UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C. 20424-0001

MEMORANDUM

DATE: July 25, 2011

TO: The Federal Labor Relations Authority

FROM: RICHARD A. PEARSON
Administrative Law Judge

SUBJECT: SOCIAL SECURITY ADMINISTRATION
SAN LUIS OBISPO DISTRICT OFFICE
SAN LUIS OBISPO, CALIFORNIA

RESPONDENT

AND

Case No. SF-CA-09-0560

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES,
LOCAL 3172, AFL-CIO

CHARGING PARTY

Pursuant to section 2423.34(b) of the Rules and Regulations 5 C.F.R. §2423.34(b), I am hereby transferring the above case to the Authority. Enclosed are copies of my Decision, the service sheet, and the transmittal form sent to the parties. Also enclosed are the transcript, exhibits and any briefs and motions filed by the parties.

Enclosures

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
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SOCIAL SECURITY ADMINISTRATION SAN LUIS OBISPO DISTRICT OFFICE SAN LUIS OBISPO, CALIFORNIA RESPONDENT AND AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 3172, AFL-CIO CHARGING PARTY	Case No. SF-CA-09-0560

NOTICE OF TRANSMITTAL OF DECISION

The above-entitled case having been heard by the undersigned Administrative Law Judge pursuant to the Statute and the Rules and Regulations of the Authority, the undersigned herein serves his Decision, a copy of which is attached hereto, on all parties to the proceeding on this date and this case is hereby transferred to the Federal Labor Relations Authority pursuant to 5 C.F.R. §2423.34(b).

PLEASE BE ADVISED that the filing of exceptions to the attached Decision is governed by 5 C.F.R. §§2423.40-41, 2429.12, 2429.21-2429.22, 2429.24-2429.25, and 2429.27.

Any such exceptions must be filed on or before **AUGUST 22, 2011**, and addressed to:

Office of Case Intake & Publication
Federal Labor Relations Authority
1400 K Street, NW., 2nd Floor
Washington, DC 20424-0001

RICHARD A. PEARSON

Administrative Law Judge

Dated: July 25, 2011
Washington, D.C.

FEDERAL LABOR RELATIONS AUTHORITY OALJ 11-10
Office of Administrative Law Judges
WASHINGTON, D.C.

SOCIAL SECURITY ADMINISTRATION
SAN LUIS OBISPO DISTRICT OFFICE
SAN LUIS OBISPO, CALIFORNIA

RESPONDENT

Case No. SF-CA-09-0560

AND

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 3172, AFL-CIO

CHARGING PARTY

Robert Bodnar
For the General Counsel

Terri-Ann Jones
For the Respondent

Katrina Lopez
For the Charging Party

Before: RICHARD A. PEARSON
Administrative Law Judge

DECISION

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 August 10, 2009, the American Federation of Government Employees, Local 3172, AFL-CIO (the Union or the Charging Party) filed an unfair labor practice charge against the Social Security Administration, San Luis Obispo District Office, San Luis Obispo, California (the Agency or Respondent). After investigating the charge, the Regional Director of the San Francisco Region of the Authority issued a Complaint and Notice of Hearing on April 28, 2010, alleging that the Agency implemented a number of changes in conditions of employment 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. The Respondent filed its Answer to the Complaint on May 24, 2010, admitting most of the factual allegations of the Complaint but denying that it committed an unfair labor practice.

A hearing was held in this matter on June 25, 2010, in San Luis Obispo, California. All parties were represented and afforded the opportunity to be heard, to introduce evidence, and to examine witnesses. The General Counsel (GC) and the Respondent have filed post-hearing briefs, which I have fully considered.

