

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  
HARTFORD DISTRICT OFFICE  
(HARTFORD, CONNECTICUT)  
Respondent  
and  
AMERICAN FEDERATION OF  
GOVERNMENT EMPLOYEES,  
AFL-CIO, LOCAL 1164  
Charging Party  
.....

Case No. 1-CA-70346

Patricia A. Randle, Esq. and  
Robert D. Chlup  
For the Respondent

Walt Samuel  
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 U.S. Code, 5 U.S.C. section 7101, et seq. (herein the Statute).

Upon an unfair labor practice charge filed by the American Federation of Government Employees, AFL-CIO, Local 1164 (herein the Union) against the Social Security Administration (Baltimore, Maryland) and Social Security Administration, Hartford District Office (Hartford, Connecticut) (herein collectively referred to as 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 refusing to bargain in good faith with the Union concerning the impact and implementation of its action in reassigning a Field Representative to a Claims Representative position at its office in Hartford, Connecticut.

A hearing on the Complaint was conducted in Hartford, Connecticut 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 counsel for the Respondent and counsel for 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, has been the exclusive representative of a nationwide unit which includes all nonprofessional employees employed by Respondent in the Hartford, Connecticut District Office of its New England Region. At all times material Respondent and the Union have been parties to a collective bargaining agreement which covers the nonprofessional employees in the Hartford Office.

In the Hartford District Office there are Field Representatives and Claims Representatives. Field Representatives serve as the agency's principal contact with the public in an assigned area for the administration of the Retirement, Survivor, Disability and Health Insurance Programs and Black Lung and Supplemental Security Income Programs. Among other things, Field Representatives furnish liaison and advisory services to various organizations; perform public relations and information activities; utilize a wide variety of media including newspaper, radio, TV, house organs, trade journals, etc.; carry out special studies and supplement line supervisors as necessary; perform interviewing, development and adjudication activities; and accept claims for benefits and assist applicants in obtaining documents to support their claims. Field Representatives' official duty station is normally a District Office, Branch Office, or other established field facility. However, duties may also be performed in a contact station, institution,

hospital or other service location.\*/ Eighty per cent of the workload of a Field Representative is performed outside of the office. Occasionally a Field Representative is called upon to perform the duties of a Claims Representative in the office. In general, Field Representatives have no constant direct supervision and are able to act on their own initiative subject to post-review.

Claims Representatives are divided into the Floor Unit and the Teleclaims Unit. The Floor Unit of Claims Representatives work in the District Office and are responsible for authorization and adjudication of claims. They respond to telephone inquiries and interview members of the public advising them of their rights and responsibilities; receive and process claims; determine the evidence and documents needed to support claims; assess the credibility of evidence; assist applicants with their appeal rights; and determine recipients' continued eligibility for benefits. They may also make speeches and perform other duties as assigned. The Claims Representative is closely supervised on a daily basis and deals with applicants on a face-to-face basis. Occasionally applicants, unhappy with the Social Security System, become upset, unruly or threatening.

The Teleclaims Unit of the Claims Representatives is limited to interviewing, authorizing and adjudicating claims only by telephone. If necessary, applications are mailed to beneficiaries who are instructed to return the completed applications by mail. The Teleclaims Unit is isolated from personal public contact, and the Claims Representative in this unit, having more limited work responsibilities, has more of an opportunity for detailed and in depth research into manuals relating to relevant program application. Testimony by Union representative Walt Samuel revealed that Teleclaims work is considered by employees to be a more desirable assignment than Floor Unit duty.

Christopher Smith had been a Claims Representative until he became a Field Representative, first on a temporary basis from January 1985 until January 1986, and then on a permanent basis. Smith shared this function with another more senior Field Representative. In June, 1986, Smith began spending as much as 50 per cent of his time working as a Claims Representative.

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\*/ A contract station is a location where the Field Representative meets with persons who have difficulty coming to the Hartford Office.

