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SOCIAL SECURITY ADMINISTRATION CAROLINA FIELD OFFICE CAROLINA, PUERTO RICO RESPONDENT AND AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 2608 CHARGING PARTY	Case No. BN-CA-09-0371

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For the Respondent

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For the Charging Party

Before: RICHARD A. PEARSON
Administrative Law Judge

DECISION

In late April or early May of 2009, the Respondent's manager gathered employees together for two meetings to announce that starting the following week, a new set of procedures would be implemented, in an effort to reduce the waiting time for customers. The primary feature of the new procedures was to require all Claims Representatives (CRs) who are in the office between 7:30 and 9:00 a.m. (the period of peak customer influx) to work in the reception area and assist the Service Representatives (SRs) with visitor intake duties. Because these new procedures changed the CRs' conditions of employment to an extent that was more than *de minimis*, the Respondent had a duty to notify the employees' bargaining

representative in advance and to give it an opportunity to bargain over the impact and implementation of that change. The Respondent's refusal to do so was an unfair labor practice. Respondent committed an additional unfair labor practice by failing to give the Union an opportunity to be represented at the first (but not the second) of those two meetings.

STATEMENT OF THE CASE

This is an unfair labor practice proceeding under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the U.S. Code, 5 U.S.C. §§ 7101 *et seq.* (the Statute), and the Rules and Regulations of the Federal Labor Relations Authority (the Authority), 5 C.F.R. part 2423.

On June 15, 2009, the American Federation of Government Employees, Local 2608 (the Union or the Charging Party) filed an unfair labor practice charge against the Social Security Administration (SSA), Carolina Field Office, Carolina, Puerto Rico (the Agency or Respondent). The Union filed an amended charge on April 5, 2010. After investigating the charge, the Regional Director of the Denver Region of the Authority issued a Complaint and Notice of Hearing on April 23, 2010, alleging that the Agency: (1) implemented changes in the conditions of employment of bargaining unit employees without providing the Union an opportunity to negotiate to the extent required by the Statute, in violation of section 7116(a)(1) and (5) of the Statute; and (2) held a formal discussion of the changes with employees without affording the Union an opportunity to be represented, in violation of sections 7114(a)(2)(A) and 7116(a)(1) and (8) of the Statute. The Respondent filed its Answer to the Complaint on May 7, 2010, denying that it committed an unfair labor practice.

A hearing was held in this matter on August 20, 2010, in San Juan, Puerto Rico. All parties were represented and afforded an opportunity to be heard, to introduce evidence, and to examine witnesses. The General Counsel (GC) and the Respondent filed post-hearing briefs, which I have fully considered.

Based on the entire record,[1] including my observation of the witnesses and their demeanor, I make the following findings of fact, conclusions of law, and recommendations.

[1] The General Counsel moved to correct the transcript as follows:

Page 22, line 20: change "older" to "other"
Page 22, lines 22 and 23: change "Tourist Service" to "Teleservice"
Page 72, line 16: change "evolves" to "involves"
Page 90, lines 11 and 12: change "lonesome debt" to "lump sum death"

The Respondent did not oppose this motion, and I grant it in accordance with section 2423.21(b)(4) of the Authority's Regulations. Additionally, Page 66, line 14, "do" should be changed to "go".

FINDINGS OF FACT

The Respondent is an agency within the meaning of section 7103(a)(3) of the Statute. GC Ex. 1d, 1e. Among its many functions, the Carolina Field Office prepares, processes and adjudicates disability, retirement, survivors and SSI claims from the public. Tr. 21-22. Since April 16, 2009, Luis Rosa has been the District Manager of the Carolina Field Office, and Awilda Martinez was its Operations Supervisor from April 2007 to February 2010. Tr. 190, 243, 262. Most of the employees in the office are either Service Representatives (employees at GS Grades 5 through 8 who work in the reception area and interact with the public, answering their questions about the Agency's various programs and instructing them how to go about filing claims) or Claims Representatives (employees at GS Grades 5 through 11 whose primary duties are to interview claimants, help them file claims, and then adjudicate the many different types of claims and appeals). Tr. 21-22, 67-68, 74-75. In 2009,[2] the Carolina Field Office had two SRs and approximately fourteen CRs. Tr.145, 193. CRs also help the SRs with reception, or visitor intake, duties, and it is this work that is the focus of our dispute. Tr. 25, 62-63, 74, 77, 111, 126, 184-85, 192-93.

The American Federation of Government Employees, AFL-CIO (AFGE), a labor organization within the meaning of section 7103(a)(4) of the Statute, is the exclusive representative of a nationwide unit of employees at SSA. GC Ex. 1d, 1e. The Charging Party, AFGE Local 2608, is an agent of the AFGE for the purpose of representing employees (including the SRs and CRs) at the Carolina Field Office and other SSA offices in Puerto Rico and the U.S. Virgin Islands. *Id.*; Tr. 22-23.

The Carolina Field Office opens to the public at 7:30 every morning, but employees report to work as early as 7:00 a.m. and can "flex" their arrival any time between 7:00 and 9:00 a.m. Tr. 115-16. SRs work in the reception area performing visitor intake all day, while most of the CRs spend a large part of their day interviewing claimants with pre-scheduled appointments. Prior to April 2009, CRs conducted three retirement claim interviews (at 7:30 and 8:00 a.m. and 1:15 p.m.) and two disability claim interviews (at 9:00 and 10:30 a.m.) per day, except for two or three CRs, who were assigned, on a rotating basis, to assist the SRs with the visitor intake work. One CR was also assigned as a "flex-CR," who was responsible
for handling all the items left by customers in the office mailbox. Additionally, every CR was given one "quiet day" every two weeks, during which they would be allowed to work without interruption on their claims adjudications, appeals, and reconsideration cases.[3]

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[2] All dates are 2009 unless otherwise noted.

[3] According to the testimony of some employee witnesses, the Union and Agency had negotiated an agreement several years earlier that assured employees a full, uninterrupted day of quiet for their adjudications, but the details of who negotiated it, or exactly what it provided, were ambiguous at best. Although Agency witnesses were not aware of any union-management agreement concerning quiet days, they did agree that there had been a longstanding practice in the Carolina office of setting aside one quiet day every two weeks for each employee, and that management honored this practice up until April 2009. While the evidence is insufficient to establish that there was a negotiated agreement on the subject of quiet days, I do find that the practice of assigning each employee one

At least as early as March, management officials in SSA Area IV (Puerto Rico and the U.S. Virgin Islands) recognized that customers at many SSA field offices had to wait an unacceptable amount of time to see a representative.[4] In the fiscal year starting October 1, 2008, through February 27, 2009, the overall waiting time for visitors to the Carolina office was 95.6 minutes, and 102 minutes for visitors without an appointment; Carolina was among the two or three worst offices in Area IV in this regard. GC Ex. 21 at 16. As a result, Area IV management formed a workgroup to study office procedures and formulate recommendations for reducing waiting times by at least 20 percent, and to an average waiting time of 30 minutes or less. *Id*. at 1, 18, 21. A set of areawide "Principles for Reducing Waiting Times" was developed by the workgroup, and these principles were adapted to the specific circumstances of the Carolina office after the workgroup visited the office. *Id.* at 8-10, 14-15. The thrust of the Agency's strategy was to engage as many employees as possible in meeting with customers as soon as the office opens, to screen the customers immediately in order to identify their needs, and to prioritize those customers whose needs can be addressed quickly. *Id.*; Tr. 191. Ms. Martinez, the Operations Supervisor, advised Carolina employees on March 26 that they would be making "some changes in Reception" in April in order to reduce waiting time, but that the details of those changes would be decided by the new manager. GC Ex. 4 at 2; Tr. 120-21.

When Mr. Rosa, the new District Manager, took over at Carolina on April 16, he and Ms. Martinez reviewed the recommendations of the workgroup and decided on a series of changes designed to reduce customer waiting times. Tr. 194-95, 245. The changes, which were implemented beginning May 11,[5] included:

1. Pre-scheduled retirement interviews earlier than 9:00 a.m. have been eliminated, so that CRs can focus on visitor intake and reception duties in the early morning, when the waiting room is busiest. Tr. 82-83, 218, 248.