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

FINDINGS OF FACT

The Respondent is an agency within the meaning of section 7103(a)(3) of the Statute. G.C. Ex. 1b, 1c. The San Luis Obispo District Office is a field office of the Social Security Administration (SSA); it prepares, processes and adjudicates disability, retirement, survivors' and Supplemental Security Income (SSI) claims from the public under Titles II and XVI of the Social Security Act. Tr. 22, 126. Joseph Kent is the District Manager, who runs the San Luis Obispo District Office. Tr. 125. Most employees in the office are either Service Representatives (SRs) or Claims Representatives (CRs), and the Claims Representatives are subdivided into units that handle either Title II or Title XVI claims. Tr. 23, 36-38, 126. In 2009,[1] there were five CRs in each unit. Tr. 72-73, 126.

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. 1b, 1c. The Charging Party, AFGE, Local 3172, is an agent of the AFGE for the purpose of representing employees (including the CRs) at the San Luis Obispo and other field offices of SSA. *Id.*

One of the main duties of a Claims Representative is interviewing claimants in order to help them file claims for retirement, survivors' and disability benefits, and then adjudicating those claims. Tr. 24, 29, 74-75, 126, 164. Claimants are given appointments to come into the office, and a CR interviews them, taking all necessary information and documents, including information related to their income and assets for SSI claims and medical information for disability claims. Tr. 24-26, 77, 165. Interviews for retirement or survivor benefits tend to be fairly short and simple, generally taking 30 minutes to an hour.

[1] **All dates are 2009, unless otherwise noted.**

Tr. 29, 152. Interviews for disability benefits (sometimes referred to as DIBs), however, vary considerably as to their complexity and the time needed to obtain all necessary information. When it is clear that the claimant is not eligible, the interview may take as little as 15 to 30 minutes, but when the claimant has a complicated medical or work history or does not have his documents or facts organized, the interview can last up to two and a half hours. Tr. 25-26, 40, 76, 78-79, 177-78, 189-90.

In addition to interviewing claimants, CRs perform adjudication work to follow up on claims, making sure that all necessary information and documentation has been received and placing a claimant into pay status if the claimant is found eligible. Tr. 28, 33, 74, 80. They also work on redetermination cases, in which claimants previously found disabled are re-evaluated to determine whether they continue to be eligible. Tr. 30-31, 80-81, 172. Additionally, CRs respond to telephone inquiries (Tr. 24, 30) and action requests from a variety of sources, both within the office and outside it (Tr. 31-32, 51-53, 181-83; GC Ex. 6), and they are sometimes asked to assist the Service Representatives working in the front office with the general public (Tr. 34-36, 101-03, 179).

The parties agree that on April 27, 2009, the Agency modified its interview schedule for all CRs, both those who handled Title II claims and those who handled Title XVI claims. The parties disagree on the impact of this changed schedule, which is the gist of the current unfair labor practice case. However, it is almost as difficult to pinpoint the boundaries of the change as it is to evaluate its impact. Testimony among the witnesses differed as to how many interviews, and what type of interviews, each class of CRs was assigned per week after April, and sometimes an individual witness' testimony changed during questioning. The fact-finding process is further complicated by the near-total absence of any time records, work schedules or other documentary exhibits (with two minor exceptions) that might quantify the nature and extent of the change, and by the Agency's decision to change the CR schedules again in May or June. Tr. 141-42, 144, 157-58.

Prior to April, the Title II employees each were assigned fifteen retirement interviews a week (9:00, 10:00 and 11:00 a.m. and 1:00 and 2:00 p.m. on Monday, Wednesday and Friday), three disability appointments a week (9:00 and 11:00 a.m. and 1:00 p.m. on Thursday), and they had Tuesday as an "adjudication day," in which they had no assigned interviews and could catch up on their other work. (This other work sometimes involved claims interviews that the CRs scheduled on their own, but the CRs made this decision, not management.) Tr. 32-34, 38-39, 65, 129-32, 143, 160-61, 166-67, 170-71. Title XVI employees each were assigned three disability interviews a day (9:00 and 11:00 a.m. and 1:00 p.m.), three days a week; Friday was their adjudication day, and the fifth day

was devoted to redetermination cases.[2] Tr. 79-83, 95, 97, 111, 130, 142, 172. Each Title XVI CR had a different day of the week (Monday through Thursday) reserved for redeterminations. Tr. 80, 83, 172.[3]

