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

SOCIAL SECURITY ADMINISTRATION. REGION 1 BOSTON MASSACHUSETTS Respondent	
and	Case No. 1-CA-10407
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO, LOCAL 1164 Charging Party	

Marilyn H. Zuckerman, Esquire
For the General Counsel

John J. Barrett, Esquire
For the Respondent

Andrew Krall, Area Vice President
For the Charging Party

Before: JESSE ETELSON
Administrative Law Judge

DECISION

The complaint in this case alleges, and there is really no dispute although the answer denies it, that the Respondent (SSA) refused a request of the Charging Party (the Union) to enter into negotiations over the impact and implementation of a contemplated relocation of its Hyannis, Massachusetts, Branch Office. The issue is whether SSA had a duty to enter into in such negotiations at the time it refused to do so.

A hearing was held in Boston, Massachusetts, on February 25 and 26, 1992. Counsel for the General Counsel and for SSA filed post-hearing briefs.1/

1/ It is very helpful to have lengthy exhibits tabbed and to have all statements of facts in the brief record-referenced.

Findings of Fact

SSA has had its Hyannis Branch Office at the same location on Walton Avenue in Hyannis since approximately 1970.[2/] It occupied leased space provided by the General Services Administration (GSA). The most recent full lease for that office space was, by its terms, to expire at the end of February 1991. One year in advance of that scheduled expiration, GSA routinely requested SSA to complete a questionnaire and accompanying information package, in which SSA was supposed to inform GSA of its future space requirements and to make certain specification requests. SSA responded in May 1990, stating that its current site was acceptable and requesting that the site solicited for an additional term of five years with certain improvements.

Notwithstanding SSA's expressed desire to remain at the Walton Avenue site, GSA contacted SSA's Richard Fisher, a "specialist" in the Field Services Branch, to arrange for a market survey of prospective sites including the Walton Avenue site. The market survey was conducted in July 1990. This proved to be only the beginning of a competitive bidding and selection process that focused first on one, then another, alternative site. The second alternative site seemed in early 1991 to be the site of choice, and in February Hyannis Branch Manager John Fontes told Union Steward Robert Hecker that the chances were "fair to good" or "fairly good" that the office would be moving to that site, on Barnstable Road. No final decision having been made when the Walton Avenue lease expired at the end of February, the lease was extended for three months.

Three months later SSA and GSA were still attempting to work out the details for necessary space and accommodations at the Barnstable Road site. At that point SSA had sent GSA a new space request, requesting that additional vacant space contiguous to the previously proposed space be leased, and stating that the Hyannis office "is scheduled to move to its new location 310 Barnstable Road [sic] by the end of the summer" (GC Exh. 24). The Walton Avenue lease was extended for another three months, to August 31.

A detailed floor plan for the space under contemplation for lease was prepared by or for GSA. Entered in the record as GC Exh. 25, it appears to be dated July 2, 1991. Branch

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2/ Documents in the record refer to this location as Falmouth Road. I assume the two streets intersect at the branch office's location.

Manager Fontes held a staff meeting for employees on July 11. He told them that "they thought they would move" by September. The next day, Union Steward Hecker submitted a written request to bargain on the impact and implementation of the relocation. Fontes responded on July 23. This is the pertinent section of his memorandum:

> Please be advised that no final decision regarding the potential relocation of the Hyannis, MA Social Security Office has been made.
>
> Please be advised that I will advise you at such time as when [sic] a decision is made.
>
> We will at that time be prepared to bargain to the extent required by law.

Due to legal complications concerning the selection process, the selection was reopened, the owner of the Barnstable Road site withdrew from consideration, and at the time of the hearing no relocation had occurred. On September 27, 1991, there was a further lease extension at Walton Avenue. It ran to May 31, 1992, but gave the Government the right to terminate on five days' notice after a certain intermediate date that is not entirely clear to me but was no earlier than November 30, 1991.

