lease. The precise proposals are not before me. With respect to the November 9, absolute refusal to bargain was made at a time when no proposals had been made and there were, of course, many impact and implementation matters which could have been raised. Further SSA argues, in connection to the issues herein involving the request for information, that since GSA procures and arranges for parking SSA could not bargain about parking. This argument is without merit because the FLRA has held that an agency must bargain to the extent it has discretion. U.S. Department of Labor, et al, 37 FLRA No. 2 (1990). Thus SSA was in a position to negotiate whether it would use its discretion to ask GSA to seek additional parking or to make other parking arrangements.

General Counsel of the FLRA argues that had notice and an opportunity to bargain been afforded to AFGE Local 2879, the union cold have bargained about what SSA could, in its discretion, have asked of GSA. Although such an argument is appealing and may have merit, as discussed above, it is not before me because it was not alleged in the complaint, which very particularly alleged the refusal to bargain occurred on and after November 9, 1989, after the lease had already been signed. Similarly General Counsel of the FLRA argues that the union, if given timely notice and opportunity to bargain, had a right to bargain about the substance of the decision to relocate and the site selected because, in the case of the TSC, the location of the TSC office does not involve the method and means of performing the mission of the agency because the mission of the TSC involves only the answering of telephones and does not involve access to the public. Again, although such an argument is appealing and may have merit, it is not before me because the complaint limits the allegation of the refusal to bargain to a time after the lease had already been signed.

In light of all of the foregoing, I conclude AFGE Local 2879 was entitled to bargain about the impact and implementation of the relocation of the TSC on November 8, 1989, and when, on November 9, SSA refused the union's request, SSA violated section 7116(a)(1) and (5) of the Statute.

Section 7114(b)(4) of the Statute obligates an agency to provide a union data, to the extent not prohibited by law, which is normally maintained in the regular course of business; which is reasonably available and necessary for full and proper discussion, understanding and negotiation of subjects within the scope of collective bargaining; and which does not constitute guidance, advice, counsel or training for management officials or supervisors, relating to collective bargaining.

Pursuant to section 7114, on October 19, 1989, AFGE Local 2879 requested that the TSC provide, (1) all packages submitted to GSA regarding sight selection and the relocation of the TSC; (2) copies of any lease regarding the relocation of the TSC; (3) a copy of the latest floor plan of the proposed site; and (4) data regarding the availability to SSA of parking in the new location.

With respect to all four requested items I conclude that nothing in this record indicates that any of them need not be provided to the union because, under section 7114(b)(4)(C), it "constitutes guidance, advice, counsel or training provided for management officials or supervisors, relating to collective bargaining."

I conclude that all four requested items were "normally maintained by the agency in the regular course of business . . ." With respect to the lease, the record establishes that the lease on the new TSC site was received by the SSA Regional Office soon after October 10, 1989 and before the October 19, 1989 request. The lease therefore was in SSA's possession and was therefore normally maintained by SSA in the normal course of business.

With respect to the floor plan, I find that the record establishes that there was a floor plan available to SSA at the time the request for it by the union was made. In this regard I note that an employee received a detailed description of the new space from his supervisor, prior to the request, and the supervisor was not called as a witness to deny this testimony and I note that the lease was signed early in October 1989.

With respect to the requested packages submitted by SSA to GSA, the record establishes that the Form SF-81s were submitted to GSA in May 1988 and February 1989, and thus were maintained by SSA in the normal course of business when the request for the information was made.

With respect to the request for the information about parking the lease contained information about two spaces that had already been secured and, as noted above, the lease was in the possession of SSA at the time the request for the information was made.

SSA seems to argue that SSA did not maintain the lease in the normal course of business, and the same would apply to the other requested documents also, because Roberts at that TSC office did not know the lease had been received in the SSA Regional Office and because she did not have the documents in her possession. This argument is rejected. SSA is not freed of its obligation to provide information because the information was available from a source within SSA other than the TSC. See Department of Defense Schools, Washington, D.C. and Department of Defense Schools, Germany Region, 19 FLRA 790 (1985); and U. S. Army Reserve Components, Personnel and Administration Center, St. Louis, Missouri, 26 FLRA 19 (1987).

With respect to the requirement of section 7114(b)(4)(B) of the Statute that the requested information must be reasonably available, I conclude, in light of the foregoing discussion, that the four requested items were in the possession of SSA at the time the request was made and the items were reasonably available.

Section 7114(b)(4)(B) also requires that the requested information be necessary for "full and proper discussion, understanding and negotiation of subjects within the scope of collective bargaining." A determination must be made in the circumstances of each case whether the data requested is necessary and must be disclosed. Defense Mapping Agency, Aerospace Center, St. Louis, Missouri, 21 FLRA 595 (1986). I conclude that all four items requested by the union were necessary for the union to properly understand and negotiate concerning the impact and implementation of the relocation of the TSC.

AFGE Local 2879 could reasonably use the packages submitted to GSA by SSA in deciding what issues to raise with SSA and to formulate proposals with respect to the impact and implementation of the relocation.