On April 15, the District Manager sent a notice to the Union representative who serviced the San Luis Obispo office, advising him of changes in the office's interview system, to begin on April 27. GC Ex. 2. Thereafter, all CRs would be assigned a 9:00 a.m. disability interview five days a week, and on days when CRs had three disability interviews, they would be scheduled for 9:00 and 10:30 a.m. and 12:45 p.m. This meant that Title II CRs, who previously had been assigned disability interviews only on Thursdays, would now have an additional disability interview on Monday, Tuesday (previously their adjudication day), Wednesday and Friday, and their three-interview schedule on Thursdays

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[2] **On the day that they devoted to redeterminations, CRs would handle from six to ten cases. Tr. 111, 172.**

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While the testimony of Title XVI Claims Representative Pamela Young initially seems to conflict with that of District Manager Kent regarding the number of disability interviews the Title XVI employees were assigned prior to 2009, a full examination of the record clarifies the issue. Ms. Young explained at length about the rotating redetermination schedule for herself and the other Title XVI CRs (Tr. 80, 111), and her testimony on this issue was essentially corroborated by Vivian Ruff, the supervisor of the Title XVI unit (Tr. 172). Kent testified that "the Title 16 disability unit always did three DIBs . . . They were given one additional DIB on a Friday [in April 2009]." Tr. 130. This testimony suggests that every Title XVI CR had been conducting three disability interviews a day, Monday through Thursday, for a total of twelve per week, but Kent did not refer in this part of his testimony to the redeterminations that the Title XVI CRs conducted one day a week. Ruff testified that although Title XVI CRs were conducting disability interviews Monday through Thursday, each CR used one of those days for redeterminations and "didn't get disability appointments on that day." Tr. 172. Thus, I find that Title XVI CRs prior to 2009 had been assigned nine disability interviews per week. In general, my observation was that Mr. Kent, as second-level supervisor, had a less precise grasp on the details of scheduling than the CRs themselves or Ms. Ruff, and his account was occasionally confusing or inconsistent. Where there are conflicts between his testimony and others', I have given his less weight.

would be compressed into a slightly shorter time period than before.[4] It meant that instead of

conducting fifteen retirement interviews and three disability interviews a week, they would be conducting nine retirement interviews and seven disability interviews a week. For Title XVI CRs, it meant that initially they would be conducting two additional disability interviews a week (one on their redetermination day and one on Friday, which had previously been their

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[4] **In this respect, Title II Claims Representative Paula Adrian seems to have been mistaken. She testified that starting in April, CRs in her unit were assigned one additional disability interview, at 9:00 a.m. on Tuesdays, which had been their adjudication day, in addition to the three disability interviews they had already been doing on Thursdays. She stated that on Mondays, Wednesdays and Fridays,**

they continued to conduct five retirement interviews a day, as they had before. Tr. 32-33, 38-39, 45.

This conflicts with the testimony of the two management officials (Kent and Ruff), who stated that beginning in April, both Title II and Title XVI CRs were assigned 9:00 a.m. disability interviews five

days a week, and that in order to make room for this disability interview, the 9:00 and 10:00 a.m. retirement and survivor interviews on Monday, Wednesday and Friday were eliminated. Tr. 128-31, 160, 165, 169-71. It also conflicts with GC Exhibit 2, which states, "All Claims Representatives (CR) will have an interview at 9:00 A.M., Monday through Friday . . . ." As Ruff explained, the purpose of

the changed schedule was to enable the office to conduct disability interviews every day of the week (Tr. 169), and this purpose could not be accomplished if the Title II CRs conducted disability interviews only on Tuesday and Thursday. See also GC Ex. 8, which shows that on a Wednesday, Ms. Adrian and two other Title II CRs were assigned a disability interview at 9:00 a.m. and retirement or survivor interviews the remainder of the day.

adjudication day)[5]; they would no longer have full days to devote to redeterminations and adjudication; and their interview schedule would be compressed on days when they held three interviews.

