

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

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SOCIAL SECURITY ADMINISTRATION
(BALTIMORE, MARYLAND) AND
SOCIAL SECURITY ADMINISTRATION
FITCHBURG, MASSACHUSETTS DISTRICT
OFFICE (FITCHBURG, MASSACHUSETTS)

Respondent

and

Case No. 1-CA-80103

AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES,
AFL-CIO, LOCAL 1164

Charging Party
.....

Patricia A. Randle, Esq.
For the Respondent

Percy O. Daley
For the Charging Party

Marilyn H. Zuckerman, Esq.
For the General Counsel

Before: SALVATORE J. ARRIGO
Administrative Law Judge

DECISION

Statement of the Case

This case arose under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the United States Code, 5 U.S.C. § 7101, et seq., (herein the Statute).

Upon an unfair labor practice charge having been filed by the captioned Charging Party (herein the Union) against the captioned Respondent, the General Counsel of the Federal

Labor Relations Authority (herein the Authority), by the Regional Director for Region I, issued a Complaint and Notice of Hearing alleging Respondent violated the Statute by changing the seating assignments and work assignments of certain bargaining unit employees without providing the Union with an opportunity to bargain about the changes.

A hearing on the Complaint was conducted in Boston, Massachusetts at which all parties were represented and afforded full opportunity to adduce evidence, call, examine and cross-examine witnesses and argue orally. Briefs were filed by Respondent and the General Counsel and have been carefully considered.

Upon the entire record in this case, my observation of the witnesses and their demeanor and from my evaluation of the evidence, I make the following:

Findings of Fact

At all times material the American Federation of Government Employees, AFL-CIO (herein AFGE) has been the exclusive collective bargaining representative of various of Respondent's employees including all nonprofessional employees located in the Fitchburg, Massachusetts District Office. At all times material Local 1164 has been recognized by Respondent as the agent of AFGE for the purpose of representing Fitchburg District Office bargaining unit employees.

In November 1987 there were approximately 16 bargaining unit employees in the Fitchburg Office including seven Claims Representatives and three Claims Development Clerks. Claims Representatives interview the public face-to-face or by telephone with regard to claims for social security benefits and supplemental security income benefits. Claims Representatives are also responsible for developing and adjudicating claims. Development Clerks perform a full range of support activities for Claims Representatives and other technical professionals in the District Office. Development Clerks work closely with Claims Representatives and their duties include general typing, maintaining files, performing follow up actions on development requests, preparing routine forms and routine written notices concerning records of entitlement and eligibility, receiving mail and telephone calls and performing reception services when required.

The office layout at the Fitchburg Office in early November consisted of a reception area and separate work area. The relevant office area, extending back from the

reception area to the far wall, was comprised of five pairs of work stations or units (units 1 through 5) arranged in line to one side of the office. A Claims Representative and a Development Clerk occupied each of three of these pairs of work stations. One of the other two units consisted of two Claims Representatives, one of whom performed all duties by telephone (herein Teleclaims Representative), and the other unit consisted of a Claims Representative and a vacant work station. On the other side of the office were various rooms and work stations. Another Teleclaims Representative occupied one of these work stations.

Claims Representatives and Development Clerks are assigned specific portions of the alphabet to determine which claimants they will service. Thus, the five Claims Representatives, excluding Teleclaims Representatives, divide the alphabet into five parts while the three Development Clerks divide the claimant's names alphabetically into three parts. Accordingly, Development Clerks generally service more than one Claims Representative.

District Office Manager Lois Stearns testified that sometime prior to early November 1987 she and her Assistant Manager decided it would be more efficient if the two teleclaims employees were located together especially since both were not working full-time and were backing-up each other and bringing their pending files together would facilitate that effort. In addition, it was decided it would be desirable to put them in the back of the office, an area removed from the public thereby making Claims Representatives more convenient and accessible to the public including the handicapped when they came to the office for interviews. Management further was of the opinion that the Claims Representative and Development Clerk comprising Unit 5 who were sitting where the Teleclaims employees would be located "seemed to be a little slower than some of the others in processing the work." It was therefore decided that using a different combination of employees might work out better since the two employees would have to be relocated in any event. It was agreed that changes in seating assignments would occur when new desks, scheduled to arrive soon, were received.

