DEPARTMENT OF HEALTH AND HUMAN SERVICESADMINISTRATION FOR CHILDREN AND FAMILIES, SEATTLE, WASHINGTON Respondent andNATIONAL TREASURY EMPLOYEES UNION Charging Party

Case No.
SF-CA-01-0307

Yolanda Shepherd Eckford, Esquire For the General Counsel
Before: WILLIAM B. DEVANEY Administrative Law Judge

DECISION ON MOTION FOR SUMMARY JUDGEMENT

The Complaint and Notice of Hearing in this case issued on July 31, 2001, and set the hearing for October 26, 2001. The Answer was due to be received, if filed in person, or postmarked, no later than August 27, 2001. Respondent did not file an Answer by August 27, 2001, and the General Counsel on October 5, 2001, filed a Motion For Summary Judgement which was served by certified mail on Respondent on October 5, 2001. Respondent has filed no response to the motion for summary judgement. Accordingly, the General Counsel's motion for summary judgement is Granted.

I. Standard For Granting Summary Judgement

Section 2423.27 of the Authority's Rules and Regulations codifies the summary judgement procedures adopted by the Authority in earlier cases, in which the Authority adopted the requirements of Rule 56 of the Federal Rules of Civil Procedure. *E.g. Department of the Navy, U.S. Naval Ordinance Station, Lousiville, Kentucky*, 33 FLRA 3, 4-6 (1988). Thus, under §2423.27(a), moving party's motion "shall be supported by documents, affidavits, applicable precedent, or other appropriate materials" and, consistent with Rule 56(c), the motion is to be granted if the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgement as a matter of law." Rule 56(c).

Section 2423.20(b) of the Authority's Rules and Regulations provides in part that, "Absent a showing of good cause to the contrary, failure to file an answer or respond to any allegation shall constitute an admission." Respondent has failed to answer the allegations in the Complaint or respond to the allegations of the Complaint. Accordingly,

the factual allegations in this Complaint must be deemed to be admitted in their entirety. The only issue for determination, therefore, is the legal issue as to whether Respondent's implementation of Team Administrator positions and refusal to bargain regarding the matter violated section 7116(a)(1) and (5) of the Statute.

II. Findings

Based on the Complaint, testimony provided by affiants and Respondent's failure to answer the July 31, 2001 Complaint, the following material of facts are not in dispute:

1. The Department of Health and Human Services, Administration for Children and Families, Seattle Washington, is an agency under 5 U.S.C. § 7103(a)(3). (Complaint ¶ 2).

2. The National Treasury Employees Union (Union) is a labor organization under 5 U.S.C. §7103(a)(4) and is the certified exclusive representative of an appropriate nationwide unit of employees of the Administration for Children and Families, including employees at Respondent. (Complaint ¶ 3).

3. The charge was filed by the Charging Party with the San Francisco Regional Director on February 12, 2001 and a copy of the charge was served on the Respondent. (Complaint ¶ 4, 5).

4. During the time period covered by this complaint, the persons listed below occupied the positions opposite their names (Complaint ¶ 7, 8):

Steve Henigson Regional Administrator

Nancy Hutchinson Assistant Regional Administrator

Vince Herberholt Assistant Regional Administrator

Diane Brockington Labor Relations Specialist

5. During the time period covered by this complaint, Steve Henigson, Nancy Hutchinson, Vince Herberholt and Diane Brockington were supervisors and/or management officials under the Statute, and were acting on behalf of Respondent. (Complaint ¶ 6, 7, 8, 9).

6. Respondent is organized into five teams, each responsible for different programs administered by the Respondent: Head Start Childcare; Child Welfare; TANF, which deals with welfare to work issues; Tribal; and Child Support. Each team has a designated team leader who serves as a technical expert, providing program information and resources to members of the team. The team leaders, like employees on the team, are classified at the GS-13 level. (Affidavit of Ann Snead, Ex 4, p. 2).