Kent testified that some aspects of his April 15 memo were incorrect. Although his memo indicated that Title II CRs would continue to do five retirement interviews a day, they only did three a day after April, because the first two retirement interviews were replaced by one disability interview. *Compare* GC Ex. 2 and Tr. 129-30. Additionally, the memo stated that one CR a day would be a "floater" to take walk-in appointments. GC Ex. 2. While that had been Kent's initial intent, he testified that he realized this would not be feasible, and there never was a floater CR. Tr. 141. Finally, as noted earlier, the responsibility for

redeterminations, which initially remained with the Title XVI CRs after April, was reassigned to other employees, starting in about May or June. Tr. 142. Kent did not send a corrected notice to the Union informing it of these mistakes and subsequent adjustments. Tr. 154.

When Mr. Kent sent the Union the April 15 memo describing the planned scheduling changes, he stated that it was being sent as a courtesy to the Union, but that the Agency did not have a statutory duty to bargain over the new schedule. GC Ex. 2. The Union requested

[5] **Again, apparent conflicts in the testimony are clarified by a full review of the evidence concerning the handling of redetermination cases. As explained in note 4, supra, prior to April 2009, the Title XVI CRs were assigned three disability interviews a day, three days a week, and none on either their adjudication day or their redetermination day. Starting on April 27, all CRs (both Title II and Title XVI) were assigned one 9:00 a.m. disability interview every day of the week; this meant that two disability interviews a week were added to the Title XVI employees' schedule. As noted in GC Ex. 2, Kent recognized that the 9:00 am interview would preclude the Title XVI CRs from doing redeterminations in the morning on their redetermination day, but he instructed them to schedule redeterminations in the afternoon instead. Id.; see also Tr. 81-82, 112. Apparently recognizing the difficulties this caused, Kent made a further change in approximately May or June. At that time, he "removed the responsibility for them [Title XVI CRs] processing redeterminations" and reassigned that work to other employees. Tr. 112, 142, 172. In Ruff's words, "that freed up the Title 16 claims reps to get back into the disability." Tr. 172. All of the witnesses who testified concerning the Title XVI CRs' schedule stated that they now conduct thirteen disability interviews a week: three a day on Monday through Thursday and one on Friday. Tr. 79-80, 112, 142, 172. This represents an increase of four disability interviews a week from the pre-2009 schedule, but the record reflects that the increase occurred in two steps: two interviews were added in April and two more were added in May or June, when they were relieved of responsibility for redeterminations and were "incorporated back into the disability interview program." Tr. 172. Unfortunately, all of the witnesses tended to testify in terms of the work done by the Title XVI CRs "before" and "after" April 2009, glossing over the differences between the interview schedule immediately after April and the schedule implemented later. The result is a murky record filled with apparent inconsistencies; notwithstanding those inconsistencies, I find that Title XVI CRs were assigned nine disability interviews a week prior to April 2009, eleven disability interviews a week for a month or two thereafter, and thirteen disability interviews a week since then.**

nonetheless to bargain with the Agency, but the Agency refused, stating that the adjustments to the employees' schedules were *de minimis*. GC Ex. 3, 4. The parties stipulated that no bargaining occurred regarding the modified schedule. Tr. 7-8.

In addition to the schedule changes referenced in the April 15 memo, the GC's witnesses testified that the Agency simultaneously began requiring them to conduct extra interviews when claimants were double-booked. Tr. 67, 91-93; GC Ex. 8. When claimants had previously been double-booked, a manager or service representative would contact one of the claimants to reschedule their appointment, but after April, the CRs were told they would have to deal with the problem themselves, by conducting the extra interview that day or rescheduling it. Tr. 67, 92. Starting at that same time, Ms. Adrian testified that management also began requiring CRs to interview claimants who walked in without an appointment.
Tr. 24-25, 33-34. Additionally, both Ms. Adrian and Ms. Young testified that the Agency increased its practice of requiring CRs to come to the front office to assist the SRs representatives in answering the telephone and making calls. Tr. 33, 35, 59, 101-02; GC Ex. 12. While CRs had occasionally been asked in the past to work at the front desk, they said this became an almost daily occurrence after April. Tr. 59, 102.