It is self evident that the lease and the floor plan requested by the union were necessary for the formulation of proposals dealing with the impact and implementation of the relocation. Without this information AFGE Local 2879 would not have had even the most fundamental information upon

which to base its proposals. This was clearly recognized by SSA when in January 1990 it finally did give this information to the union.

The request for the packages submitted to GSA and for the information concerning parking also involved items that AFGE Local 2879 would reasonably use in formulating proposals concerning the impact and implementation of the relocation of the TSC. It would provide the information the union would need to consider and weigh in deciding whether to propose to SSA that it use its discretion to ask GSA to seek additional items, including additional parking, etc. Thus, although GSA is solely responsible for leasing space and leasing parking, SSA can exercise its discretion in asking GSA to provide additional space, parking, etc. Knowing what SSA had already sought from GSA would enable the union to decide whether to ask SSA to renew requests, make different requests or to let matters stand.

With respect to the request for packages submitted to GSA, SSA contends that the GSA procedures for acquiring and leasing space is so confidential that it should not be disclosed to AFGE Local 2879. In so arguing SSA cites and relies upon GSA Property Management Regulations, 41 C.F.R. 101-18.101(a) and (c), and Federal Acquisition Regulation, 48 C.F.R. Chapter 1, Subpart 5.4.

I conclude, however, that nothing in these Regulations prevent SSA from providing the union with any packages SSA had submitted to GSA, in this case the Form SF-81s, concerning leasing of space. This is especially so in the subject case where the packages were requested <u>after</u> the lease had already been signed.[4/] Thus, I conclude providing the information requested by the union is lawful.

Based upon all of the foregoing, I conclude that AFGE Local 2879 was entitled to all the requested information under section 7114(b)(4) of the Statute and SSA's refusal to provide this information within a reasonable amount of time after the October 19, 1989 request constituted a violation

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4/ In so concluding I need not decide whether the union would have been entitled to these packages before the lease had been signed or whether AFGE Local 2879 would have been able to bargain about what should be included in the packages to be submitted to GSA during the space search process.

of section 7116(a)(1), (5) and (8) of the Statute. U.S. Food and Drug Administration, 19 FLRA 555 (1985).

Having concluded that SSA violated section 7116(a)(1), (5) and (8) of the Statute with respect to Case No. 8-CA-00048 and section 7116(a)(1) and (5) of the Statute with respect to Case No. 8-CA-00077, I recommend that the Authority issue the following Order:

ORDER

Pursuant to section 2423.29 of the Authority's Rules and Regulations and section 7118 of the Statute, the Authority hereby orders that Department of Health and Human Services, Social Security Administration, Baltimore, Maryland shall:

1. Cease and desist from:

(a) Failing or refusing to furnish the American Federation of Government Employees, AFL-CIO, the exclusive representative of its employees, information that was requested on October 19, 1989, by memorandum, concerning the relocation of the San Diego Teleservice Center and any other information that is reasonably available and necessary and relevant for full and proper discussion, understanding and negotiation of subjects within the scope of collective bargaining.

(b) Failing and refusing to negotiate to the extent of its discretion with American Federation of Government Employees, AFL-CIO, over the impact and implementation of the relocation of the San Diego Teleservice Center.

(c) In any like or related manner, interfere with, restrain, or coerce any employee in the exercise of the rights guaranteed by the Federal Service Labor-Management Relations Statute.

2. Take the following affirmative action designed and found necessary to effectuate the policies of the Statute:

(a) Negotiate with American Federation of Government Employees, AFL-CIO, concerning the impact and implementation of the relocation of the San Diego Teleservice Center, to the extent it has not already done so.

(b) Upon request, furnish American Federation of Government Employees, AFL-CIO, the information requested in the October 19, 1989 memorandum concerning the relocation of

the San Diego Teleservice Center, to the extent it has not already done so.

(c) Post at its San Diego Teleservice Center, San Diego, California, 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 Manager of the San Diego Teleservice Center 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.

(d) Pursuant to section 2423.30 of the Authority's Rules and Regulations, notify the Regional Director, San Francisco Region, Federal Labor Relations Authority, 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., March 22, 1991.

SAMUEL A. CHAITOVITZ
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 fail or refuse to furnish the American Federation of Government Employees, AFL-CIO, the exclusive representative of our employees, information that was requested on October 19, 1989, by memorandum, concerning the relocation of the San Diego Teleservice Center and any other information that is reasonably available and necessary and relevant for full and proper discussion, understanding and negotiation of subjects within the scope of collective bargaining.

WE WILL NOT fail and refuse to negotiate to the extent of our discretion with American Federation of Government Employees, AFL-CIO, over the impact and implementation of the relocation of the San Diego Teleservice Center.

WE WILL negotiate with American Federation of Government Employees, AFL-CIO, concerning the impact and implementation of the relocation of the San Diego Teleservice Center, to the extent we have not already done so.

WE WILL upon request, furnish American Federation of Government Employees, AFL-CIO, the information requested in the October 19, 1989 memorandum concerning the relocation of the San Diego Teleservice Center, to the extent we have not already done so.

_____
(Activity)

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, San Francisco Region, whose address is: 901 Market Street, Suite 220, San Francisco, CA 94103, and whose telephone number is: (415) 744-4000.