2. CRs are now scheduled for four interviews a day, rather than five. Previously, CRs conducted two retirement interviews in the morning, plus two disability interviews starting at 9:00 and 10:30 a.m. and a third retirement interview at 1:15 p.m. Now, they conduct two disability interviews in the morning, at 9:00 and 10:30, and two retirement interviews in the afternoon, at 1:15 and 1:45. Tr. 82-83, 155-56.

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quiet day every two weeks had become a condition of employment in the years leading up to 2009.

[4] Indeed, a series of GAO reports on service and staffing issues at SSA makes it clear that increased field office waiting times had been a source of national concern for several years. GC Ex. 14.

[5] I have accepted May 11 as the date of implementation, although most of the witnesses were uncertain about the precise time frame of the events of the case, and most of them (including counsel for both parties) placed the events in late April. The only witness who testified precisely on this matter was Rosa, who stated that he met with employees on May 5 and 8 to introduce the changes in office procedure and that the new procedures were implemented the following Monday, which was May 11. Tr. 249, 254. Since he had just taken over as District Manager a few weeks earlier, it is likely that he had a better recollection of the dates. Therefore, I will refer to the employee meetings in dispute as the May 5 and May 8 meetings, and to the implementation date of the changes as May 11.

3. CRs are now required to help the SRs with reception and visitor intake prior to 9:00 a.m. Employees still are not required to report to work before 9:00, but those who choose to do so must devote the time from 7:30 to 9:00 to visitor intake, even on their quiet day. Tr. 80, 165, 245.

4. The "flex-CR" assignment has been eliminated, and the work handling the mail has been reassigned to SRs, to be performed after hours. Tr. 181-82, 213-15.

5. One employee each day (either an SR or a CR) is now assigned as a "screener," who directs the traffic of visitors, identifies the purpose of every visit, and tries to ensure that the visitor is seen by the appropriate employee. Tr. 77-78, 182; GC Ex. 21 at 9, 14.

Employees and managers testified as to the impact of these changes in the Carolina office. It appears that there was confusion on the first day of implementation, as some claimants who had previously been given early morning interview appointments had not been notified that their interviews had been rescheduled, and employees were not fully familiar with the duties of the screener. Tr. 132-33, 166-67, 182. Sometimes, CRs are assigned (even on their quiet day) to relieve the SRs when the SRs are on lunch break, but it is not clear whether this is a consistent practice. Tr. 78, 136-37. In the past, two or three CRs were assigned to work all day in the reception area, and never on their quiet day; the other CRs interviewed claimants and adjudicated their cases. Tr. 154-55, 192-93. Now, on most days, between four and seven CRs are assigned to work all day in reception,[6] and all CRs who flex to work before 9:00 a.m. work in the reception area from 7:30 to 9:00. There are approximately six CRs who regularly report at 7:00 a.m. Tr. 131, 186-87. In the past, CRs were free to work their cases (i.e. adjudicate) after they finished their 1:15 p.m. retirement interview, but now they cannot do so until they have finished their 1:45 retirement interview. Some of the CRs feel that their job has become more stressful, and that they don't have enough time to adjudicate their cases. Tr. 99-100, 131-32, 175, 178-79. Martinez and Rosa believe that employees have enough time to complete their work, noting that the CRs now are assigned one less interview than before, and that CRs are taken away from reception duties when they say they need more time for their cases. Tr. 203-04, 255-56. Rosa told employees that overtime and comp time would be made available for them after April, but some of the CRs' personal commitments prevent them from working late. Tr. 80, 84-85, 129, 180. The CRs who report to work early feel that they are being treated unfairly in comparison to the employees who report closer to 9:00 a.m. Tr. 45-47, 131-32. Both employee and management witnesses agreed that after the new procedures took effect, CRs were not asked to handle their own appeals; instead, a single CR is assigned to handle all appeals for a few

[6] On GC Ex. 3, the daily assignment chart for August 2010, days that an employee is assigned to reception duties are marked with an "R." On most days in August 2010, between four and seven employees were assigned to reception.

months, and then the job is rotated. Tr. 39, 112-13, 134-35, 140-41, 212, 218. Some CRs have not handled any appeals for a year or more. Tr. 39, 134. Handling appeals and adjudicating claims are core duties of a CR, while visitor intake is not, and the employees are concerned that the new emphasis on visitor intake will adversely affect their performance evaluations and promotion potential. Tr. 25, 38-40.

Since the changes were made in the Carolina office, customer waiting times have been reduced significantly, from 95-100 minutes to 15-25 minutes. Tr. 196, 249. According to Martinez, the assignment of additional CRs to visitor intake early in the morning often helped to empty the waiting room by 9:30 a.m., which in turn relieved the pressure on all employees. Tr. 204-06.

As noted earlier, two meetings were conducted to announce the new visitor intake procedures: the first one was held on Tuesday, May 5, and the second on Friday, May 8. Tr. 249.[7] Employees were notified of the May 5 meeting by a "pop-up" announcement placed on their computer screens by a manager. Tr. 122, 163. The meeting was held in the conference room, and it was attended by all employees. Tr. 123, 163-64, 197, 250. It began at about 2:00 or 2:30 p.m., and witnesses estimated variously that it lasted between thirty minutes and an hour. Tr. 123, 126, 166, 198 250. There was no written agenda for the meeting, and most witnesses agreed that nobody read from, or took, notes. Tr. 125, 198, 251; but see Tr. 166. Both the Operations Supervisor and the Manager spoke at the meeting; Martinez introduced Rosa, and both of them explained to employees the purpose of the new procedures and the details of the changes in the appointment calendar and in staffing the reception area between 7:30 and 9:00 a.m. Tr. 124-25,164-65, 198-99, 251. No Union representative was present at the meeting, and when an employee asked why, Rosa stated that this was an operational meeting, not a meeting in which working conditions were discussed. Tr. 126, 165-66.

Employees were also advised of the May 8 meeting by a pop-up announcement, late on the Friday afternoon before the changes were implemented. Tr. 80, 96, 199, 252-54. This meeting was held on the work floor, next to Martinez's workstation, with most employees standing in the surrounding area. It was a much shorter discussion, lasting between ten and thirty minutes. Tr. 81, 96, 200-01, 253. According to the two managers, the meeting was called simply to remind the employees that they would be starting the new interview and reception system the following Monday, and thus it was very brief. Tr. 200-01, 254. One

[7] *See* note 5, *supra*. I do not describe or analyze the meeting held by Martinez on March 26, as the General Counsel has not alleged that meeting to be unlawful. GC's Brief at 7.

employee did express concern that her quiet day would be interrupted by having to work in the reception area. Tr. 201, 255. The Respondent did not notify the Union in advance of either the May 5 or May 8 meeting or give the Union an opportunity to be represented.[8]

The Union learned about the new visitor intake procedures in late April, when bargaining unit employees at several different offices in Puerto Rico advised the Union president that Agency managers were discussing these changes with them. Tr. 24-25. At the direction of the AFGE's regional vice-president, the president of Local 2608 wrote to SSA Regional Commissioner Beatrice Disman on April 27, demanded to bargain, and requested that the Agency delay implementation of any changes until bargaining had been completed. GC Ex. 2. The Agency did not respond to this letter, and it implemented the changes described above on May 11, as scheduled. Tr. 27.

DISCUSSION AND CONCLUSIONS

Positions of the Parties

General Counsel

The General Counsel argues that the new visitor intake procedures introduced in May changed the conditions of employment for Claims Representatives, and that the actual or foreseeable impact of this change was more than *de minimis*. Therefore, the GC asserts that the Agency had an obligation to notify the Union in advance of the change and to negotiate with the Union over its impact and implementation; the Agency's failure to fulfill this obligation violated section 7116(a)(1) and (5) of the Statute. Additionally, the GC alleges that the May 5 and May 8 meetings were formal discussions, within the meaning of section 7114(a)(2)(A); accordingly, the Agency's failure to notify the Union of those meetings or to give the Union an opportunity to be represented violated section 7116(a)(1) and (8).