DISCUSSION AND CONCLUSIONS

Positions of the Parties

General Counsel

The General Counsel argues that the April 2009 modifications to the CRs' schedule changed their conditions of employment and had more than a *de minimis* effect on their working conditions. Therefore, it argues that the Respondent had an obligation to negotiate with the Union over the impact and implementation of the changes. Accordingly, in the GC's view, the Respondent violated section 7116(a)(1) and (5) of the Statute.

Specifically, the GC alleges that the Agency changed conditions of employment by (1) increasing the number of disability interviews each of the CRs was assigned, and particularly by scheduling a 9:00 a.m. disability interview on their adjudication day, thereby eliminating the freedom the CRs had to structure the day themselves and focus without interruption on those tasks they felt were most important; (2) moving the 11:00 a.m. disability appointments to 10:30 and the 1:00 p.m. disability appointments to 12:45; (3) requiring CRs on an almost daily basis to assist the service representatives; and (4) requiring CRs to take walk-in and double-booked claimants.

The General Counsel argues that these changes added significantly to the CRs' workload and altered the manner in which employees could plan their day and accomplish their multiple tasks. The addition of more disability interviews, even when (in the case of the Title II unit) it was accompanied by a reduction of retirement interviews, increased the quantity of work the CRs were required to perform, and left them with less time to devote to their many non-interviewing tasks. Moreover, because of the many conflicting demands on

their time, it was important to the CRs to have one day a week in which they retained total discretion to prioritize their work and their time. Tr. 33-34. The GC cited a memo written by Ms. Ruff to her Title XVI CRs back in 2006, when management increased the number of disability appointments from two to three a day. GC Ex. 7. Ruff told her employees at the time that while she recognized that "this makes it difficult" for them to do their other assigned work, "[w]e will still have Friday as a down day." *Id.; see also* Tr. 84. In the GC's view, this illustrates the importance of the adjudication day as a safety valve to enable the CRs to juggle their many responsibilities and to get their work done.

The GC also argues that the shift of the 11:00 a.m. disability appointments to 10:30 and of the 1:00 p.m. appointments to 12:45 makes it more difficult for CRs to take their morning break and lunch. According to Adrian and Young, their disability appointments frequently run longer than ninety minutes; thus their 9:00 interview often pushes into the time when their 10:30 interview is supposed to start, forcing them either to skip their morning break or keep the 10:30 claimant waiting. Tr. 40-42, 97-101; GC Ex. 9-11. Starting the 10:30 interview late often means that it extends well into their lunch period, forcing them to
skip lunch entirely, take an abbreviated lunch or delay their 12:45 interview. Tr. 46-50, 100-101; GC Ex. 5. It also prevents them from "flexing" their lunch period, because they need to get advance permission for a longer lunch, and they never know when that will be possible on a three-interview day. Tr. 57-58, 100-01. The compressed schedule causes claimants to have to wait longer, subjecting both claimants and CRs to considerable stress. Tr. 49-50, 66, 97-98, 105.

The GC's witnesses also described changes that were not listed in the Agency's April 15 memo: requiring CRs to assists SRs in the front office and requiring CRs to take walk-ins and double-booked claimants. Adrian and Young both admitted that they had been asked to help in the front office prior to 2009, but they stated that it "became an everyday thing" after the issuance of the memo. Tr. 36, 59, 102, 106. As for double bookings, Adrian testified that when this occurred prior to 2009, management would reschedule the claimants, but that since April, supervisors have required CRs to resolve the problem themselves. Tr. 67, 92. Although this was never announced formally by the Agency, Adrian said "It was more like an attitude change." Tr. 68. The effect of these new requirements was particularly felt on the CR's adjudication day, to the point that "it just seemed like Tuesdays [the Title II unit's adjudication day] just got squandered into doing all this other work, basically." Tr. 34. See also Young's testimony at Tr. 90-93, 109-10.