Accordingly, during a meeting on November 6, 1987 between District Manager Stearns and Union Steward Percy Daley, Stearns notified Daley she was considering making several office changes. Stearns explained that one change involved physically moving the two Teleclaims Representatives from their separate locations in the office to an area

wherein they would work adjacent to one another,^{1/} and would be located against a wall at the end of the office farthest from the reception area. The Claims Representative and the Development Clerk occupying those desks (Unit 5) would in turn be relocated, the Claims Representative (Phyllis Bolduc) to the desk across the room and forward about 50 feet to the work station previously occupied by one of the Teleclaims Representatives and the Development Clerk (Marion Haudel) would move one desk forward from where she was presently sitting and would be located next to unit 4 Claims Representative Mineault.^{2/} Prior to the relocation, Bolduc and Haudel worked primarily on the same parts of the alphabet but after the relocation, the alphabetical assignments were to be reassigned and Bolduc and Haudel would work together on only a very minor part of alphabet with Development Clerk McKinney working most of Bolduc's alphabet assignment.

Office Manager Stearns also informed Union Steward Daley that new desks would be arriving for the Claims Representatives and Development Clerks. Daley told Stearns he could foresee problems, particularly with respect to changes in working relationships. Daley mentioned that the same combination of Development Clerks and Claims Representatives had been working together quite well and he would hate to see problems arise because of a change. Daley, without going into any specifics, noted there had been some problems in the past with some combinations. He further indicated he wanted to discuss the proposed changes with members of the staff and would get back to Stearns later on the matter.

On November 9, 1987 Assistant Steward Susan Leavy^{3/} met with District Manager Stearns and discussed the proposed changes. Leavy expressed concern that the changes would break up the long standing working relationship between Claims Representative Bolduc and Development Clerk Haudel.

^{1/} This would require moving one Teleclaims Representative about 50 feet.

^{2/} Haudel's new location would not have a window next to it as did her then existing work station.

^{3/} Whenever Union Steward Daley was absent from the Fitchburg Office, Assistant Steward Leavy performed the duties of steward for that office.

Stearns informed Leavy she felt a need to change that combination but the reasons therefore were not pursued nor explained. Leavy asked if Stearns considered relocating another Claims Representative thus enabling Bolduc and Haudel to remain together and Stearns replied she had not. Leavy mentioned that in the past there had been problems with Bolduc and McKinney working together and claimed the combination wouldn't work.^{4/} Stearns asked Leavy what she meant and Leavy simply repeated what she said earlier about the working relationship.

On November 10, 1987 Assistant Steward Susan Leavy filed with Respondent a request to bargain on management's proposed revision in the seating plan at the Fitchburg Office. Leavy also requested management provide the Union with information concerning "the exact location of pending files, bookcases, office POMS (manuals), and the affected work stations," and asked that the proposed changes not be implemented until the Union received the information.

By memorandum dated November 10, Stearns replied to Leavy as follows:

"In subject memo you request "bargaining concerning management's recently revised seating plan for the Fitchburg District Office."

"Your request for bargaining is not appropriate at this time.

"On Friday November 6, I met with Percy Daley, Steward, to give notice that we were proposing co-locating the two CR's in the Tel Unit and with new desks being installed, want to do it simultaneously. We also are considering the reassignment of a clerical to work with the CR who will move to make space for the Tel Unit.

^{4/} Bolduc testified that when she worked with McKinney prior to 1980 the relationship was "strained" and the two had "some problems." She explained, "it got to the point where (McKinney) would not even speak to me about claims or anything else, particularly not even so far as to answer my good morning in the morning."

"Yesterday, in the absence of the Steward, you requested time to poll some of your membership and then requested to meet with me. At that meeting you asked questions and passed information to me which you thought should be considered.

"Since no decision has been reached regarding the possible changes, there is no way of determining whether there is an issue to be bargained at this time. Your assumption that this "can readily be compiled" is not exact.

"When a decision is reached, you will receive notification."

On November 12 Steward Daley sent District Manager Stearns a memorandum again notifying Stearns that the Union wished to bargain on the proposed changes in seating arrangements and "associated issues." Daley stated that to the extent such plans were still being developed the Union desired to discuss them in a "consultative capacity" prior to formal bargaining.^{5/} Daley also inquired as to the status of Leavy's prior request for information.

^{5/} Article 30, Appendix F, Section I of the parties National Agreement provides in relevant part:

"I. The parties agree that many issues which arise at local levels may be resolved by meaningful consultation without formal bargaining.

"Accordingly, the parties agree that when a management initiated change is proposed, local representatives will consult in an attempt to reach mutually satisfactory understandings.

"Bargaining on such management initiated changes where appropriate under 5 USC 71 may be requested for the purpose of reaching a written agreement if consultation fails to resolve the issue between the parties. Except as provided by the agreement, procedures for local consultation will be determined by the parties."

