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

SOCIAL SECURITY ADMINISTRATION Respondent	
and	Case No. 3-CA-80378
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO Charging Party	

Saul Schwartz, Esquire
For the General Counsel

Jay Clary, Esquire
For the Respondent

Mr. Craig Campbell
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 May 5, 1988, by the American Federation of Government Employees, AFL-CIO, (hereinafter called the Union), a Complaint and Notice of Hearing was issued on July 28, 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 proceeding with the announced installation of personal computers at the worksite at a time when impact and implementation negotiations concerning the installation of the personal computers had not been completed.

A hearing was held in the captioned matter on November 1, 1988, in Washington, D.C. All parties were afforded the full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues involved herein. The General Counsel and the Respondent submitted post-hearing briefs on December 14 and 15, 1988, respectively, which have been duly considered.

Upon the basis of the entire record, including my observation of the witness and his demeanor, I make the following findings of fact,1/ conclusions and recommendations.

Findings of Fact

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

By letter dated May 20, 1986, Mr. Peter Spencer, Director, Division of Labor and Employee Relations, informed the Union of Respondent's decision to implement the National End User Computer Project in field offices and field assessment offices nationwide. This initiative concerned the installation of personal computers into these offices.

Between October 21, 1986 and November 3, 1986, the parties bargained over this initiative. On November 3, 1986, the parties reached a negotiation impasse. On November 13, 1986, the Union requested that the Federal Service Impasses Panel provide assistance in resolving the impasse.

1/ The facts, which for the most part were stipulated into the record, are not in dispute. The only witness in the proceeding, Mr. Craig Campbell, merely explained or elaborated on the approximately 35 stipulated exhibits and the written stipulation of the parties.

In January 1987, the Panel directed the parties to reconvene for bargaining with the assistance of a mediator. Although negotiation sessions were scheduled for February 1987, no such sessions took place.

By letter dated May 8, 1987, Respondent by Mr. Thomas Whitlock, Chief Field Operations Branch, Division of Labor and Employee Relations, informed the Union that the project had been expanded to encompass headquarters and the program service centers.

On July 2, 1987, the Panel determined that it should decline to assert jurisdiction since the Respondent had revised the project to encompass additional offices than originally announced.

By letter dated August 7, 1987, Respondent by Mr. Peter Spencer informed the Union that the project had again been expanded to encompass all six components of Respondent's organization.

On August 14, 1987, the Union requested bargaining over the revised project and submitted bargaining proposals. On October 2, 1987 the parties reached agreement on ground rules.

Between November 3, 1987 and November 17, 1987, the parties held nine bargaining sessions. On November 17, 1987, the parties reached a negotiation impasse. On the same day the Union's chief negotiator, Mr. Craig Campbell, sent a letter to the Respondent stating that it was invoking the assistance of the Impasses Panel and that it, the Union, did not agree to implementation of the project. On November 20, 1987, the Union requested that the Panel provide assistance in resolving the impasse.

On January 13, 1988, the Panel directed that the parties deal with the disputed issues during their upcoming master contract negotiations and if no agreement was reached on the issues the parties were further directed to resubmit the matter to the Panel. As authority for its action, the Panel cited Section 2471.6(a)(2) of the Impasses Panel's regulations.

Inasmuch as negotiations for a master contract were not imminent, the Union requested the Panel to reconsider its decision. Respondent opposed the request. On March 31, 1988, the Panel denied the Union's request for reconsideration.

By letter dated February 12, 1988, Respondent informed the Union that it had begun implementation of the project consistent with Respondent's final offer which had been submitted to the Union in November 1987. Concurrently, Respondent also informed its managers and supervisors of the fact that implementation had begun in accordance with its final offer to the Union.

By letters dated January 27, 1988 and February 23, 1988, the Union informed the Respondent that it was the Union's position that while the Panel retained jurisdiction over the matter, pending agreement by the parties, the Respondent was not allowed to implement the project. In this connection the Union stated that the personal computers should not be put into use, furniture should not be acquired, adaptive devices for the handicapped should not be obtained, trainers should not be selected and other changes should not proceed.

The record further reveals that On September 29, 1987 the project contract was awarded to the by Telex Corporation. The award of the contract was challenged by several unsuccessful bidders between October and December 1987. The challenges were dismissed by the General Services Administration. The contract provides for the delivery of approximately 4000 microcomputers to Respondent's offices.

Delivery of the personal computers began in March 1988 and continued throughout 1988. During January and February 1988 Respondent made plans for the use of the personal computers, including making training schedules. Use of the computers by bargaining unit employees began in March of 1988.2/

The parties entered into negotiations for a master contract during the period May through July 1988. At such time they discussed the computer issue and did reach an agreement on a number of issues. However, according to the uncontested testimony of Mr. Campbell, a number of "issues which in effect became moot because the agency had already implemented, such as selecting trainers, furniture, setting up the work stations in local offices where they go in a particular office."

Several of the stipulated exhibits indicate that there had been an extensive decline in the work force during the period FY 1984 - FY 1987 and that Respondent was liable for penalties for failure to accept the computers and the furniture associated therewith in a timely fashion.

2/ The foregoing portion of facts is for the most part a verbatim reproduction of the parties written stipulation of facts.

However, it is impossible to determine the extent of such penalties from the record exhibits. In this latter connection, there is no evidence in the record which indicates that the Respondent at any time attributed its action in implementing the computer program to either the decline in the work force and/or the possibility of contract penalties for delayed installation.