On or about August 7, 1987, Smith was told by District Manager, Robert Johnson, he would have to work as a Claims Representative on a full-time basis because of the press of work and to give his Field Representative work to the other Field Representative. He testified that Johnson told him the shift might be temporary but could give him no guarantees.

Thomas Kucab, the Assistant District Manager, then drew up new work assignments and on August 13 informed Union representative Samuel that certain Claims Representatives would be rotated into the Teleclaims Unit and Smith would be required to perform full time as a Claims Representative. Samuel said he would get back to Kucab, who requested a response by the end of the day because he wanted to implement the change the next morning.

Although Kucab told Samuel that Smith would perform claims work full time, Samuel had not been told whether Smith would be formally re-classified as a Claims Representative. Upon reviewing his records, Samuel decided that if Smith were re-classified as a Claims Representative, he was due to be immediately rotated to Teleclaims based on his seniority. However, the view that positions in Teleclaims should be based on seniority was only Samuel's and had not been accepted by Respondent. Kucab testified that the activity attempted to give every Claims Representative a chance to work in Teleclaims and generally gave first opportunity to the Claims Representative who had been longest "on the floor." In any event, Samuel asked Kucab what Smith's status was going to be and Kucab replied that he would have to ask Johnson the next day. Before the close of business on August 13, Samuel gave Kucab a memorandum which stated:

"[w]e are unable to respond to the teleclaims rotation proposal because management has been unable to provide information concerning the position description under which C. M. Smith will be employed. If he remains under the field representative position description, the Union has no objection. However, if he has been returned to a claims representative position description, the Union would be forced to hold that, under the procedure for rotation that has operated for at least the past three years, he should be rotated into teleclaims.

"We request that no action be taken to implement the teleclaims rotation until the requested information is provided. If necessary, you may consider this a request for formal bargaining."

On Friday, August 14, Kucab wrote a memorandum to Samuel stating that Smith will be "journalized as a Claims Representative" and would be rotated into the Teleclaims Unit at a later date. There were no further conversations concerning bargaining and Smith began as a Claims Representative on August 17 and has continued to work in that job.

Smith testified that he was adversely impacted by the change as a result of denial of overtime, denial of travel reimbursement and increased stress. With respect to overtime, because of the need to give speeches and seminars outside of the working day, he had earned \$35 - \$150 per pay period in overtime while working as a Field Representative. When he was working 50 per cent of his time as a Claims Representative, his overtime was reduced by at least one-third and Smith has had no overtime recently while working full-time as a Claims Representative. He conceded his supervisor could assign him overtime work as a Claims Representative or deny him overtime work as a Field Representative. However, Smith did not expect to be assigned such overtime work as a Claims Representative. Assistant Manager Kucab testified Claims Representatives often receive overtime in offices where there is only one Field Representative but did not testify that he intended to assign any overtime to Smith.

Smith also complained he was deprived of the approximately \$100 weekly travel reimbursement which he had received as a Field Representative. He testified he had bought a new car and the mileage allowance exceeded his maintenance and gasoline costs thereby helping him with his car payments. Finally, Smith testified he had a major heart problem in September and October 1987 due to stress, and he has increasingly felt stress since working as a Claims Representative.

Union representative Samuel testified the transfer of Smith impacted the whole office because: the information given the public by Field Representatives reduced the public need for service at the office by Claims Representatives; Field Representatives get information from the Bureau of Vital Statistics for Claims Representatives; and Field

Representatives can check questionable claims in the field. Assistant Manager Kucab, on the other hand, testified the change benefited the other Claims Representatives since they would get more help, and the remaining Field Representative would absorb only marginally more work because the remainder of the work would be absorbed by management or eliminated.

Kucab also testified the change was necessary because the office had recently lost two Claims Representatives and Smith did not need training for that job. He testified a status quo ante order would be disruptive because scheduled computerization of the office and training put an additional burden on the Claims Representatives who were needed to serve the public and the burden would be increased if Smith could not serve as a Claims Representative. However, the training was to be finished by April 1988.