Stearns responded to Daley on November 13. After stating again, as she had in her November 10 memorandum, supra, that "bargaining" was not appropriate at this time, Stearns indicated she was willing to meet with Daley on that same day if he had something to contribute which would be constructive but not to hear the same presentation made by Assistant Steward Leavy on November 9. Stearns and Daley met on Friday November 13 late in the day to discuss the matter.^{6/} Stearns informed Daley that the arrival of new desks was imminent and she definitely decided to move the two teleclaims people to the location next to the back wall but that nothing else had been decided. Daley made a suggestion that involved some employees relocating one desk away with the result being that Bolduc and Haudel would continue to work side by side. Daley again referred to the possibility of problems arising from changing the work relationship of Claims Representatives and Developmental Clerks. Daley reminded Stearns that Bolduc and McKinney had not gotten along years earlier when they worked together and their lack of compatibility resulted in many problems which affected the work of that unit. Daley strongly recommended against implementing that combination. Stearns listened but made no comments.

On November 16, 17 and 18 new desks arrived and during that period seating changes as Stearns had previously indicated she had decided on or was considering, supra, were implemented.^{7/} A November 17 memorandum from management to the staff set forth the changes. On Wednesday, November 18 Assistant Steward Leavy sent a memorandum reminding management that there remained an outstanding request for bargaining and information and Leavy requested relocation of employees be delayed subject to the completion of bargaining.

Management decided on November 19 that changes in the distribution of alphabetical assignments of Development Clerks should also take place at that time. The change was the same which Office Manager Stearns notified Steward Daley she was considering making during their November 6 meetings, supra. Thus, the change would result in Development Clerk McKinney working with most of the alphabet handled by Claims Representative Bolduc and Development Clerk Haudel would be

^{6/} The meeting was continued on Monday, November 16.

^{7/} Bolduc's relocation did not occur until Friday, November 20.

assigned only a small part of the alphabet controlled by Bolduc, the remainder of which Haudel would be working with another Claims Representative. Accordingly, Assistant District Manager Margaret German^{8/} notified Assistant Steward Leavy on November 19 in a hallway conversation of management's decision and that the changes would be effective on Monday, November 23. German also notified Leavy that one of the three Development Clerks would become a receptionist and perform some additional duties and told her she assumed Leavy would want to discuss the matter. Leavy did not agree with the alphabet change and asked on what basis German determined to reassign the alphabet. German explained she reviewed the various records and tools at her disposal and decided on what, in her judgement, was an equitable breakdown. Leavy expressed concern that Bolduc and McKinney would not work well together.

On November 20 Union Steward Daley sent a memorandum to management again requesting a status report on the Union's information request of November 10. By memorandum of November 24 management supplied the Union with the information it previously requested and set forth the alphabetical assignments which were to be effective November 23 as German had previously notified Leavy.

However, the alphabetical reassignments were not implemented on November 23. Leavy met with Stearns on December 3 and told Stearns that Development Clerks, particularly Haudel, preferred working with familiar alphabetical break-downs and Leavy expressed dissatisfaction with the seating assignments. Leavy also indicated there was concern about the back-up duties for which Development Clerks were currently responsible and the reassignment of one Development Clerk being temporarily reassigned to reception duties.^{9/} Stearns did not address any of these problems but indicated she wished to discuss the situation with Assistant Manager German. Respondent did not thereafter communicate with the Union about the matter.

On December 4, 1987 Stearns issued a staff memorandum which, inter alia, fully set forth primary and back-up duties

^{8/} Stearns was on sick leave and German was the Acting Manager during her absence.

^{9/} The temporary reassignment is not at issue in this case.

which would be effective December 7. 10/ The alphabetical breakdowns for Claims Representatives and Development Clerks was as management previously indicated they would be. On that same day the Union sent Respondent the following memorandum:

"As you know, the union has twice requested in writing, and has also requested orally, to bargain concerning changes in seating and work assignments of certain employees in this office. The fact that some consultation took place, as contemplated by Section I of Appendix F of Article 30 of the National Agreement, does not relieve management of its obligation to bargain with the union as requested.

"We were therefore very surprised to find that a memo, containing new assignments, was distributed to the entire staff this afternoon while a response to some union suggestions was understood to be pending.

"At this time we request that formal bargaining on this subject, including impact and implementation of same, begin as soon as possible and that implementation be delayed until bargaining has been completed. Failure of management to meet this obligation will require the union to decide whether a grievance, ULP charge, or other measure may be in order.

"We look for your prompt reply. Meanwhile, we are preparing specific proposals and will furnish them to you, hopefully by close of business on Monday, December 7, 1987."

Alphabetical reassignment of Development Clerks was not put into effect on December 7.

On December 7, 1987 the Union submitted to Respondent proposed ground rules for negotiations and the following proposals;

10/ The duties and assignments of employees other than Bolduc, Haudel and McKinney varied little from those in existence at the time.