Discussion and Conclusions

The theory of the General Counsel's case is that SSA had an obligation to bargain over the impact and implementation of the prospective relocation, once that relocation reached the status of a "contemplated change." By arguing in terms of impact and implementation (I&I) only, the General Counsel appears to concede that the decision to relocate is a management right within the meaning of section 7106(a) of the Federal Service Labor-Management Relations Statute (the Statute). That concession is consistent with Authority precedent. See, e.g., U.S. Department of Health and Human Services, Social Security Administration, Baltimore, Maryland, 41 FLRA 339, 340 n.*, 350-51 (1991) (SSA Baltimore); Department of the Treasury, Internal Revenue Service, Midwest Regional Office, Chicago, Illinois, 16 FLRA 141, 161 (1984). Thus, the so-called "I&I" bargaining obligation concerns only "procedures which management officials of the agency will observe in exercising" that management right, and "appropriate arrangements for employees adversely affected by the exercise" of that right. Section 7106(b)(2) and (3).

It is less clear whether the General Counsel concedes that the decision about where to relocate is also reserved as a management right. However, such a concession would also appear to be implied by the assertion of only an I&I bargaining duty. Even in the absence of such a concession, it seems difficult to reach a different conclusion about that aspect of the relocation decision. I would feel more comfortable in making such a statement if I could find an authoritative explanation for where the decision to relocate fits within the management rights set forth in section 7106(a)--presumably somewhere within the section 7106(a)(1) authority to "determine the mission, budget, organization, number of employees, and internal security practices of the agency." In any event, it seems to have been accepted without question under Executive Order 11491, and not challenged under the Statute, that the management right unilaterally to relocate an operation includes determination of the new location. See Social Security Administration, Bureau of Hearings and Appeals, 7 A/SLMR 338, 343-44 (1977); Aircraft Fire and Rescue Division, Air Operations Department, Naval Air Station, Norfolk, Virginia, 3 FLRA 118, 128-30 (1980) (Aircraft Fire); Social Security Administration, Office of Hearings and Appeals, Region II, New York, New York, 19 FLRA 328 (1985); Environmental Protection Agency and Environmental Protection Agency, Region II, 20 FLRA 644, 652 (1985).

With the benefit of this understanding, it follows that SSA's I&I bargaining obligation here extends only to the "procedures" to be observed in moving to the new location it has selected and to "appropriate arrangements for employees adversely affected" by that move. What remains to be determined is at what point in the relocation process that obligation is incurred.

The General Counsel's contention that the obligation was incurred when relocation became a "contemplated change" is based on a passage found in the Authority's Rules and Regulations, "§ 2423.5 Selection of the unfair labor practice procedure or the negotiability procedure." In that section, the Authority first speaks of cases involving issues of negotiability where the labor organization may select one procedure or the other. The section concludes with the statement that: "Cases which solely involve an agency's allegation that the duty to bargain in good faith does not extend to the matter proposed to be bargained and which do not involve actual or contemplated changes in conditions of employment may only be filed under [the negotiability procedure]" (emphasis added).

Thus, by implication, "actual or contemplated changes in conditions of employment" are subject to a duty to bargain that may be enforced in an unfair labor practice proceeding. The General Counsel argues, in effect, that a change is "contemplated" for this purpose as soon as management starts considering it seriously, or at least when management has taken substantial steps toward making a final decision and in preparation for the anticipated change. I do not think such a construction of the term, "contemplated," is warranted where the question is one of I&I bargaining only.

Notwithstanding its use of the term, "contemplated change," in § 2423.5, the Authority describes the duty to bargain concerning a change in conditions of employment only with reference to implementation. Thus, in one of its most recent definitive statements about this duty, the Authority said:

> It is well settled that prior to implementation of a change in the conditions of employment of unit employees, an agency must provide a union with reasonable notice of the change and an opportunity to bargain, as appropriate, over the substance and/or impact and implementation of the change.

Ogden Air Logistics Center, Hill Air Force Base, Utah and Air Force Logistics Command, Wright-Patterson Air Force Base, Ohio, 41 FLRA 690, 698 (1991).

How does this square with the obligation to bargain about a "contemplated" change? I believe that the relevant teaching of Ogden, and other decisions that speak in terms of a bargaining obligation before implementation, is that an agency must negotiate about "contemplated" changes because once they are implemented without bargaining (and therefore are no longer "contemplated" changes) the party has violated its duty. Thus the use of the description, "contemplated," does not, except in relation to implementation, shed much light on when the obligation is incurred.