#### Ultimate Findings, Discussion and Conclusions

The General Counsel contends the Union made a demand to bargain by its letter of August 13, 1987, 1987, supra, and Respondent violated the Statute when it refused the request to bargain and reassigned Smith from his duties as Field Representative to that of Claims Representative without further negotiations.

Respondent contends the Union's August 13 letter did not constitute a clear demand to bargain and, in any event, the only proposal submitted by the Union dealt with the assignment of work into the Teleclaims Unit and was not negotiable. Respondent further contends Smith's change in duties was de minimis.

I reject Respondent's contention that the demand to bargain was unclear. Rather, I find the Union's request of August 13 was an unambiguous demand to bargain on whether Smith should be moved to Teleclaims or the Floor Unit. While Union representative Samuel's August 13 letter does not protest Smith being returned to a Claims Representative position as such, Samuel does request that no action be taken to implement the teleclaims rotation until information of whether Smith's position description, i.e. Field or Claims Representative, had been provided. Thus, it is clear that Samuel sought to bargain on whether Smith, as a Claims Representative, would be immediately rotated into the Teleclaims Unit as he urged, contending that a past practice has been established to support his position.

I further find the Union's proposal to immediately rotate Smith into the Teleclaims Unit was negotiable. The proposal herein dealt not with whether Smith should be assigned to teleclaims work, but when. The Authority has held that as long as a union proposal for the method of assigning work does not limit management's right to define the qualifications and determine whether the employee is qualified under management criteria, it may be a subject of bargaining. American Federation of Government Employees, Local 2185, 23 FLRA 193 (1986). See also Department of the Navy, Navy Public Works Center, Norfolk, Virginia, 31 FLRA No. 47 (1988), Proposal 1, and American Federation of Government Employees, Council of Social Security District Office Locals and Department of Health and Human Services, Social Security Administration, 15 FLRA 545 (1984). Management clearly found Smith qualified for Teleclaims, for it acknowledged it would assign him there at a later date. Indeed, Assistant Manager Kucab testified that all Claims Representatives were generally rotated into Teleclaims.

With regard to Respondent's de minimis argument, in Department of Health and Human Services, Social Security Administration, 24 FLRA 403 (1986), the Authority reassessed and modified the de minimis standard previously used to identify changes in conditions of employment which require bargaining. The Authority stated that in order to determine whether a change in conditions of employment requires bargaining, it would carefully examine the pertinent facts and circumstances presented in each case and in examining the record, principal emphasis would be placed on such general areas of consideration as the nature and extent of the effect or reasonably foreseeable effect of the change on conditions of employment. It also stated that equitable considerations would be taken into account in balancing the various interests involved; that the number of affected employees and the parties' bargaining history would be given limited application; and that the size of the bargaining unit would no longer be a consideration.

In my view management's assignment of Smith to the Claims Representative Floor Unit and not the Teleclaims Unit had more than a de minimis impact on bargaining unit employees and therefore imposed a bargaining obligation on Respondent. Smith's assignment to the Floor Unit was not a temporary or short term one. Rather, Smith has continued in the position as Claims Representative for a considerable period of time. Further, the record reveals Floor Unit work is significantly different from Teleclaims work in terms of the variety of duties, the personal face to face contact

employees have with clients and the environment in which the work is performed, supra. See Environmental Protection Agency and Environmental Protection Agency Region II, 25 FLRA 787 (1987).

Accordingly, in all the circumstances I find Respondent's unilaterally assigning Smith into the Floor Unit without completing bargaining with the Union on the matter violated section 7116(a)(1) and (5) of the Statute.