"1. The desks and associated materials of each claims representative in units 2 through 4 will be moved by one position in the direction of the reception area. The unit 5 CR's desk and associated materials will be moved into the space currently occupied by the unit 4 CR. The unit 1 CR's desk and associated materials will be moved into the space currently occupied by the unit 5 CR. Effectuation of the moves will be accomplished by management, although union personnel may offer to assist.

"2. Permanent alphabetical assignments of the five unit CR's and the three unit DC's will remain as they were as of October 1, 1987, unless management decides to make specific changes in such assignments.

"3. Before deciding to make changes in alphabetical work assignments, management will conduct an individual meeting with each affected employee (e.g., a meeting with the DC and a meeting with each corresponding CR if the assignment of the DC is to be changed), with a union representative present, during which meeting management will fully explain: (a) what failures of the former or existing set of assignments dictate a change in assignments, (b) exactly what changes are believed to be necessary, (c) what improvements are expected to result from such changes, and (d) how any failure on the part of such changes to bring about the expected improvements will affect the employees concerned. Management will answer any questions by the employee and/or the union representative as completely as possible.

"4. After the meetings in 3. above have been completed, and after the union representative has had an opportunity to discuss the results with the employees

and to obtain advice from within AFGE and elsewhere, the District Manager or designee and the Steward or designee will discuss the matter further in an effort to resolve any problems perceived by either, before management's final decision is announced.

"5. At three-month intervals after effectuation of alphabetical unit changes management and union will review the situation and attempt to resolve any problems perceived.

"6. When temporary alphabetical reassignments are needed, they will be consistent with the then-existing permanent assignments to the greatest extent possible.

"7. All evaluations of employee performance will take into account the effects of alphabetical reassignments on each affected employee, in light of Article 21, Section 3E, of the SSA-AFGE National Agreement of June 11, 1982.

"8. Neither party by this agreement waives any of its rights under law or higher-level agreement."

Respondent sent the following notification to the Union on December 17:

"It is our position that the decision regarding seating assignments in the office and alphabetical breakdown assignments of clericals (with the resultant working with various Claims Representatives) is not bargainable.

While impact and implementation of these changes would be bargainable, the proposals contained in your memo dated Dec. 7, attachment (b), "Memorandum of Understanding," do not apply to impact and implementation and are therefore not bargainable.

"Accordingly, we plan to implement the changes on Monday, December 21."

The alphabetical reassignment was thereupon implemented on December 21. Bolduc testified that since being reassigned to work with McKinney although neither employee was "too happy" about the change, both are "trying very, very hard." She further testified: "There have been a few rough spots. We have our days, well this is one of the weeks I have gotten very few good mornings, but this comes and goes." Haudel testified that her work relationship with the Claims Representative with whom she shares the majority of the alphabet "isn't as compatible as it was before working with Bolduc."

Discussion and Conclusions

Counsel for the General Counsel alleges Respondent violated the Statute by unilaterally changing seating assignments of certain unit employees without providing the Union with notice of the change and an opportunity to bargain concerning the impact and implementation of the change. Counsel for the General Counsel further alleges Respondent also violated the Statute by changing unit assignments of Development Clerks and therefore the working relationships between Claims Representatives and Development Clerks without providing the Union with an opportunity to bargain concerning the impact and implementation of the change.

Respondent essentially contends: the Union's underlying concern over the personal "working relationship" between particular employees, i.e. the employee with whom another employee may have to work, is not a condition of employment under the Statute; the Union after being notified of the changes did not submit timely bargaining proposals to the Respondent on either the change in seating assignments or alphabetical assignments; the changes herein were no more than de minimis; and the Union's proposals submitted on December 7, 1987 were not negotiable.

I find the decision to change bargaining unit employees' seating assignments and work assignments, i.e. the realignment of alphabetical assignments arrange Development Clerks, clearly concerned terms and conditions of employment of unit employees within the meaning of the Statute. Whether the Union's underlying concern was over the personal "working relationships" between particular employees is immaterial to this conclusion. Rather, it is the basic subject matter of the changes under consideration which governs the determination of whether the matters in issue were conditions of employment under the Statute. Thus, I conclude Respondent

was obligated to provide proper notification and upon demand bargain with the Union on the impact and implementation of those changes as alleged.^{11/}