Discussion and Conclusions

The General Counsel takes the position that the Respondent violated Sections 7116(a)(1) and (5) of the Statute by implementing the computer program at a time when negotiations thereon had not been completed. According to the General Counsel, bargaining proposals, such as those involved herein, could only be implemented after completion of negotiations or upon reaching an impasse. Inasmuch as neither of these conditions were present at the time the Respondent implemented the computer program, Respondent's action was in derogation of the bargaining obligations imposed by the Statute. Additionally, the General Counsel contends that while the matter was before the Impasses Panel Respondent was under an obligation to maintain the status quo. Finally, while the General Counsel acknowledges that the existence of exigent circumstances may provide a defense to an agency's action in implementing a program while proposals thereon are before the Impasses Panel, he points out that the record evidence fails to disclose either the actual existence, or the claim by Respondent of the existence, of such an exigency.

Respondent, on the other hand, takes the position that its implementation of the computer program was not violative of the Statute since it occurred at a time when the parties had reached impasse and the Impasses Panel had declined to assert immediate jurisdiction. Additionally, Respondent, relying on the Authority's decision in U.S. Department of Housing and Urban Development and U.S. Housing and Urban Development, Kansas City Region, Kansas City, Missouri, 23 FLRA 63, takes the position that its action was "consistent with the necessary functioning of the Agency." In such circumstances the failure to maintain the status quo did not constitute an unfair labor practice.

In agreement with the General Counsel and contrary to the position of the Respondent, I find that the Respondent violated Sections 7116(a)(1) and (5) of the Statute when it implemented the computer program. While I do not disagree with Respondent's conclusions with respect to the state of

the law, I find that its application to the facts of the instant case does not warrant the outcome urged by Respondent, i.e., dismissal of the Complaint in its entirety.

Thus, on the basis of the instant record, which, as noted above, for the most part consists of a written stipulation of facts and some thirty-five stipulated exhibits, I cannot find that the Impasses Panel relinquished and/or declined jurisdiction over the impassed matters by its letter dated January 13, 1988. The letter instructed the parties to deal with the impassed issues "during their pending master contract negotiations and, if no agreement is reached, submit the matter to the Panel, along with any other open issues, at that time." As authority for its decision, the Impasses Panel cited Section 2471.6(a)(2) of its regulations.3/ If the Panel, as contended by Respondent, intended to decline or relinquish jurisdiction one must assume that the Panel would have cited Section 2471.(6)(a)(1) as authority for its actions. Accordingly, and in the absence of any other record evidence supporting a contrary conclusion, I find that the Impasses Panel did not relinquish jurisdiction over the matter.

3/ § 2471.6 Investigation of request; Panel recommendation and assistance; approval of binding arbitration.

(a) Upon receipt of a request for consideration of an impasse, the Panel or its designee will promptly conduct an investigation, consulting when necessary with the parties and with any mediation service utilized. After due consideration, the Panel shall either:

(1) Decline to assert jurisdiction in the event that it finds that no impasse exists or that there is other good cause for not asserting jurisdiction, in whole or in part, and so advise the parties in writing, stating its reasons; or

(2) Recommend to the parties procedures, including but not limited to arbitration, for the resolution of the impasse and/or assist them in resolving the impasse through whatever methods and procedures the Panel considers appropriate.

In view of the above finding, Respondent was under an obligation to maintain the status quo to the maximum extent possible, that is, to the extent consistent with the necessary functioning of the agency. However, when an agency does alter the status quo, as in the instant case, the agency is required to provide affirmative support of its assertion that the action taken was consistent with the necessary functioning of the agency. U.S. Department of Housing and Urban Development, et al., supra. The record herein fails to support the Respondent's assertion that the implementation of the computer program was consistent with the necessary functioning of the Agency. Thus, all the record contains is a partial or incomplete contract indicating possible interest penalties for failure to allow timely delivery, etc. of the computers and a table showing that over a period of several years there had been a decline in the numbers of employees working in various categories of employment. I find that any conclusions based on such evidence would be purely speculative.

Having concluded, based upon the above analysis and considerations, that the Respondent violated Sections 7116(a)(1) and (5) of the Statute, it is recommended that the Federal Labor Relations Authority issue the following Order designed to effectuate the purposes and policies of the statute.

ORDER

Pursuant to section 2423.29 of the Federal Labor Relations Authority's Rules and Regulations and section 7118 of the Statute, the Authority hereby orders that the Social Security Administration shall:

1. Cease and desist from:

(a) Unilaterally implementing provisions of the National End User Computer Project while negotiations over such provisions are pending before the Federal Service Impasses Panel.

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

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

(a) Upon request of the American Federation of Government Employees, AFL-CIO, bargain concerning impact and manner of implementation proposals relating to the National End User Computer Project.

(b) Post at its 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 Commissioner of the Social Security Administration or his designee, and shall be posted and maintained for 60 consecutive days thereafter, in conspicuous places, including 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 24, 1989

BURTON S. STERNBURG
Administrative Law Judge

NOTICE TO ALL EMPLOYEES

PURSUANT TO

A DECISION AND ORDER OF THE

FEDERAL LABOR RELATIONS AUTHORITY

AND IN ORDER TO EFFECTUATE THE POLICIES OF

CHAPTER 71 OF TITLE 5 OF THE

UNITED STATES CODE

FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS STATUTE

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT unilaterally implement provisions of the National End User Computer Project while negotiations over the impact and manner of implementation of the project are pending before the Federal Service Impasses Panel.

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

WE WILL, upon request of the American Federation of Government Employees, AFL-CIO, bargain concerning impact and implementation proposals relating to the National End User Computer Project.

_____
(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.