Specifically, the GC alleges that the Agency changed conditions of employment by (1) requiring all CRs on duty between 7:30 and 9:00 a.m. to work in the reception area; (2) requiring CRs to work in reception even on their quiet days; (3) adding the job of screener to the visitor intake-reception duties; and (4) changing the way that CRs handle appeals.

[8] There was little consistency in the testimony of the witnesses regarding the meetings. Ms. Rodriguez described only a Friday meeting, and her description matched closely with that of the managers regarding the May 8 meeting. Tr. 80-91, 96-97. Mr. Garcia initially described two meetings conducted by Martinez and Rosa (Tr. 122-26, 127-28), but later indicated that Rosa only attended one meeting (Tr. 158-59). Ms. Benitez also described only one meeting, but her description matched other witnesses' descriptions of the May 5 meeting, in the conference room. Tr. 163-66. Since the hearing was held more than a year after the events in question, these inconsistencies are not surprising, but overall I credit the managers' descriptions as more accurate, consistent, and certain. Accordingly, I find that Rosa and Martinez held two meetings to explain the changes to employees in the week immediately before implementation. The May 5 meeting was longer, and it was here that the new procedures were explained in detail. The May 8 meeting was very brief, called simply to remind employees that the new system would begin the next Monday.

The General Counsel begins by asserting that work duties, including the assignment of additional tasks, are a condition of employment. *U.S. Dep't of the Air Force, 913th Air Wing, Willow Grove Air Reserve Station, Willow Grove, Pa.*, 57 FLRA 852 (2002)(*Willow Grove*). The GC concedes that CRs have always had to perform reception duties, but it argues that the Agency greatly increased the amount of such work. Previously, the job of working in the reception area was a rotated assignment, and on days when they were not assigned to reception, CRs could count on being able to conduct claims interviews and work their cases, which are their primary responsibilities, and on which their appraisals are based. Moreover, they never previously had to perform reception work on their quiet days, and this allowed them one full day every two weeks to focus on their case work without interruptions. Not only are they required now to work at reception much more often than before, but the nature and requirements of that work changed with the creation of the job of reception screener. According to the GC, this job requires entirely new skills, for which they were not given advance training. Thus, the GC asserts that the new visitor intake procedures affected the Claims Representatives' conditions of employment.

One indicator of the magnitude of the impact of the additional reception duties is the fact that the Agency stopped requiring CRs to handle the appeals of their own cases, instead assigning a single CR to handle all appeals for a few months at a time and then rotating the assignment to another CR. According to the General Counsel, this was a recognition by management that the CRs' increased reception duties would cut into their ability to handle all their case work. However, insofar as appeals were a duty on which they were appraised, and a skill that affected their prospects for promotion, CRs were adversely affected by not handling appeals for many months at a time. The CRs who report to work earliest were also concerned that they were being unfairly required to bear the brunt of the additional reception duties. They testified that they felt they had less time to perform their primary duties, and for some of them, their personal commitments prevented them from working the overtime and credit hours that were made available for employees to make up their work. Tr. 84, 100, 109-10, 129, 178. Having to walk more often to the reception area was particularly difficult for Benitez, because she has knee problems, and for a time she was reassigned to a different office. Tr. 167-74. Benitez has now decided to retire early because of the stress, while Garcia is considering either retiring or reducing his work day from nine hours to eight. Tr. 141-42, 175, 268-69.

The GC attempted to quantify the impact of the changes, both in the amount of additional time CRs spent doing visitor intake and on the reduction in claims "cleared" (i.e. filed) by the CRs. Using the month of August 2010 as an example of the CRs' schedule under the new system, the GC estimated that Rodriguez spent 22 ¼ more hours, out of the total 136 hours she worked that month (or 16 percent), performing reception duties than she did in typical months under the old system. Tr. 75-79; GC Ex. 3. Similarly, Garcia spent 37 more hours (23 percent of his total hours) and Benitez spent 22 more hours (15 percent) in August 2010 doing reception work than they did in the old system. GC Ex. 3. Using a table that breaks down the numbers and types of claims that each CR cleared every month from

2007 to 2010, the Union and the GC estimated that Rodriguez cleared 22 percent fewer disability claims in the thirteen months from March 2008 through March 2009 than she did in the thirteen months from May 2009 through May 2010; similarly, Benitez cleared 40 percent fewer disability claims in that period, while Garcia actually cleared 11 percent more disability claims. Tr. 33-38; GC Ex. 13.[9]

The General Counsel argues that the Authority's decisions in *Soc. Sec. Admin., Malden Dist. Office, Malden, Mass.*, 54 FLRA 531, 536-37 (1998)(*SSA Malden*), and *Soc. Sec. Admin., Gilroy Branch Office, Gilroy, Cal.*, 53 FLRA 1358 (1998)(*SSA Gilroy*), are directly applicable to the instant case. In those cases, SSA Claims Representatives had their duties or work assignments changed in different ways, and the Authority found in both instances that the Agency was required to negotiate with the Union over the impact and implementation of the changes. The GC asserts that the changes made to the CRs' assignments in our case were even more extensive (taking up to a quarter of their work day), and that the impact of the changes should accordingly be found to be more than *de minimis*. *See also U.S. Dep't of Labor, Occupational Safety & Health Admin.,* 24 FLRA 743 (1986). The GC further argues that the procedures implemented in April upset union-management understandings that had been negotiated in earlier years -- one such understanding resulted in the creation of the position of Flex CR, and the other recognized that CRs would have a full quiet day every two weeks. Counsel finally cites *U.S. Dep't of Veterans Affairs Reg'l Office, San Diego, Cal.*, 44 FLRA 312, 320 (1992), and *U.S. Dep't of Health & Human Serv., Soc. Sec. Admin., Balt., Md.*, 41 FLRA 1309, 1317-18 (1991)(*SSA Baltimore*), in support of its argument that the changes here required advanced notice to and bargaining with the Union.

With regard to the May 5 and May 8 meetings, the GC argues that both meetings concerned a "personnel policy or practices, or other general condition of employment[,]" within the meaning of section 7114(a)(2)(A) of the Statute, and they both met the formality criteria established by Authority precedent. Citing *F.E. Warren Air Force Base, Cheyenne, Wyo.*, 52 FLRA 149, 155-57 (1996)(*Warren AFB*), the GC asserts that the subject matter alone (announcing a significant change in working conditions for CRs) rendered the meetings formal; nonetheless, it additionally asserts that the manner in which the meetings were held met the formality criteria of the Statute.

The first meeting, by all accounts, lasted considerably longer than the second, was conducted by the two levels of management in the Carolina office, was held in a room separate from the employees' general work area, and was announced to employees in advance. Even though there was not a formal agenda for the meeting and notes were not taken, the GC asserts that it followed a logical sequence and the managers used the meeting to engage in discussion with the employees about the new working conditions and how the new practices would affect the employees. Thus, while the first meeting did not have all the traditional characteristics of formality, the GC argues that in totality it was formal.

[9] In its post-hearing brief, the GC sought to correct an error in the Union president's methodology. In order to eliminate this error, the GC compared the number of disability claims cleared, rather than the total number of claims cleared. See GC's Brief at 12-15.

The General Counsel concedes that the second meeting (May 8) had fewer of the formality criteria than the first meeting, but insists that it was formal nonetheless. It argues first that the May 8 meeting was "merely a continuation or coda to the first meeting and should be considered 'formal' for this reason[.]" GC's Brief at 19. While the GC does not elaborate on this reasoning, it apparently is based on the fact that both meetings were called for the purpose of discussing significant changes in conditions of employment; therefore, by virtue solely of the subject matter of the May 8 meeting, it was formal. Even if the formality criteria are examined, however, the GC insists that the May 8 meeting was formal. It was mandatory, it was announced in advance, and it was conducted by both the first- and second-level supervisors.