7. In or about November 2000, Respondent established a new GS-14 Team Administrator position. At the time, Respondent selected three employees to serve as Team Administrators with responsibility for the five program teams and for the Administrative Support Team. (Complaint ¶ 10; Affidavit of Ann Snead, Ex 4, p. 3). The Team Administrators have authority to approve bargaining unit employees' leave requests, make recommendations for employee awards and for changes in work processes. Team Administrators also will have input into bargaining unit employees' performance elements, performance plans and performance appraisals. (Affidavit of Ann Snead, Ex 4, p. 4[(1)]; Ex 5(a), p. 2, numbers 1 and 6). Respondent established these positions without affording the Charging Party prior notice or the opportunity to bargain regarding the matter. (Complaint ¶ 10, 13, Affidavit of Ann Snead, Ex 4).

8. On December 8, 2000, the Charging Party requested that Respondent negotiate over the impact and implementation of the establishment of Team Administrator positions. (Complaint ¶ 11; Affidavit of Carol Perkins, Ex 3).

9. On February 12, 2001, Respondent, by Brockington, responded to the Charging Party's request, refusing to bargain concerning the impact and implementation of its decision to establish Team Administrator positions. (Complaint ¶ 12; Affidavit of Carol Perkins, Ex 3).

Conclusions

The right of Respondent to establish the Team Administrator positions is not at issue in this case; nor is the inclusion, or exclusion, of the Team Administrator position in a bargaining unit under the Statute at issue in this case. I fully agree with the General Counsel that the duty to bargain arises because of the impact of this new position on bargaining unit employees who are on teams under the Team Administrator's responsibility.

An agency has the duty to give a union prior notice and the opportunity to bargain when it makes a change in working conditions which has a reasonably foreseeable impact which is more than *de minimis*. Department of Health and Human Services, Social Security Administration, 24 FLRA 403 (1986) (*SSA*); *Social Security Administration, Gilroy Branch Office, Gilroy, California*, 53 FLRA 1358 (1998). This obligation to engage in impact and implementation bargaining with the exclusive representative extends to organizational changes that have a reasonably foreseeable impact which is more than *de minimis*. See U.S. Government Printing Office, 13 FLRA 203 (1983)(where the Authority upheld the ALJ's determination that an organizational change that affected sick leave procedures had more than *de minimis* impact on bargaining unit employees and brought about a bargaining obligation).

Applying the standard established by the Authority in *SSA* to the present case, I conclude that the establishment of Team Administrator positions at Respondent had a reasonably foreseeable impact on bargaining unit employees which was more than *de minimis*. Respondent has determined that Team Administrators will have input into employees' performance plans and performance appraisals, impacting on employees' work requirements and performance expectations, as well as adding another level of review of bargaining unit employees work. The importance of the appraisal process to an employee's conditions of employment may not be questioned. An employee's performance appraisal impacts awards and promotional opportunities, and forms the basis for continued employment. In light of the significance of the appraisal process to employees' conditions of employment, Respondent's determination that Team Administrators would have input into employees' work plans and performance appraisals, had more than *de minimis* impact

on conditions of employment of the affected bargaining unit employees. Clearly, when an agency decides to make a change which affects such a basic aspect of employment, the exclusive representative of employees should have the opportunity to address the change, including such issues as notice to employees of the change and how the change will be implemented, procedural matters which are negotiable under the Statute. *Patent Office Professional Association and U.S. Department of Commerce, Patent and Trademark Office, Washington, D.C.*, 48 FLRA 129, 142-43 (1993)(procedural matters regarding performance appraisal systems which do not interfere with the right to assign work are within the duty to bargain).

Further, the establishment of Team Administrator positions affected the procedure for requesting leave at Respondent by adding an official with leave approval authority to the leave approval process. It is not unreasonable to assume that whether an employee is granted leave depends upon an employee following the correct procedure in requesting leave and thus, the addition of Team Administrators to the process, without clarification of their authority or the procedure to be followed, has impact on the bargaining unit employees. *Cf. Defense Logistics Agency, Defense Depot Tracy, Tracy*, *California*, 14 FLRA 475 (1984)(unilateral change in sick leave call in procedure was ULP).

