

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

.....

SOCIAL SECURITY ADMINISTRATION.

Respondent

and

Case No. WA-CA-20438

AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES,
LOCAL 1923, AFL-CIO

Charging Party

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Laurence M. Evans, Esquire
For the General Counsel

Edward Novak, Esquire
For the Respondent

Alvin S. Levy
For the Charging Party

Before: BURTON S. STERNBURG
Administrative Law Judge

DECISION

Statement of 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 March 9, 1992, by the American Federation of Government Employees, Local 1923, AFL-CIO, (hereinafter called the Union), a Complaint and Notice of Hearing was issued by the Regional Director for the Washington Regional Office, Federal Labor Relations Authority, Washington, D.C., on May 20, 1992. 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 revoking the permanent building entrance badge provided to Union Benefits Coordinator Jack Hoppenstein without providing the Union prior notice and an opportunity to negotiate over the "substance or the impact and implementation of this change in building access".

A hearing was held in the captioned matter on July 22, 1992, 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 September 14, 1992, which have been duly considered.

Upon the basis of the entire record, including my observation of the witnesses and their demeanor, I make the following findings of fact, conclusions and recommendations.

Findings of Fact

The American Federation of Government Employees, AFL-CIO (hereinafter called the AFGE), is the exclusive representative of a nationwide consolidated unit of Respondent's employees appropriate for collective bargaining.

The Union is an agent of AFGE for purposes of representing employees working at Respondent's Headquarters located in Baltimore, Maryland.

Mr. Jack Hoppenstein is a self-employed insurance broker and a registered investment advisor. Sometime around 1982, the Union made Mr. Hoppenstein its Benefits Coordinator and broker of record. As Benefits Coordinator Mr. Hoppenstein is responsible for administering various Union benefits programs for which he is paid a commission.^{1/} Additionally, Mr. Hoppenstein writes articles for the Union's newsletter concerning various benefits available to the employees and also attends orientation meetings wherein he explains the various Union benefit programs to new employees.

^{1/} Included among the programs administered by Mr. Hoppenstein are the dental insurance, life and travel accident insurance, disability insurance, supplemental health insurance, and "dues back". Under this latter program, i.e., dues back, employees who remain members of the Union until they die, retire or become disabled, get back all of the dues that they had ever paid to the Union.

Mr. Hoppenstein normally visits the Respondent's building complex in Baltimore every day of the week.

In 1982, Mr. Hoppenstein received a building entrance badge which allowed him unrestricted access to Respondent's buildings in Baltimore. The badge did not have to be renewed on an annual basis.^{2/} The record indicates that management was well aware that Mr. Hoppenstein enjoyed unlimited access to the SSA buildings.

Around the early part of January 1992, Mr. Richard Matthews, a Supervisory Employee Relations Specialist, was appointed Acting Labor Relations Branch Chief. In such position, according to newly revised security regulations, his office was responsible for issuance of entry badges. Upon reviewing the unfinished business left by his predecessor, Mr. Matthews came upon a folder dealing with an inquiry which had been made by Respondent to the Union concerning the status of Mr. Hoppenstein. The inquiry dated November 15, 1989, and addressed to the Union President, stated in pertinent part as follows:

In reviewing other badge applications, I note that badge applications were processed for Jack C. Hoppenstein and Sharon Pinnock, without Division of Labor and Employee Relations review or approval. Since Ms. Pinnock no longer works for Local 1923, I am having her pass cancelled. I would appreciate your clarifying Mr. Hoppenstein's status by providing the following information:

1. Is Mr. Hoppenstein an employee of AFGE Local 1923? If not, what is his exact status?
2. If he is not an employee, why does he need a red background badge?
3. Why does he need access to Security West and Metro West buildings?

^{2/} The badge has a red background which, according to the testimony and exhibits presented at the hearing, indicates that the holder is an employee and entitled to unrestricted access. However, when the badge was presented at the hearing, it was identified as a non-employee badge which also gives the holder unrestricted access to the various buildings within the SSA compound in Baltimore. It appears that the badge might have been reissued in 1986 because the original badge issued in 1982 was wearing out.

Please respond as soon as possible. I will take no action on Mr. Hoppenstein's pass until November 22, 1989.

By letter dated November 15, 1989, Mr. Alvin Levy, Executive Vice President of the Union replied to the inquiry from Respondent concerning Mr. Hoppenstein.

The letter reads in pertinent part as follows:

Mr. Hoppenstein is not an employee of Local 1923, however, he does administer our Insurance and Dues Back Programs. As such, he needs to be in the various buildings; including Security West and Metro West on a full time basis to respond to questions and resolve problems that arise in connection with these programs.

Mr. Matthews, upon seeing the above memoranda, and being informed that the matter of Mr. Hoppenstein's status had not been cleared up, on February 28, 1992, drafted the following letter to Mr. Gage, President of the Union.

Dear Mr. Gage:

This is to clarify the building access status of Mr. Jack Hoppenstein who is not an employee of SSA or Local 1923. You previously advised us that Mr. Hoppenstein requires full time access to the Woodlawn Complex, Security West and Metro West in order to administer your insurance program and dues back program.

Unless his status has changed, we are placing Mr. Hoppenstein on the rolodex for all three buildings. We have some question about his need for full time access to Security West and Metro West and will review the frequency of access to those buildings when he renews his rolodex application in approximately six months.

We are cancelling Mr. Hoppenstein's current badge since he is not entitled to that type of access. The rolodex will continue to provide his access during business hours. Please have Mr. Hoppenstein turn his badge in to Mr. Richard A. Matthews, Branch Chief, Headquarters Operations Branch, OLMR. If you have any questions you can contact Mr. Matthews on extension 54753.