As a remedy for these unfair labor practices, the General Counsel seeks *status quo ante* relief for the refusal to bargain before implementing the new procedures. Specifically, it requests that the Agency rescind the new procedures until it has fully negotiated with the Union over the impact and implementation of those procedures, and that the Agency post a notice to employees regarding its duty to bargain and the Union's right to representation at formal discussions. In accordance with *Federal Correctional Institution*, 8 FLRA 604, 606 (1982)(*FCI*), the GC asserts that the factors relevant to the appropriateness of *status quo ante* relief weigh in its favor here: the Agency's failure to bargain was willful, the Union was given no advance notice of the new procedures, the Union had no opportunity to bargain, the adverse impact of the new procedures is significant, and rescinding the changes would not disrupt or impair the Agency's operations.

Respondent

The Respondent denies that it had any obligation to bargain over the impact or implementation of the new visitor intake procedures at the Carolina office, because those procedures did not change employees' conditions of employment. It further contends that there was only one meeting at which its managers explained the new procedures to employees, and that meeting was not formal, within the meaning of section 7114(a)(2)(A).

With regard to the refusal to bargain charge, Respondent states that the implementation of new visitor intake procedures was merely an assignment of work to CEs. Not only did management have the right to make this decision unilaterally under section 7106(a)(2)(B), but the decision did not cause any change in conditions of employment. Assigning CEs to work in the reception area was not new in 2009: rather, it was a duty that CEs had always performed, a fact that the employees themselves confirmed. Tr. 126, 184-85. While some CRs might now be required to do more reception and visitor intake work than before, the number of claims interviews assigned to each CR was reduced. Citing *U.S. Dep't of Homeland Sec., Border & Transp. Sec. Directorate, U.S. Customs & Border Prot., Border Patrol, Tucson Sector, Tucson, Ariz.*, 60 FLRA 169, 173-74 (2004)(*Border Patrol*), Respondent asserts that an increase in the same type of work is not a change in conditions of employment, and that assigning CRs an additional 1 ½ hours of reception duties per day was

comparable to the additional processing of aliens that agents performed in the latter case. *See also U.S. Dep't of Veterans Affairs Med. Ctr., Sheridan, Wyo.*, 59 FLRA 93, 94-95 (2003) (*VA Sheridan*), where an increase in the number and acuity of patients admitted did not represent a change in the hospital's admission policy.

In order to emphasize the continuity in the CRs' conditions of employment, the Respondent notes the many aspects of the CRs' work that was unchanged, such as their hours of work, pay, and benefits; they did not miss lunch or breaks, nor were they denied leave; and they were not assigned new duties. Respondent further insists that the use of a "screener" in the waiting room was not a new position, but rather a part of the overall job of dealing with walk-in customers during visitor intake; and that reassigning the "flex CR" work to SRs was not a change, because this was an SR duty. Tr. 215.

Alternatively, the Respondent argues that even if the new reception procedures represented a change in conditions of employment, its impact on bargaining unit employees was *de minimis*. Citing many of the same factors as in its rationale that there was no change in conditions of employment (i.e., hours of work, lunch and breaks, pay and benefits, and leave availability were all unchanged, and employees were not assigned new duties), Respondent asserts that these facts also show that any change in procedures had no real impact on the CRs. Respondent further argues that many of the adverse consequences of the new procedures alleged by the GC are either speculative or refuted by the evidence. For instance, it is mere speculation that the loss of 1 ½ hours of quiet time every two weeks will hinder the CRs' ability to complete their work and adversely affect their performance evaluations. All of the employees who testified at the hearing had received either better, or equivalent, evaluations for the year subsequent to the change than they had for the previous year; the managers testified that they are quite satisfied with the production of the CRs since the change, and that employees are completing their work in a timely manner. Although none of the three employees who testified had received performance awards for the most recent year, Respondent says there is no evidence that this was a result of the new visitor intake procedures. And while employees feared that the additional time spent on reception duties would harm their promotion potential, one Carolina employee has received a permanent promotion and another has received a temporary promotion. Tr. 57-58. Finally, the Respondent disputed the meaning of the claims clearance statistics in GC Ex. 13. Some CRs had actually handled more claims in the year since the changes were implemented, while others handled approximately the same number as before. Moreover, the chart and raw numbers demonstrate no causal connection between any reduction in claims and the change in reception procedures.

Looking at the case law, Respondent submits that *SSA Gilroy*, cited by the General Counsel, is inapplicable to the case at bar, as the facts of that case are vastly different from ours. The CRs in *SSA Gilroy* incurred a substantial workload increase by the addition of six claims interviews on their quiet day, and this was a change that affected all the CRs, not merely those CRs who chose to come to work early. Management in *SSA Gilroy* did not balance the work increase with any accompanying reductions, whereas Carolina management

balanced the CRs' increased reception duties with a reduction in their claims interviews. Moreover, the changes here have not required the employees to work overtime or to miss lunches or breaks. Consequently, the Respondent submits that, after looking at the totality of the evidence, the impact of the new visitor intake procedures has been *de minimis.*

With regard to the formal discussion charge, the Respondent addresses only the May 8 meeting and asserts that this meeting was not formal.[10] Respondent noted that the meeting was held outside Martinez's workstation, lasted only 10-15 minutes, had no agenda and no notes were taken. All of these facts, in the Respondent's view, emphasize the informality of the meeting. But Respondent acknowledges that the subject matter and content of the meeting are also relevant factors in this regard. If the new visitor intake procedures are found to be changes in working conditions having more than a *de minimis* impact on employees, then the meeting introducing those changes to the employees would likely be considered a formal discussion under 7114(a)(2)(A). Respondent's Brief at 22. However, since the Respondent has already demonstrated that the new procedures did not have more than a *de minimis* impact on employees' working conditions, it argues that the meeting did not concern working conditions, and the Union had no right to be notified and represented there.

Finally, on the question of a remedy for any unfair labor practice, the Respondent insists that *status quo ante* relief would be inappropriate here, in light of the *FCI* factors. Specifically, it argues that rescinding the new visitor intake procedures would cause serious disruption in government operations. The new procedures had reduced customer waiting times from over 100 minutes to between 15 and 20 minutes; a return to the old procedures would destroy this progress and restore an untenable situation.

Analysis

The Respondent Changed Conditions of Employment

Prior to implementing a change in conditions of employment, an agency is required, by section 7116(a)(5) of the Statute, to provide the exclusive representative with notice of the change and an opportunity to bargain over those aspects of the change that are within the duty to bargain, if the change will have more than a *de minimis* effect on conditions of employment. *U.S. Dep't of the Air Force, Air Force Materiel Command, Space & Missile Sys. Ctr. Detachment 12, Kirtland Air Force Base, N.M.*, 64 FLRA 166, 173 (2009)(*Kirtland AFB*). In such cases, when an agency exercises a reserved management right and the substance of the decision is not itself within the duty to bargain, the agency nonetheless has an obligation to bargain over the procedures to be used in implementing the decision and

[10] It is unclear why the Respondent only addresses one of the two meetings that week, because Respondent's own witnesses both described two meetings, one on a Tuesday and one on that same Friday. Tr. 197, 199-200, 249-54. Respondent refers to the meeting occurring on a Friday, near Martinez's workstation, so it is clear that counsel is describing the May 8 meeting. Respondent's Brief at 6, 21.

appropriate arrangements for employees adversely affected by the decision. *SSA Malden*, 54 FLRA at 536-37; *Dep't of Health & Human Serv., Soc. Sec. Admin.,* 24 FLRA 403 (1986) (*HHS, SSA*). In applying the *de minimis* doctrine, the Authority looks to the nature and extent of either the effect, or the reasonably foreseeable effect, of the change on bargaining unit employees' conditions of employment, at the time of the change. *Kirtland AFB,* 64 FLRA
at 173. The appropriate inquiry involves an analysis of the reasonably foreseeable effects of the change based on what the Respondent knew, or should have known, at the time of the change. *Portsmouth Naval Shipyard, Portsmouth, N.H.*, 45 FLRA 574, 575 (1992). Some of the factors considered by the Authority in making this analysis were listed in decisions such as *HHS, SSA*, 24 FLRA at 407, but the Authority also made it clear that the relevant factors will vary from case to case.