Since it is the responsibility of an agency seeking to make the change to insure that it has fulfilled its bargaining obligation before implementation (except in special circumstances that need not be considered here), the agency must allow a reasonable time for the bargaining process to occur. But since this is the agency's problem and not the union's, the union often has only a more or less passive interest in how the agency arranges to fulfill its obligation--as long as it does fulfill it. Therefore the union can usually rest in at least a legal assurance that,

whenever the agency notifies it of a proposed change and gives it the opportunity to bargain, its opportunity will be adequate.

Under some circumstances, however, a contemplated change may be so close to implementation that the agency's silence, or its refusal of a request to bargain, may be inconsistent with the duty to negotiate in good faith described in section 7114 of the Statute. For example, in a case similar to this one, the Authority found that an agency's duty to bargain over the I&I of an office relocation was "triggered" by the agency's receipt of a signed lease for the new office space and the union's subsequent request to bargain. SSA Baltimore, supra, at 340 n.*.

The union's interest, in cases of this type (and it is so here), is to participate as early in the relocation process as possible so as to have the opportunity to affect as many of the decisions involving the relocation as it can. The question of when this interest becomes a legal right, however, depends to a great extent on what aspects of the move are "negotiable," as the Authority uses that term--that is--to identify mandatory subjects of bargaining.

As discussed above, neither the decision to relocate nor the relocation site is negotiable. Only the "procedures" and "appropriate arrangements for employees adversely affected" are negotiable. Therefore, much as it might be desirable from the Union's viewpoint to be a participant in the decision-making process at an earlier stage, it is difficult to envision an obligation on SSA's part, under existing law, to negotiate before a firm decision had been made to relocate. See SSA Baltimore at 351 (The union was entitled to bargain about the impact and implementation of the relocation once such a relocation was decided upon.); Occupational Safety and Health Review Commission, 8 A/SLMR 399, 404 (1978) (Obligation to bargain on request arose when decision to relocate was final but "the Activity had not completely decided on how that decision would be implemented in all [respects]."). Cf. Aircraft Fire, supra, 3 FLRA at 131 ("In the absence of any knowledge, as opposed to mere speculation or conjecture, of where management planned to relocate . . ., there was nothing over which to bargain concerning impact and implementation, and no duty upon the Complainant to request bargaining.").3/

3/ I emphasize, perhaps unnecessarily, that this is my interpretation of the extent of SSA's legal obligation. An
(Footnote continued on next page)

In the instant case, it has not been established that a final decision had been made. A tentative decision had been reached, but the record will not support a finding that negotiations with the prospective lessor had reached a point where agreement had been reached on all matters essential to make a final commitment to move. Absent that, it is unnecessary to decided whether the actual signing of a lease is required in order to "trigger" (SSA Baltimore, supra) the duty to bargain. Neither do I reach the question of whether a bargaining obligation arises as soon as an agency makes a final decision to relocate but before it decides on the new site, as to matters other than the location of the site.

The Authority has previously held that this union was entitled to data concerning SSA's requests to GSA for space, in connection with this and other anticipated relocations, so that the Union could, among other things, prepare for I&I bargaining. Social Security Administration, Baltimore, Maryland and Social Security Administration, Area II, Boston Region, Boston, Massachusetts, 39 FLRA 650, 669-70 (1991). That decision did not, however, speak to the issue of how far the relocation plans must have progressed before actual negotiations must begin.

I conclude that SSA was not required to negotiate over the impact and implementation of the contemplated relocation of its Hyannis Branch office at the time the Union requested negotiations. Accordingly, I recommend that the Authority issue the following order.

ORDER

The complaint is dismissed.

Issued, Washington, DC, July 24, 1992

JESSE ETELSON
Administrative Law Judge

(Footnote continued from previous page)
agency might well find it desirable to solicit a union's input at an earlier stage, especially since, as appears to be the case here, it is at the earlier stages that the agency has the most flexibility in requesting from GSA that specific configurations, equipment, or amenities be provided at the new location.