The seating reassignments

With regard to the question of timeliness of the Union's proposals, as to the seating arrangements the Union first received notice on November 6, 1987 that District Manager Stearns was "considering" making the seating changes which were ultimately effectuated. Clearly Stearns did not indicate that the change was definitely decided upon at this time. Management and the Union met on November 9 and the problem of breaking up the Bolduc-Haudel combination was discussed but not resolved. On November 10 the Union requested to bargain and asked for specific information concerning the matter and requested that implementation be withheld until the information was provided. Stearns responded, inter alia, that the request to bargain was not appropriate at that time and informed the Union it would be notified when a decision was reached. On November 12 the Union again indicated it desired to bargain on the matter but meanwhile it wished to go forward with "consultation" as provided by the negotiated agreement. At a meeting between Stearns and Union Steward Daley on November 13 which presumably was consultative in nature, Stearns informed Daley that she definitely decided on relocating the two teleclaims employees but added that nothing else had been decided. Stearns gave Daley no reply to his recommendations on aspects of the change which involved employees other than teleclaims. On November 16, 17 and 18 without providing the Union with the information it requested and without providing the Union with further notice, Respondent relocated the two teleclaims Representatives and Claims Representative Bolduc and Development Clerk Haudel as well. Bolduc and Haudel

^{11/} Section 7106(b)(2) and (3) of the Statute provides that while it is a management right to assign employees, an agency and labor organization are not precluded from negotiating over:

"(2) procedures which management officials of the agency will observe in exercising any authority under this section; or

"(3) appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such management officials."

obviously had to be relocated since they had been sitting at locations now occupied by the Teleclaims Representatives. In these circumstances I conclude Respondent failed to provide the Union with an adequate opportunity to present proposals and bargain on the impact and implementation of the change in seating assignments before implementing the change. Respondent's actions precluded the Union from providing timely proposals regarding matters concerning the impact and implementation of the change and I therefore reject Respondent's contention in this regard.

The alphabetical reassignments

The closely related subjects of seating and alphabetical assignments were merged during subsequent communications between the parties. As with seating assignments, the Union also first received notice that Stearns was "considering" changing alphabet assignments of Development Clerks on November 6. On November 9 the parties discussed but did not resolve the problems involved in breaking up the Bolduc-Haudel combination and putting Bolduc back to working with McKinney. Respondent's reply to the Union's request for bargaining information and delay of implementation of November 10 was that the request for bargaining was not appropriate at that time and the Union would be notified when a decision was reached. The Union again requested bargaining on November 12 and pursuant to its request for "consultation" Daley and Stearns met on November 13. At that meeting the Union was notified that the only thing management had decided on was relocating the two Teleclaims Representatives. The compatibility of employees Bolduc, Haudel and McKinney was again discussed and Daley recommended that Bolduc and Haudel continue to work together, obviously working on the same portions of the alphabet, but Stearns was noncommittal.

Although seating was changed between November 16 and 20, work assignments remained as before. In a hallway conversation on Thursday, November 19, Respondent notified the Union that alphabetical assignments would be changed effective Monday November 23. On November 20 the Union reminded Respondent it was still awaiting information on the change requested on November 10. The work assignment change was not implemented on November 23 and on November 24 Respondent provided the requested information including the new alphabetic assignments. Assistant Steward Leavy and District Manager Stearns met on December 3 and Leavy voiced various of the Union's concerns which included the alphabetical assignment of Bolduc and Haudel. Stearns did not comment on the Union's concerns but only indicated she wished to discuss the matter with her Assistant Manager.

Without further communication to the Union, on December 4, 1987, by memorandum, Stearns notified the staff of the change in alphabetical assignments to be effective December 7 whereby McKinney would be handling the majority of the alphabet worked on by Bolduc, and Haudel would be working primarily with another Claims Representative. Primary and back-up duties of personnel were also designated in the Memorandum but varied little from those previously assigned. The Union requested negotiations on December 4 and indicated it would submit bargaining proposals by December 7. Delay of implementation was requested and the change was not put into effect as scheduled. The Union submitted its proposals on December 7 and Respondent declared those proposals to be non-negotiable on December 17 and implemented the change in working assignments forthwith.

In these circumstances I conclude the Union's bargaining proposals concerning the change in work assignments were also submitted in a timely manner. Although Respondent announced its intent to change assignments, it did not implement the changes. There is no allegation that Respondent violated the Statute by announcing the change in assignments nor that the substance of the change was negotiable. Rather, the allegation at issue is Respondent's December 17 refusal to bargain on proposals submitted on December 7, substantially prior to implementation of the work reassignment.