In asserting that it did not change the conditions of employment of its employees here, the Agency does not dispute that the assignment of work to the CRs -- assigning them to help the SRs perform visitor intake, adjusting the number of claims interviews they conduct, or directing them as to how appeals will be handled -- fits within the definition of "conditions of employment" under section 7103(a)(14) of the Statute. Rather, it argues that the procedural adjustments implemented in May 2009 did not change those conditions of employment. Such a determination requires an inquiry into the facts and circumstances regarding the Agency's conduct and the employees' conditions of employment. *92 Bomb Wing, Fairchild Air Force Base, Spokane, Wash.*, 50 FLRA 701, 704 (1995).

The simple answer to the Agency's contention is the same answer posed in *Fairchild AFB*: the Agency acknowledges that it changed: (1) the number of claims interviews each CR was assigned; (2) the times of those interviews; (3) the type of work that CRs were required to perform between 7:30 and 9:00 a.m.; and (4) the manner in which appeals were handled. It further acknowledges (5) that it required CRs, for the first time, to perform visitor intake work even on their quiet days. In so doing, it "imposed a practice that was different from what previously existed and, consequently, constituted a change in conditions of employment." *Id.*

The Respondent insists, however, that the inquiry must go further, in light of the *Border Patrol* decision. In holding that the agency in that case did not change the agents' conditions of employment by transporting apprehended aliens from one station to another for processing, the Authority stated there was no evidence the agency "promulgated any policy or took any action that resulted in the larger number of aliens that were apprehended." *Border Patrol*, 60 FLRA at 173. Citing *VA Sheridan*, 59 FLRA at 94, the Authority noted further that the agency did not change any "policy, practice, or standards" related to the processing of aliens. *Border Patrol*, 60 FLRA at 174. Thus, while the Respondent is correct that an increased volume of work, by itself, does not change conditions of employment, an agency's change in policy or practices regarding how or when employees perform their work, which results in an increase in employees' workload, may constitute a change in conditions of employment. And this is what the Agency did here.

CRs at Carolina began performing more visitor intake work in May 2009 than they had previously, because the Agency (among other things) increased the number of hours that CRs were required to work in the reception area. Seeing more walk-in visitors was not, itself, the change in policy or practice, but rather it was the **consequence** of a new Agency policy requiring CRs to rearrange their work schedule and to devote the time between 7:30 and 9:00 a.m. solely to visitor intake. Moreover, at the same time as the Agency began requiring CRs to work in the reception area from 7:30 to 9:00, it moved the CRs' daily claims interviews from that time period to the afternoon. The Respondent misconstrues the nature of the employees' complaint about the change as simply an increase in visitor intake work, when in reality it was a complaint about the restructuring of the CRs' work day and workload, so that more of their time is spent in visitor intake and less in filing claims and clearing cases. As a result of moving the retirement claims interviews from morning to afternoon, and of requiring CRs to work in the reception area from 7:30 to 9:00 a.m., CRs have less time in the afternoon to devote to their case work, and a larger portion of their overall work day is spent in visitor intake, which is not a core duty of CRs. A corollary of the requirement that CRs work in visitor intake from 7:30 to 9:00 was the application of this rule to employees on their quiet days, further reducing the time available for CRs to work on their cases. Having increased the CRs' work and reduced the time available for them to do their work, the Agency tried to "balance" these policy changes by eliminating one retirement claim interview per day and by changing the method in which appeals cases are handled. No longer do CRs handle the appeals of their own cases; instead, one CR is assigned all appeals for an extended period of time. Consequently, CRs are spending a smaller portion of their work time on appeals and claims interviews, which are core CR duties on which their appraisals depend, and a larger portion of their time on visitor intake, which is actually a core duty of the SRs. These changes did not occur organically, as a result of increased customer flow, but rather as the direct result of changes in policy and practice by Carolina management.

To summarize thus far, I find that the Agency did change the CRs' conditions of employment by: (1) requiring all CRs in the office between 7:30 and 9:00 a.m. to work in the reception area doing visitor intake during that time period; (2) moving the two early-morning retirement claim interviews to the afternoon; (3) reducing the number of retirement claim interviews per day for each CR from three to two; (4) requiring CRs to perform visitor intake duties even on their quiet days; and (5) changing the way that appeals cases are handled.

Contrary to the General Counsel, however, I do not find that the Respondent changed conditions of employment by creating a new job of "screener." While it is clear that such a job was created when the new procedures were implemented, the screening function was simply one aspect of working in the reception area, and it did not require appreciably different skills than those already possessed by both SRs and CRs. One technique identified by the Agency in its new program to reduce customer waiting times was the assignment of one employee to screen the customers immediately on their arrival and to direct them to the most appropriate CR or SR for assistance. GC Ex. 21 at 9, 14. Although Carolina employees were not trained how to perform this task prior to the implementation of the new

procedures, the screener was simply applying skills used by all employees during visitor intake. The record does not demonstrate that the CRs' job changed in any meaningful way or was made more difficult when they were assigned to screen walk-in visitors. Compare this with the assignment of intelligence duties to employees in *U.S. Dep't of Justice, Immigration & Naturalization Serv., U.S. Border Patrol, San Diego Sector, San Diego, Cal.*, 35 FLRA 1039, 1047-48 (1990); and with the assignment of new duties never previously performed by CRs in *SSA Malden*, 54 FLRA at 537.

The Agency was, of course, entitled to respond to the problem of long customer waiting times by making changes in its assignment practices and by devoting extra resources to visitor intake, pursuant to its section 7106 management rights. But if the foreseeable effects of those changes on employees were more than *de minimis*, then the Respondent was required to negotiate with the Union concerning the impact and implementation of the changes. Since I have found that the Agency did make changes to the CRs' conditions of employment, my analysis turns to the effects of those changes.

The Changes Were More Than *De Minimis*

As discussed already, the *de minimis* doctrine looks to the "nature and extent" of the effects of the changes. *Kirtland AFB*, 64 FLRA at 173. Thus, the analysis incorporates both a qualitative and quantitative evaluation of those changes. In the previous section, I described the nature of the changes, or their qualitative aspects. It is a bit more difficult to quantify all of the changes, because some types of work were reduced at the same time as others increased, but an overall picture emerges nonetheless.

The most obvious and direct impact of the new system was on those CRs who report to work at or before 7:30 a.m., as they now spend one and a half hours every day performing reception/visitor intake work. Prior to May 2009, CRs would occasionally be assigned to work at the reception area for the entire day -- on the average of once or twice a week -- but they did not do so at all on the other days. Tr. 126, 185. GC Ex. 3 reflects that even after the new system was implemented, CRs are still assigned all day to reception about twice a week (those days marked with an "R," "Rx," or "W"), but they are also working at reception every other day, from 7:30 to 9:00 a.m.[11] The General Counsel calculated that in August 2010 Rodriguez performed reception duties 22 hours more than under the old system, while Garcia performed those duties 37 more hours and Benitez performed them 21 more hours than before, and that appears to be a valid and representative comparison between the old and new

[11] There was no evidence that the month represented in GC Ex. 3 was atypical or otherwise unrepresentative, and the witnesses' testimony generally corroborated the facts set forth in the exhibit.

schedules. This significantly limits the time available for them to handle their regular case assignments.[12] Approximately six of the fourteen CRs report to work by 7:30 a.m. and thus bear the brunt of the new requirement to work in the reception area, but all employees must report by 9:00 a.m., so almost all CRs will work at reception more now than they had before. No CR is unaffected by the change: because all employees are subject to the same performance and case-handling standards, those CRs who don't perform reception duties every morning benefit from the new system, at the expense of the early-reporting employees. The late-reporting CRs don't have their case-handling time or their quiet time reduced by the early morning reception work, and thus they have more time to handle their workload than the other employees.