#### Remedy

The General Counsel requests a status quo ante order and a back pay order to remedy Respondent's unfair labor practices. The record reveals Respondent gave the Union only one days' notice for this change and did not give it sufficient information even then. Further, it did not respond to the Union's bargaining request. In addition, failure to restore the status quo ante would result in Smith continuing to perform in a significantly less desirable job than one in which he might be assigned if Respondent had negotiated in good faith in the matter. Although Respondent's witnesses testified that a status quo ante order would burden its proposed training for computerization, that training period has come and gone. Consequently, under the standards set forth in Federal Correctional Institution, 8 FLRA 604 (1982), I conclude a status quo ante order is warranted.

However, no back pay order is required. Under the terms of the Back Pay Act, no award is justified unless the "withdrawal or reduction in backpay would not have occurred but for the unjustified action." Federal Aviation Administration, Washington, D.C. 27 FLRA 230 (1987) at 234. On the facts of this case it is not possible to ascertain how much, if any, overtime pay Smith may have earned if Respondent had not engaged in the unfair labor practice found herein. Thus, there is no evidence as to whether any overtime work would have been performed by Smith if he remained as a Field Representative. Indeed, the record reveals the overtime work performed by Smith before he was assigned full-time to Claims Representative duties was, for the most part, not performed by anyone after Smith went to full-time claims work. With regard to a claim for travel allowances, such payments are intended merely to reimburse expenses incurred by an employee while on official business. Therefore, denial of travel allowances does not warrant a backpay award.

In view of the entire foregoing, it is hereby 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 Rules and Regulations of the Federal Labor Relations Authority and section 7118 of the Statute, the Authority hereby orders that the Social Security Administration (Baltimore, Maryland) and Social Security Administration Hartford District Office (Hartford, Connecticut), shall:

1. Cease and desist from:

(a) Implementing a change in the working conditions at its Hartford Office concerning the assignment of Christopher Smith to the position of Claims Representative without first notifying the American Federation of Government Employees, AFL-CIO, Local 1164, the employees' exclusive bargaining representative, and affording it an opportunity to bargain with respect to the procedures to be observed in implementing such change and appropriate arrangements for such change.

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

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

(a) Reassign Christopher Smith to the position of Field Representative pending the outcome of negotiations requested by Local 1164 concerning his assignment Claims Representative, Floor Unit or Teleclaims Unit.

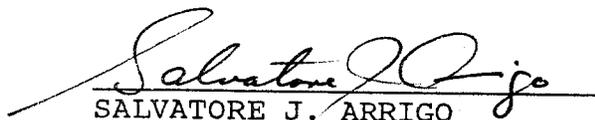
(b) Meet and bargain with Local 1164, to the extent consonant with law and regulation, concerning the assignment of Christopher Smith to the Claims Representative Floor Unit or Teleclaims Unit.

(c) Post in the Hartford, Connecticut 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 Manager of the Hartford, Connecticut 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 posted and 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 § 2423.30 of the Rules and Regulations, 5 C.F.R. § 2423.30, notify the Regional Director, Region I, Federal Labor Relations Authority, 10 Causeway Street, Room 1017, Boston, Massachusetts 02222-1046, 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., August 31, 1988

  
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 implement a change in working conditions concerning the assignment of Christopher Smith to the position of Claims Representative without first notifying the American Federation of Government Employees, AFL-CIO, Local 1164, the employees' exclusive representative, and affording it an opportunity to bargain with respect to the procedures to be observed in implementing such change and appropriate arrangements for such change.

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 Statute.

WE WILL reassign Christopher Smith to the position of Field Representative pending the outcome of negotiations requested by Local 1164 concerning his assignment to the Claims Representative Floor Unit or Teleclaims Unit.

WE WILL, meet and bargain with Local 1164, to the extent consonant with law and regulation, concerning the assignment of Christopher Smith to the Claims Representative Floor Unit or Teleclaims Unit.

\_\_\_\_\_  
(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: 10 Causeway Street, Room 1017, Boston, Massachusetts 02222-1046, and whose telephone number is: (617) 565-7280.