The de minimis defense

I further conclude the changes in seating assignments and work assignments were not de minimis. In Department of Health and Human Services, Social Security Administration, 24 FLRA 403 (1986), the Authority set forth revised standards to be applied when considering such a contention. The Authority indicated it would "place principal emphasis on such general areas of consideration as the nature and extent or reasonably foreseeable effect of the change on conditions of employment of bargaining unit employees." The Authority went on to state it would take into account "equitable considerations" in balancing the various interests involved; the number of employees affected would be used only to expand the number situations where bargaining would be required; bargaining history would have limited application; and the size of the bargaining unit would not be considered a relevant factor.

In the case herein the changes affected the seating assignments of five out of 16 bargaining unit employees, moving two employees to about 50 feet away from their prior locations; resulted in one employee losing a window; and broke up a long-term close working relationship between two

employees and caused one of those employees to work with another employee where a poor working relationship existed. The Authority has recognized that employees have a legitimate interest in the location of their office space, American Federation of Government Employees, Local 12, AFL-CIO and Department of Labor, 25 FLRA 979 (1987), and that employee morale is a matter of substantial concern to employees, Internal Revenue Service, Washington, D.C. and Fresno Service Center, Fresno, California, 16 FLRA 98 (1984) re Case No. 9-CA-881. Clearly the workplace environment is of significant importance to employees. Applying the standards set forth in Department of Health and Human Services, supra, in my view the changes which occurred resulted in an impact on unit employees which was more than de minimis and I accordingly reject Respondent's contention in this regard.

The Union's proposals

Turning now to the specific Union proposals at issue, proposal 1 states:

"1. The desks and associated materials of each claims representative in units 2 through 4 will be moved by one position in the direction of the reception area. The unit 5 CR's desk and associated materials will be moved into the space currently occupied by the unit 4 CR. The unit 1 CR's desk and associated materials will be moved into the space currently occupied by the unit 5 CR. Effectuation of the moves will be accomplished by management, although union personnel may offer to assist."

Respondent contends the proposal is nonnegotiable since seating assignments constitute the methods and means of performing work. The Authority has held that in order to support such an assertion, the agency must demonstrate that its choice of office space design has a technological relationship to accomplishing its work and the union's proposal would interfere with the purpose of the agency's design. National Treasury Employees Union and Department of Health and Human Services, Family Support Administration, 28 FLRA 1108 (1987) (Proposal 1) and American Federation of Government Employees, Local 12, AFL-CIO and Department of Labor, supra. Thus, a "link" must exist between the location of employees in workspace and furthering the

performance of work. Id. It is reasonable to assume such linkage must be of some significance and not merely conjectural.

The seating assignment change herein was prompted by Respondent's desire to bring the two teleclaims employees together in order to make that unit more efficient and effective. Those employees were not working full-time and it was deemed necessary to bring their files together so they could effectively back-up one another. Locating those employees in the rear of the office was based upon management's decision to make more accessible and convenient to the public areas closer to the front of the office. However, the Union's Proposal 1 makes no mention of the teleclaims employees and if effectuated, would prevent management from co-locating these employees. In these circumstances I conclude Respondent has demonstrated that its decision to co-locate the teleclaims employees has a technological relationship to accomplishing its work and the Union's proposal would excessively interfere with the purpose of the change. Accordingly I find Union Proposal 1 to be nonnegotiable.

Proposal 2. "Permanent alphabetical assignments of the five unit CR's and the three unit DC's will remain as they were as of October 1, 1987, unless management decides to make specific changes in such assignments."

No explanation has been submitted as to the precise meaning of this proposal.^{12/} However as to the October 1, 1987 date, it is reasonable to assume the Union used that date to designate a specific period prior to Respondent's unilateral change in seating assignments found herein to be violative of the Statute. The remainder of the proposal simply indicates assignments will remain as they are unless management chooses to make changes. Thus, management would retain the authority to make the changes it desires in alphabetical assignments. Therefore, no management right is curtailed or in any way adversely affected. Accordingly I conclude in these circumstances that Proposal 2 is negotiable.

^{12/} Indeed, no explanation of intent, meaning or application has been given on any of the Union's proposals considered herein.

Proposal 3. "Before deciding to make changes in alphabetical work assignments, management will conduct an individual meeting with each affected employee (e.g., a meeting with the DC and a meeting with each corresponding CR if the assignment of the DC is to be changed), with a union representative present, during which meeting management will fully explain: (a) what failures of the former or existing set of assignments dictate a change in assignments, (b) exactly what changes are believed to be necessary, (c) what improvements are expected to result from such changes, and (d) how any failure on the part of such changes to bring about the expected improvements will affect the employees concerned. Management will answer any questions by the employee and/or the union representative as completely as possible."

Proposal 4. "After the meetings in 3. above have been completed, and after the union representative has had an opportunity to discuss the results with the employees and to obtain advice from within AFGE and elsewhere, the District Manager or designee and the Steward or designee will discuss the matter further in an effort to resolve any problems perceived by either, before management's final decision is announced."