The disparate impact of the new system is also noticeable on the CRs' quiet days. CRs have only one quiet day every two weeks, and historically they have had unfettered control of their time on this one day. On this day, they can allot their time and focus their priorities in the areas they feel are most important for them, without interruption. For an employee like Rodriguez, who must start work at 7:00 so that she can leave at 3:30 to pick up her son, her quiet days now begin at 7:00, but at 7:30 she needs to shift gears (physically and mentally), stop whatever she is doing, and go to the reception area. She can resume her own case work after 9:00, but her morning is now half over, and the visitor intake work constitutes a significant interruption in her routine. Some CRs may choose to delay their arrival on their quiet days until 9:00, but some employees do not have that flexibility, and they are thus carrying an unequal share of the burden of the new visitor intake procedures. It is reasonable to expect that the CRs who arrive at work later, and spend less time performing visitor intake work, will be able to handle more cases than the early-reporting CRs. And when the early-reporting Carolina CRs compete for promotions against the late-reporting CRs, as well as against CRs from other offices, their productivity is likely to be adversely affected by the reduced amount of time they were able to devote to case handling.[13]

I recognize that the Agency reduced some other work demands on the CRs at the same time as it increased their visitor intake duties. The record suggests, without being able to quantify the matter precisely, that retirement interviews take an average of 30 minutes to complete, and the CRs now conduct two, rather than three, such interviews on days that they

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[12] I do not, however, consider GC Ex. 13, the chart of cases cleared by each CR, to be persuasive evidence of the impact of the new system on the CRs' productivity. There are too many unexplained variables that might explain these raw numbers to attribute the changes in cases cleared to any one cause.

[13] I do not consider it significant, in this context, that the CRs who testified at the hearing received equivalent or better performance appraisals for the year after the new system was implemented than for the previous year, nor do I consider it significant that they failed to receive performance awards for the most recent year, or that two CRs in the Carolina office were promoted in the subsequent year. As I noted in note 12, *supra*, there are too many possible explanations for these facts to attribute a cause, and a single year's experience in the system cannot override the reasonably foreseeable effects of the new visitor intake procedures.

conduct interviews. They also handle appeals cases much less frequently than in the old system, although this change defies quantification. These changes do tend to reduce some of the impact of the other aspects of the new system, but they do not fully balance out the adverse effects that I described previously. The additional time that CRs are spending doing visitor intake work is likely to be about an hour a day more than the time saved in retirement interviews. Moreover, the imbalance of the changes falling mostly on the early-arriving CRs is only heightened by the reduction of retirement interviews and appeals cases for all CRs. Furthermore, the loss of almost 20 percent of each employee's quiet day exceeds the actual time involved. The ability of the CRs to fully decide for themselves how to use their time, on this one day every two weeks, offered a sense of security and control that was intangible and emotional, and the loss of part of that day is likely to result in CRs feeling rushed, to a degree that extends beyond minutes or hours. While the management witnesses at the hearing may well believe that CRs still have adequate time to complete their case work, and they may indeed be pleased with how the new system has succeeded in reducing waiting times, it is also understandable that many CRs may also feel unable to complete their assignments. Most importantly, the overall character and balance of the CRs' workload has changed significantly under the new system. They are performing more visitor intake, which is in essence lower-graded work done by SRs, and they are working less on the claims and appeals that are the staples of a CR's job, than before. Working out appropriate arrangements for employees adversely affected by the Agency's exercise of its management rights is the bilateral responsibility of the Union and management; the Agency cannot avoid that obligation by acting unilaterally. Rather, management's attempt to "balance" the effects of the changes highlights the fact that the impact of the additional reception duties was more than *de minimis. See* the dissenting opinion of then-Member Pope in *Border Patrol,* 60 FLRA
at 179.

Clearly, the Agency considered the elimination of customer waiting times to be important to SSA's overall mission, and it had the statutory right to modify the CRs' work assignments to accomplish this purpose. But it is equally clear that the reassignments have ramifications on the CRs' working conditions that need to be discussed, and negotiated, with the Union. To give just two examples, the changes implemented here had greater impact on employees than in *SSA Baltimore, supra,* and *Dep't of Health & Human Serv., Soc. Sec. Admin.,* 26 FLRA 344 (1987). The Union is entitled to bargain with the Agency concerning ways of balancing the disparate impact of the changes on early-reporting and late-reporting employees; how the reduction in claims interviews and appeals cases will affect the CRs' performance standards and appraisals and the comparability of each CR's productivity statistics; and ways of accommodating employees who cannot do the additional walking required in the new system, among other issues. See Tr. 46-48, 167-68. The consequences of the changes implemented by the Respondent were more than *de minimis,* and the Respondent's refusal to fulfill its obligation to bargain with the Union over these matters violated section 7116(a)(1) and (5) of the Statute.

The May 5 Meeting Was a Formal Discussion

As I have already noted, the record reflects considerable ambiguity as to the exact dates of the events in question. While the parties and the witnesses all agreed that the crucial events occurred in either late April or early May of 2009, only one witness could pinpoint the dates with any specificity. For the most part, the confusion regarding dates is irrelevant to resolving the legal issues in this case, but that is not true for the second disputed meeting, the one that appears to have been held on May 8. As I will explain, the Respondent was not adequately notified (either before or during the hearing) that it was being charged with two unlawful formal discussions, rather than one; accordingly, I will consider only the allegation that the Agency failed to comply with section 7114(a)(2)(A) of the Statute on one occasion.

The First Amended Charge filed by the Union alleged that the Respondent, through Rosa and Martinez, failed to give the Union notice and an opportunity to be represented "at a formal discussion" held "in or about April, 2009[.]" GC Ex. 1(c). The Complaint issued by the Authority's Regional Director alleged that "[i]n or about April 2009, the Respondent . . . held a meeting with employees" at which the Respondent failed to comply with section 7114(a)(2)(A). GC Ex. 1(d), paragraph 14. The Complaint repeatedly refers to "the meeting". GC Ex. 1(d), paragraphs 15-21. The parties' prehearing disclosures similarly cited only one alleged formal discussion, and Counsel for the General Counsel asserted in her opening statement at the hearing that Rosa and Martinez "conducted a mandatory meeting during which important changes to working conditions were announced . . . ." Tr. 8-9.

Testimony from both the GC's and the Respondent's witnesses demonstrated, however, that Rosa and Martinez conducted two meetings in the week preceding their implementation of the new visitor intake procedures, and in its post-hearing brief, the GC argued that both of these meetings violated section 7114(a)(2)(A). No motion was made at the hearing to amend the Complaint to conform to the evidence, and the Respondent's post-hearing brief reflects its continuing belief that only one unlawful meeting was being alleged.

The Authority has held that an essential element of due process and of the Administrative Procedure Act is the responsibility to ensure that every respondent in an unfair labor practice proceeding is adequately notified of the matters of fact and law asserted. *Am. Fed. of Gov't Employees, Local 2501, Memphis, Tenn.*, 51 FLRA 1657, 1660 (1996), *citing* 5 U.S.C. § 554(b)(3). What constitutes adequate notice will depend on the facts of each case, but the essential principle is to afford a respondent a meaningful opportunity to litigate the underlying issue. *Id.* The record in this case demonstrates that the Respondent did not have a reason to believe that it was being charged with two unlawful meetings. Although the evidence at the hearing, including testimony by the Agency's managers, showed that two meetings with employees were conducted, on the Tuesday and on the Friday preceding May 11, this did not put the Respondent on notice that it was being accused of two

violations. I will thus consider evidence only regarding the primary, more lengthy meeting, the one held on Tuesday, May 5, in evaluating whether the Respondent violated section 7114(a)(2)(A).[14]

Looking specifically at the evidence concerning the May 5 meeting, most witnesses agreed that it was held in the conference room or training room, separate from the employees' normal work area, and that it was conducted by Ms. Martinez (the first-level supervisor) and Mr. Rosa (the second-level supervisor and the highest official in the Carolina office). Tr. 124, 163-64, 197, 250. The supervisors explained the nature and the purpose of the changes that would take place the following week, that all CRs in the office between 7:30 and 9:00 a.m. would work in the reception area and that the claims interview schedules would be modified to allow all CRs to focus on visitor intake during those hours. While one employee testified that she believed Martinez took notes at the meeting, the other witnesses said that no notes were taken, and that there was no formal agenda for the meeting. Tr. 125, 166, 251. Employees were notified in advance of the meeting by pop-up mail on their computers, and most, if not all, employees attended. Tr. 197, 250. The meeting was timed for about 2:30 p.m., so that both early-departing and late-departing employees would be present. A few employees asked questions: one asked why the Union was not given the opportunity to attend, and another expressed concern at the loss of part of her quiet day. One employee estimated that the meeting lasted a half hour, [15] another estimated 45 minutes, and another said an hour. Tr. 126, 166. Rosa estimated that the meeting lasted 30 to 45 minutes. Tr. 250.