Sincerely,

Lette Weinrich
Acting Director
Office of Labor Management
Relations

Under the Rolodex procedure Mr. Hoppenstein's name would be listed on the Rolodex along with other people, who were not vendors or employees, but needed access to the complex on a frequent basis. A person listed on the Rolodex, unlike a Union employee, would be required to show identification and sign in on a daily basis. He would then be given a paper badge or pass which would be valid for only one day. The following day the procedure would have to be repeated. Depending on the number of people seeking access to the complex, it could take up to fifteen minutes to achieve access to the complex.

According to the credited testimony of Mr. Matthews, the letter to the Union dated February 28, 1992 concerning Mr. Hoppenstein's method of ingress, was for purposes of putting the Union on notice that Respondent wanted clarification of his status and to get some response from the Union before Respondent exercised the authority it possessed in terms of internal security. Further, according to Mr. Matthews, if the Union did not respond with anything concrete with regard to Mr. Hoppenstein's current status, Respondent intended to place Mr. Hoppenstein on Rolodex. Finally, according to Mr. Matthews, the February 28th letter was notification to the Union of an intended change.

At the time of the hearing, Mr. Hoppenstein's badge had not been cancelled or confiscated and he was still enjoying unimpeded access to the SSA complex.

The record further discloses that other individuals serving as Benefits Coordinators enjoyed only the Rolodex method of entry.

Discussion and Conclusions

The General Counsel takes the position that the Respondent by its letter of February 28, 1992, effectively revoked Mr. Hoppenstein's employee entry badge and thereby changed a long standing recognized practice of allowing him unfettered access to Respondent's buildings located in Baltimore, Maryland. Further, according to the General Counsel, inasmuch as Mr. Hoppenstein's work as Union Benefits Coordinator significantly affects the employees working

conditions, Respondent by limiting the availability of Mr. Hoppenstein's advice and services in the area of supplemental health, disability, dental, life and travel insurance, without providing the Union with prior notice and the opportunity to request bargaining over the substance, impact and the manner of implementation constitutes a violation of Sections 7116(a)(1) and (5) of the Statute.

Respondent takes the position that it did not revoke Mr. Hoppenstein's employee entry badge and that the February 28, 1992 letter was merely an attempt by the Respondent to clarify Mr. Hoppenstein's status and insure that the entry badge issued to him complied with what was called for in the newly amended security regulations.

To the extent that an opposite conclusion is reached, it is Respondent's further position that the revocation of Mr. Hoppenstein's employee entry badge did not constitute a change in a condition of employment since Mr. Hoppenstein is not an employee but an admitted independent insurance agent.

Additionally, it is Respondent's contention that inasmuch as it was enforcing its security policy, it was under no obligation to bargain with the Union concerning the substance, impact and manner of implementation of its decision with respect to the type of entry badge given to Mr. Hoppenstein.

Finally, it is the position of Respondent that insurance benefits sold by a private insurance salesman affiliated with a union do not have an affect upon the conditions of employment of bargaining unit employees.

While I credit Mr. Matthew's testimony that the February 28th letter to the Union was merely an attempt to clarify Mr. Hoppenstein's status and need for his existing badge, I find, in agreement with the General Counsel, that the letter by its terms effectively cancelled Mr. Hoppenstein's employee badge and put him on the Rolodex method of entry. The fact that his badge had not been confiscated by the time of the hearing does not belie such a finding, particularly since the Union filed the charge underlying the instant complaint shortly after the receipt of the February 28th letter.

However, in any event, I cannot find, based upon the instant record, that the change in the past practice of allowing Mr. Hoppenstein unfettered access to the premises by means of an employee badge, without prior notice and

bargaining with the Union, constituted a violation of Sections 7116(a)(1) and (5) of the Statute.

As I read the Statute, Respondent is only under an obligation to give a Union notice and the opportunity to bargain over changes which affect conditions of employment of unit employees. Here, inasmuch as Mr. Hoppenstein is admittedly not an employee of the Union or Respondent, but merely an independent insurance agent who has been selected by the Union to service unit employees, in order to establish a 7116(a)(1) and (5) violation it must be shown that the change in his form of entry from an employee badge to Rolodex impacted on the unit employees' conditions of employment. While I question whether the availability of an independent insurance agent to advise and sell various types of insurance as a supplement to such policies offered by the Government is a condition of employment, I am hard pressed to find how the instant change in Mr. Hoppenstein's method of ingress impacted in any manner, shape or form upon the unit employees' conditions of employment. While it is acknowledged that the Rolodex form of entry might well inconvenience Mr. Hoppenstein for up to 15 minutes each day, he still would be available each day, as before, to advise, sell and administer the supplemental and other insurance programs of interest to the unit employees.

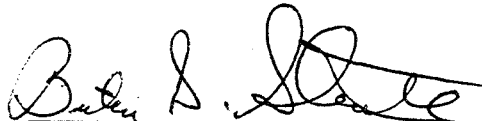
Accordingly, inasmuch as the change in Mr. Hoppenstein's manner of entry to Respondent's premises has not been shown to have any affect whatsoever on the working conditions of unit employees, I find that Respondent was under no obligation to give the Union prior notice and the opportunity to bargain over the change.

Having found that Respondent did not violate the Statute, it is recommended that the Authority adopt the following order dismissing the Complaint in its entirety.

ORDER

It is hereby Ordered that the Complaint should be, and hereby is, dismissed in its entirety.

Issued, Washington, DC, December 1, 1992



BURTON S. STERNBURG
Administrative Law Judge