Although contending Respondent was obligated to negotiate with the Union on the impact and implementation of the change in alphabetical assignments, the General Counsel acknowledges Respondent was not obligated to bargain over the decision to change alphabetical assignments. Proposals 3 and 4 would require management to consult with the Union and follow a specific procedure before it decided to make a change in the assignment of work. I find such a condition precedent excessively interferes with management's right to make a decision on assigning work and accordingly I conclude these proposals are nonnegotiable. See National Association of Government Employees, Local R14-87 and Kansas Army National Guard, 21 FLRA 24 (1986).

Proposal 5. "At three-month intervals after effectuation of alphabetical unit changes management and union will review the situation and attempt to resolve any problems perceived."

Proposal 5 merely requires the parties to review prior changes and attempt to resolve any perceived problems. I see no curtailment or interference with any management right under the Statute and accordingly conclude Proposal 5 is negotiable.

Proposal 6. "When temporary alphabetical reassignments are needed, they will be consistent with the then-existing permanent assignments to the greatest extent possible."

On its face the proposal would limit management making temporary alphabetical assignments to an undefined consistency with existing permanent assignments. Such a limitation substantially interferes with management's right to assign work since temporary reassignments must be "consistent" with permanent assignments. I conclude therefore that Proposal 6 is nonnegotiable as it excessively interferes with management's right to assign work. See Kansas Army National Guard, supra. The inclusion of the phrase "to the greatest extent possible" does not alter this conclusion. Cf. American Federation of Government Employees, AFL-CIO National Border Patrol Council and Department of Justice, Immigration and Naturalization Service, 16 FLRA 251 (1984).

Proposal 7. "All evaluations of employee performance will take into account the effects of alphabetical reassignments on each affected employee, in light of Article 21, Section 3E, of the SSA-AFGE National Agreement of June 11, 1982.

Article 21, Section 3E of the negotiated agreement provides:

"E. Appraising Employees: when rating employees or otherwise applying performance standards, the employer shall consider factors which affect performance that are beyond the control of the employee.

"An employee will be accountable only for those job elements and performance standards for which the employee is officially responsible."

Respondent contends this proposal is not within the duty to bargain in that it is a mere attempt to negotiate the terms of Article 21, Section 3E.

In my view the proposal merely indicates that when employees are evaluated and the employee has been involved in an alphabetical reassignment, such matter will be considered as a "factor" under Article 21, Section 3E. I find such proposal to be a valid appropriate arrangement for an affected employee and accordingly conclude Proposal 7 is negotiable.

Proposal 8. "Neither party by this agreement waives any of its rights under law or higher-level agreement."

Respondent gives no reason for declaring this proposal nonnegotiable and indeed I perceive none. Accordingly I conclude Proposal 8 is negotiable.

The remedy

The General Counsel urges that to remedy the unfair labor practices herein Respondent be ordered to restore the status quo ante by relocating those employees whose seating was changed and restore Development Clerks' alphabetical assignments. Respondent opposes such a remedy contending that the degree of disruption or impairment upon the efficiency and effectiveness of the Agency's operation will be "substantial and extreme" if a status quo ante remedy is imposed.

In Federal Correction Institution, 8 FLRA 604 (1982) the Authority held the appropriateness of a status quo ante remedy would be determined on a case-by-case basis, balancing the nature and circumstances of the particular violation against the degree of disruption on government operations such a remedy would cause. The Authority went further to set forth, as illustrative, the following factors it would consider in determining whether it would grant a status quo ante remedy in specific cases involving a violation of the duty to bargain over impact and implementation: (1) the timing of the notice of change given to the union; (2) whether and when the union requested bargaining in the matter; (3) the willfulness of the Agency's conduct; (4) the nature and extent of the impact experienced by adversely affected employees, and; (5) whether and to what degree such a remedy would disrupt or impair the efficiency and effectiveness of the agency's operations. The Authority has also indicated a concern exists when considering imposition of a status quo ante remedy to not

render meaningless the obligation or bargain in effectuating the purposes and policies of the Statute. See Department of the Navy, Naval Underwater Systems Center, Newport, Rhode Island, 30 FLRA 697 (1987).