Under section 7114(a)(2)(A) of the Statute, a union has the right to be represented at a meeting when all of the following conditions are met: (1) there must be a discussion; (2) which is formal; (3) between one or more agency representatives and one or more unit employees or their representatives; (4) concerning any grievance or personnel policy or practices or other general condition of employment. *U.S. Dep't of Justice, Immigration & Naturalization Serv., N.Y. Office of Asylum, Rosedale, N.Y.,* 55 FLRA 1032, 1034 (1999) (*INS Rosedale*). It is undisputed that there was a discussion on May 5, and that it involved two Agency representatives and the bargaining unit employees at the Carolina office. The Respondent contends, however, that the discussion was not formal, as that term is defined by Authority precedent, and that it did not concern a grievance, personnel policy or practice or other general condition of employment.

[14] Even if I were to consider the merits of the GC's allegations regarding the May 8 meeting, I would find that the May 8 meeting lacked the elements of formality that are required for a formal discussion under 7114(a)(2)(A).

[15] However, this employee appears to have been describing the Friday meeting, although that was the only meeting she recalled attending. Tr. 80-81.

I will address the Respondent's second contention first, because I have already answered it in regard to the Agency's duty to bargain. The May 5 meeting was held primarily to explain the new visitor intake procedures that were to be implemented the following week.[16] Martinez and Rosa advised employees that, starting next week, everyone in the office between 7:30 and 9:00 would focus their energies on the customers in the waiting room, and they explained how office procedures would be rearranged in order to accomplish that purpose. This included a discussion of the changes in the number and times of retirement claim interviews, the impact of the changes on the CRs' quiet day, the availability of credit hours and overtime to help employees complete their other work, and even the need for the Union to attend the meeting. These issues were clearly "general rules applicable to agency personnel," to quote the Authority's reasoning in *INS Rosedale,* 55 FLRA at 1035. Since I have already concluded that the new visitor intake procedures changed conditions of employment, it follows that the meeting concerned a personnel policy or practice or other general condition of employment.

This leaves the question of whether the meeting was formal. The Authority has noted that in determining formality, it looks at both the purpose and the nature of the meeting. *Warren AFB,* 52 FLRA at 156. Sometimes, the purpose of the meeting is sufficient by itself to establish formality, such as interviews of bargaining unit employees in preparation for third-party proceedings, while in other cases formality can only be determined by examining the details of how the meeting was conducted. *Id*. at 156-57. In the latter class of cases, the Authority has identified a number of criteria that it considers relevant in evaluating whether the nature of the discussion indicates formality. These criteria have varied in different decisions, and the Authority has stated that the list is merely meant to be illustrative; other factors may be appropriate in other cases, and the totality of the facts and circumstances of each discussion must be considered. *Id.* at 157.

As in *Warren AFB,* I do consider the purpose of the May 5 meeting to be a strong indication that it was formal. It was not called simply to introduce the new office manager, but rather to advise all employees of a new management initiative to reduce customer waiting times and to explain to employees a number of specific new procedures that were being implemented to accomplish that goal. In this regard, it is significant that I have already found these procedures to constitute changes in the employees' conditions of employment, and that the changes had a greater than *de minimis* impact on employees.[17] Accordingly, it is

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[16] One employee recalled that Mr. Rosa also advised employees at this meeting of his "three chances" policy: that is, if an employee is told to follow a certain practice, he will be given three chances to obey. Tr. 124-25. As this was a rule relating to employee conduct and possible discipline, it also concerned a personnel policy or practice or general condition of employment.

[17] This does not mean that any meeting at which a change in conditions of employment is discussed will automatically be considered formal. *See, e.g., Def. Logistics Agency, Def. Depot Tracy, Tracy, Cal.*, 14 FLRA 475, 475-76 (1984). Indeed, the May 8 meeting is another example of a meeting discussing a change in conditions of employment that is not formal: Mr. Rosa only called the employees together briefly, in the general work area, to remind them that the new system would begin the following Monday. The May 5 meeting involved substantive discussion and explanation of the details of the changes, while the May 8 meeting was simply a reminder.

clear that

these were not casual matters that might warrant a brief, casual discussion. As with the meeting in *Warren AFB* to advise employees that they were targets of an imminent reduction in force, a meeting to explain new office procedures of the breadth and impact present in our case would not be left to a spontaneous, casual encounter between manager and employees. *Id.* at 158.

Additionally, consideration of the traditional formality criteria supports a conclusion that the May 5 meeting was formal. Even though the managers conducting the meeting had no formal agenda and took no notes, most of the circumstances surrounding the meeting suggest formality: it was held in a conference room, separate from the general workplace; it was conducted by the two levels of management that work in the Carolina office; employees were notified of the meeting in advance; it lasted somewhere between 30 and 60 minutes; and the supervisors answered questions from employees. It is not entirely clear whether attendance at the meeting was mandatory, but it was timed to enable everyone in the office to attend, and most if not all employees did attend. The length of the meeting, and its focus almost entirely on the new visitor intake procedures, suggest that there was substantial explanation of the details and mechanics of the new procedures, and discussion among the employees. These facts contrast with those in cases such as *Dep't of Veterans Affairs, Veterans Affairs Med. Ctr., Gainesville, Fla.*, 49 FLRA 1173, 1185 (1994), where the Judge noted that although the meeting addressed work procedures, "there were no new requirements explained to these employees requiring [the Union's] presence to safeguard their interests or the interests of the Union."

The Authority has often emphasized that the application of its analytical framework should be guided by the intent and purposes of section 7114(a)(2)(A): to provide an exclusive representative with an opportunity to safeguard its interests and the interests of its bargaining unit employees, viewed in the context of a union's full range of responsibilities under the Statute. *U.S. Dep't of the Army, New Cumberland Army Depot, New Cumberland, Pa.*,
38 FLRA 671 (1990). In this case, the Agency recognized that long customer waiting times was a serious problem that needed to be addressed. GC Ex. 14, 21; GC Ex. 17 at 5. The events of May 5-11 were the culmination of a broad, region-wide project of evaluating every field office's visitor intake procedures, identifying how those procedures could be improved in order to drastically reduce waiting time, and implementing those new procedures at each field office. The Carolina office was simply one of many offices at which these changes were being made, and Union officials were caught by surprise when employees began reporting that the Agency was holding meetings to explain the new procedures. Tr. 24-25. Viewing the May 5 meeting in the context of the Union's full range of statutory responsibilities, it is clear that the Union should have been invited to attend that meeting, to hear Mr. Rosa's explanation of the new visitor intake procedures, and to engage the Agency in an informed discussion of the best way to implement the new procedures while protecting the interests of the employees.

Therefore, the Respondent violated section 7116(a)(1) and (8) by denying the Union its section 7114(a)(2)(A) right to attend the May 5 meeting.

Remedy

In order to remedy the Respondent's unfair labor practices, there is no question that a cease and desist order, bargaining order, and notice posting are appropriate. The parties disagree, however, as to whether the Agency should be required to rescind the changes it made in work procedures until it has negotiated with the Union over the impact and implementation of the proposed changes.