In light of the above, I find that establishment of the Team Administrator positions constituted a change which reasonably would have more than *de minimis* impact on bargaining unit employees. Accordingly, Respondent's unilateral implementation of Team Administrator positions and refusal to bargain concerning the matter violated section 7116(a)(1) and (5) of the Statute. *Department of Health and Human Services, Social Security Administration*, 24 FLRA 403 (1986). Moreover, Respondent's unilateral implementation of the change in conditions of employment and Respondent's refusal to negotiate on the impact and implementation of the change warrants a *status quo ante* remedy. *Federal Correctional Institution*, 8 FLRA 604, 606 (1982); *U.S. Department of Justice, Immigration and Naturalization Service*, 55 FLRA 892, 902-03 (1999).

Accordingly, the General Counsel is entitled to Summary Judgement. *U.S. Department of the Air Force, Lowry Air Force Base, Denver, Colorado*, 36 FLRA 183 (1990); *Department of Veterans Affairs, Veterans Affairs Medical Center,*

Nashville, Tennessee, 50 FLRA 220 (1995).

Having found that Respondent violated §§16(a)(5) and (1) of the Statute, it is recommended that the Authority adopt the following Order:

ORDER

Pursuant to section 2423.41(c) of the Authority's Rules and Regulations, 5 C.F.R. § 2423.41(c), and section 7118 of the Federal Service Labor-Management Relations Statute, 5 U.S.C. § 7118, it is hereby ordered that the Department of Health and Human Services, Administration for Children and Families, Seattle, Washington, shall:

1. Cease and desist from:

(a) Unilaterally implementing changes in working conditions of unit employees by establishing Team Administrator's positions without first notifying the National Treasury Employees Union (NTEU), of the change and providing NTEU an opportunity to bargain over procedures for implementing the change and/or appropriate arrangements for employees adversely affected by the change.

(b) Refusing to bargain with NTEU over procedures for implementing the decision to establish Team Administrator's and/or appropriate arrangements for employees adversely affected by the decision to establish Team Administrators.

(c) In any like, or related, manner, interfering with, restraining or coercing its employees in the exercise of their rights assured by the Federal Service Labor-Management Relations Statute (Statute).

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

(a) Withdraw and rescind the implementation of the Team Administrator positions which it unlawfully implemented without notice to NTEU and without bargaining over the impact and implementation of the change.

(b) Give NTEU notice of any future intention to implement Team Administrator positions and, upon request, bargain in good faith with NTEU concerning procedures for implementation and/or appropriate arrangements for employees adversely affected before implementing any decision to establish Team Administrators.

(c) Post at its Seattle, Washington facilities, 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 Regional Administrator, and 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.

(d) Pursuant to section 2423.41(e) of the Authority's Rules and Regulations, 5 C.F.R. § 2423.41(e), 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 with this Order.

_____

WILLIAM B. DEVANEY

Administrative Law Judge

Dated: October 29, 2001

Washington, D.C.

NOTICE TO ALL EMPLOYEES

POSTED BY ORDER OF THE

FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the Department of Health and Human Services, Administration for Children and Families, Seattle, Washington, violated the Federal Service Labor-Management Relations Statute, and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT unilaterally implement changes in working conditions of employees in the bargaining unit by establishing Team Administrator positions without first notifying the National Treasury Employees Union (NTEU), the exclusive representative of our employees, of the proposed change and provide NTEU with an opportunity to bargain over procedures for implementing the change and/or appropriate arrangements for employees adversely affected by the change as required by the Federal Service Labor-Management Relations Statute.

WE WILL withdraw and rescind the implementation of the Team Administrator positions which we unlawfully implemented without notice to NTEU and without bargaining over the impact and implementation of the change.

WE WILL give NTEU notice of any future intention to implement Team Administrator positions and WE WILL, upon request, bargain in good faith with NTEU, concerning procedures for implementation and/or appropriate arrangements for employees adversely affected, before implementing any decision to re-establish Team Administrator positions as required by the Federal Service Labor-Management Relations Statute.

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

_____

(Respondent/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, San Francisco Region, Federal Labor Relations Authority, whose address is:

901 Market Street, Suite 220, San Francisco, California, 94103 and whose telephone number is: (415)356-5000.

1. ""