In my view Respondent's conduct in changing seating assignments warrants the imposition of a status quo ante remedy. Thus, Respondent failed to provide notice to the Union of its final decision regarding all seating changes in the District Office prior to implementing the changes. Respondent rejected all the bargaining proposals the Union subsequently submitted without providing any specific reasons therefore other than saying the proposals did not apply to impact and implementation bargaining. The impact of the changes on unit employees while not overwhelming, was nevertheless significant (see discussion treating Respondent's de minimis defense, supra) and such remedy would not cause any substantial disruption or impairment as to the efficiency or effectiveness of Respondent's operations. The teleclaims employees would still perform the full scope of their duties in their prior locations as they did previously, albeit with some minimal degree of diminished efficiency. A return of employees Bolduc and Haudel to their prior locations would have little, if any, impact on operational efficiency since three Development Clerks support five Claims Representatives and therefore it is obvious that it is not necessary to have all Claims Representatives sitting at a particular desk adjacent to a Development Clerk.

I also conclude a status quo ante remedy with regard to the change in alphabetical assignments is warranted. Although Respondent did not change alphabetical assignments until after it received the Union's bargaining proposals on the matter, it nevertheless rejected all of the Union's proposals without providing specific reasons therefore. As with seating assignments, the impact, while not overwhelming, was significant and the realignment of alphabetical assignments could be implemented with little difficulty. Any diminishment in efficiency which might result from the reassignment would be minimal at best.

Accordingly, balancing the various factors herein, and mindful that a remedy in these matters should not render meaningless an agency's obligations under the Statute to bargain in good faith with the exclusive representative of its employees, I shall order working conditions restored to the conditions which existed prior to Respondent's unfair labor practices found herein.

In view of the entire foregoing I conclude Respondent, by the conduct described herein, violated section 7116(a)(1) and (5) of the Statute as alleged and recommend the Authority issue the following:

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 Department of Health and Human Services, Social Security Administration, Baltimore, Maryland, shall:

1. Cease and desist from:

(a) Failing and refusing to negotiate with the American Federation of Government Employees, AFL-CIO, Local 1164, the agent of the employees' exclusive representative, on the procedures to be observed in implementing its decision to change workplace assignments and alphabetical work assignments in the Fitchburg District Office and the impact of such decision on unit employees' conditions of employment.

(b) Unilaterally implementing its decision to change workplace assignments and alphabetical work assignments in the Fitchburg District Office without first completing bargaining with the American Federation of Government Employees, AFL-CIO, Local 1164, the agent of the employees' exclusive representative, on the procedures to be observed in changing workplace assignments and alphabetical work assignments in the Fitchburg District Office and the impact of such decision on unit employees' conditions of employment.

(c) In any like or related manner, interfering with, restraining, or coercing its employees in the exercise of the rights assured them 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, Local 1164, meet and negotiate with respect to the impact and implementation of changing workplace assignments and alphabetical work assignments in the Fitchburg District Office.

(b) Upon request of the American Federation of Government Employees, AFL-CIO, Local 1164 meet and negotiate with respect to the proposals submitted by the Union on December 7, 1987, found herein to be within the duty to bargain.

(c) Post at its Fitchburg, Massachusetts District Office, 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 Director of the Fitchburg District Office and shall be posted in conspicuous places, including all bulletin boards and other places where notices to employees are customarily posted, and shall be maintained for 60 consecutive days thereafter. 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, Region I, Federal Labor Relations Authority, Room 1017, 10 Causeway Street, Boston, Massachusetts, 02222-1046, in writing, within 30 days from the date of this Order as to what steps have been taken in comply herewith.

Issued: November 29, 1988, Washington, D.C.


SALVATORE J. ARRIGO
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 fail or refuse to negotiate with the American Federation of Government Employees, AFL-CIO, Local 1164, the agent of the employees' exclusive representative, on the procedures to be observed in implementing our decision to change workplace assignments and alphabetical work assignments in the Fitchburg, Massachusetts District Office and the impact of such decision on unit employees' conditions of employment.

WE WILL NOT unilaterally implement our decision to change workplace assignments and alphabetical work assignments in the Fitchburg, Massachusetts District Office without first completing bargaining with the American Federation of Government Employees, AFL-CIO, Local 1164, the agent of the employees' exclusive representative, on the procedures to be observed in changing workplace assignments and alphabetical work assignments in the Fitchburg, Massachusetts District Office and the impact of such decision on unit employees' conditions of employment.

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.

WE WILL, upon request of the American Federation of Government Employees, AFL-CIO, Local 1164, meet and negotiate with respect to the impact and implementation of changing workplace assignments and alphabetical work assignments in the Fitchburg, Massachusetts District Office.

WE WILL, upon request of the American Federation of Government Employees, AFL-CIO, Local 1164, meet and negotiate with respect to the proposals submitted by the Union on December 7, 1987, found herein to be within the duty to bargain.

(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, Region I, whose address is: Room 1017, 10 Causeway Street, Boston, MA 02222-1046, and whose telephone number is: (617) 565-7280.