When an agency has failed to bargain over the impact and implementation of a decision that is within its section 7106(a) rights, the appropriateness of a *status quo ante* remedy is evaluated by using the considerations set forth in *FCI*, *supra.* As the Authority explained in *FCI*, this requires, "on a case-by-case basis, carefully balancing the nature and circumstances of the particular violation against the degree of disruption in government operations that would be caused by such a remedy." 8 FLRA at 606.

The first three *FCI* factors weigh in favor of *status quo ante* relief. The Agency did not notify the Union in advance of the planned changes. When the Union learned of the changes being made at offices throughout the area, it promptly sent a letter to the Agency's Regional Director, requesting bargaining. GC Ex. 2. As no Agency official responded to that letter, it is clear that the Agency's refusal to bargain was willful.

The fourth *FCI* factor is less clear-cut. In the portion of my decision finding that the Agency had a duty to bargain over the changes at the Carolina office, I have already concluded that those changes had a greater than *de minimis* impact on the CRs there. The adjustments in the CRs' interview schedules, the loss of part of their quiet day, the increased amount of reception duties, and the decreased amount of time available for case handling and appeals all have a real and tangible impact on the CRs. Nevertheless, for purposes of balancing the potential benefits to employees in rescinding these changes against the potential disruption in Agency operations, I view the nature and extent of impact of the changes on the employees as relatively small. It has made their mornings more hectic, as they are seeing large numbers of customers in a short period of time, with a corresponding pressure to clear the waiting room, and the employees at the hearing testified to this pressure. But Ms. Martinez also testified that as a result of the success of the new procedures, the waiting room is often cleared of customers by late morning, thereby relieving the pressure on employees, and that this has had a positive effect on employee morale. Tr. 205-06. I noted in a prior section of my decision that the CRs' performance of more lower-graded work and less higher-graded work has significant implications regarding their performance appraisals and promotions, but the record suggests that this has not measurably harmed employees yet, as their appraisals have not suffered and at least some employees have been promoted. In this respect, the Union should be able to protect the CRs' legitimate concerns with prospective

bargaining, while rescinding the changes does not offer much in the way of benefits to the affected CRs. Moreover, just as the new procedures implemented in May 2009 forced a significant change in the way CRs did their work and managed their caseloads, a reversion to the old procedures, followed in all likelihood by a quick return to the new procedures, portends more confusion and disruption than benefit to employees.

My analysis of the potential benefits to employees from *status quo ante* relief is particularly skewed by my view of the potentially disruptive effects of rescinding the visitor intake procedures; in other words, the adverse impact of the unilateral changes on employees is significantly outweighed by the potential harm to the Agency's operations from a return to the *status quo ante*. The Authority has emphasized that the burden is on a respondent to demonstrate, through record evidence and specific allegations, that a *status quo ante* remedy would result in disruption to the efficiency and effectiveness of its operations. *Willow Grove*, 57 FLRA at 859 (dissenting opinion of then-Member Pope). I conclude that the Respondent has met that burden here.

Both supervisors who testified at the hearing described the problems relating to excessive customer waiting times, both nationally and at the Carolina office. Martinez estimated that the office handles an average of 200 to 250 customers a day, and when the office opens to the public at 7:30 a.m., there are usually 80 to 100 people already waiting to be served. Tr. 191-92. Rosa estimated they see 270 to 300 customers a day. Tr. 246. There are only two Service Representatives at Carolina, and for a time there was only one; they clearly could not handle all of the customers by themselves. Even before 2009, CRs were helping the SRs with visitor intake, but a series of nationwide studies identified growing customer waiting times as a serious problem, which had attracted the scrutiny of both Congress and GAO. GC Ex. 14, 19. More localized studies recommended that each office find ways to maximize the staff resources available to handle the waiting customers as early as possible, and to do so more efficiently. GC Ex. 21 at 25-34. These recommendations incorporated numerous techniques for improving efficiency, techniques that went far beyond the specific procedures that have been identified as unilateral changes of working conditions in this case. *Id.*; Tr. 245. Martinez testified that the waiting times at Carolina were reduced from over 100 minutes to between 15 and 25 minutes. Tr. 192, 195-96, 246, 249. It is clear from the record that the changes made by the Agency in its visitor intake procedures have been quite successful in reducing waiting times, both around the region and at Carolina specifically. While an absolute cause-effect relationship cannot be established from the evidence of record, it is extremely likely that rescinding the visitor intake changes in question here would quickly result in a steep rise in customer waiting times, as well as accompanying administrative disruption from the alteration of work and interview schedules.

Therefore, despite the willfulness of the Agency's violation of the Union's bargaining rights, I conclude that the disruption to the efficiency and effectiveness of the Agency's operations from a *status quo ante* remedy outweighs the adverse impact on employees of continuing the 2009 changes during bargaining. Unlike the situation in *SSA Gilroy*, 53 FLRA at 1370, the Agency here has done more than simply explain why the unilateral changes were

desirable; they have demonstrated that a return to the old visitor intake procedures would

drastically increase customer waiting times and imperil a major Agency initiative to improve its customer service and effectiveness. They must, however, bargain with the Union over the impact and implementation of these procedures and post a notice to employees regarding its unfair labor practices.

Accordingly, I recommend that the Authority issue the following Order:

ORDER

Pursuant to section 2423.41(c) of the Authority's Rules and Regulations and section 7118 of the Federal Service Labor-Management Relations Statute (the Statute), the Social Security Administration, Carolina Field Office, Carolina, Puerto Rico, shall:

1. Cease and desist from:

(a) Changing its visitor intake procedures, including the reassignment of duties to Claims Representatives (CRs), without first providing the American Federation of Government Employees, Local 2608 (the Union) an opportunity to bargain regarding the procedures to be observed in implementing those changes and appropriate arrangements for employees who have been, or may be, adversely affected by the implementation of such changes.

(b) Failing and refusing to provide the Union with advance notice and an opportunity to be represented at formal discussions with bargaining unit employees concerning any grievance or any personnel policy or practice or other general condition of employment.

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

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

(a) Upon request, bargain with the Union concerning the impact and implementation of all changes in visitor intake procedures, including the assignment of increased reception duties to CRs.

(b) Provide the Union with advance notice and an opportunity to be represented at formal discussions with bargaining unit employees.

(c) Post at its facilities where bargaining unit employees represented by the Union are located, 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 Office Manager of the Carolina Field Office, and shall be posted and maintained for 60 consecutive days thereafter, in conspicuous places, including all bulletin boards and other places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that such Notices are not altered, defaced, or covered by any other material.

(d) Pursuant to section 2423.41(e) of the Authority's Regulations, notify the Regional Director, Denver Region, Federal Labor Relations Authority, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

Issued Washington, D.C., April 24, 2012.

RICHARD A. PEARSON
Administrative Law Judge

NOTICE TO ALL EMPLOYEES

POSTED BY ORDER OF THE

FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the Social Security Administration, Carolina Field Office, Carolina, Puerto Rico, violated the Federal Service Labor-Management Relations Statute (the Statute), and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT change our visitor intake procedures, including the reassignment of duties to Claims Representatives (CRs), without first providing the American Federation of Government Employees, Local 2608 (the Union) an opportunity to bargain regarding the procedures to be observed in implementing those changes and appropriate arrangements for employees who have been, or may be, adversely affected by the implementation of such changes.

WE WILL NOT fail or refuse to provide the Union with advance notice and an opportunity to be represented at formal discussions with bargaining unit employees concerning any grievance or personnel policy or practice or other general condition 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 by the Statute.

WE WILL, upon request, bargain with the Union concerning the impact and implementation of all changes in visitor intake procedures, including the assignment of increased reception duties to CRs.

WE WILL provide the Union with advance notice and the opportunity to be represented at formal discussions with bargaining unit employees.

_____
(Agency/Activity)

Dated: _____ By: _____
(Signature) (Office Manager)

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, Denver Regional Office, Federal Labor Relations Authority, and whose address is: 1391 Speer Boulevard, Suite 300, Denver, CO 80204, and whose telephone number is: (303) 844-5224.