Adrian and Young further testified that the schedule changes caused them to work additional hours and change their arrival or departure times. Ms. Adrian stated that she had been working a 7:00 a.m. to 3:30 p.m. schedule, but after April 2009, she consistently needed to work later to keep up with her work, so that she was working credit hours to 4:00 or 4:15 most afternoons and overtime on Saturdays. Tr. 56-57, 58. Working late in the afternoon caused problems with her carpool. Tr. 56-57. Ms. Young said she quit her carpool after April, because she had to stay later than 3:30 to get her work done, and she works overtime whenever it is available on Saturdays. Tr. 73-74, 95-96. The extra work has left her "exhausted" and she has adjusted her morning arrival from 7:00 to 8:00 a.m., because she is

too tired to get to work at 7:00. Tr. 95-96. Although she worked late or on Saturdays occasionally prior to 2009, she did so when she "wanted to get extra vacation time." Tr. 107. Now, she says, she works extra hours "because I couldn't keep up." *Id.*

A year after the schedule changes occurred, Ms. Adrian retired from Federal service. Tr. 21. She testified that her decision to retire was based on a number of factors, including her eligibility for a pension, but that the "accumulation of stress and never been able to catch up on my workload" played a part in that decision. Tr. 21, 66, 68-69. Ms. Young testified that she has long had a problem with her back, which is exacerbated by prolonged sitting. Tr. 89, 121-22. Because they last so long, disability interviews put the greatest stress on her back, and since she is now conducting more such interviews than before 2009, she has had to use sick leave for her condition. *Id.*

The General Counsel argues that all of these factors demonstrate that the changes implemented by the Agency in April had an adverse impact on employee working conditions that far exceeds the *de minimis* threshold. The GC notes that the Agency itself quickly recognized the increased burdens the new schedule imposed on the CRs; as a result, the Agency made a further unilateral change to compensate for the problems caused by the original changes. When the schedule change was first implemented, Title XVI CRs continued to be responsible for their redetermination caseload, even though they had to conduct a 9:00 a.m. disability interview on their redetermination day. Tr. 81-82; GC Ex. 2. In approximately May or June, Mr. Kent reassigned the responsibility for processing redeterminations from the Title XVI CRs to a re-employed annuitant and another employee, and the Title XVI CRs were assigned two additional disability interviews (making a total of three) on their former redetermination day. Tr. 112, 142, 172. In the GC's view, the Agency's post-April changes demonstrate that the original changes had more than a *de minimis* impact on the CRs.

The GC urges that the Authority's decision in *Soc. Sec. Admin., Gilroy Branch Office, Gilroy, Cal.,* 53 FLRA 1358 (1998)(*SSA Gilroy*) is directly applicable to the facts of the instant case. That case involved a different SSA field office's decision to schedule

interviews for CRs on Fridays, which was their adjudication day and had previously been free of interviews; the Authority held that this change had more than a *de minimis* impact on the employees' working conditions. *Id.* The GC argues that the facts of the current case demonstrate an even greater impact on employees, since the changes affect not only the adjudication day but the CRs' entire workweek. It further insists that the primary case cited by the Respondent, *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 (2004) (*Border Patrol*), is distinguishable here.

To remedy the Respondent's unfair labor practice, the GC seeks *status quo ante* relief similar to that which was ordered in *SSA Gilroy*. Because the Respondent's refusal to negotiate was willful, despite the Union's repeated requests to bargain, the Respondent should be ordered to restore the schedule to the one that was in effect before April 2009 and to negotiate with the Union if it wishes to make any further adjustments to the interview schedule.

Respondent

The Respondent denies that it had any obligation to bargain over the impact or implementation of the schedule changes carried out at the San Luis Obispo office pursuant to the April 15 memo. It says the evidence shows that the CRs are doing exactly the same type of work that they have always done, in the same location and in the same manner, for the same pay and benefits. They have not been assigned any new types of work or been given new responsibilities. Accordingly, there was no change in the CRs' conditions of employment.

In support of this argument, the Respondent insists that the *Border Patrol* case is directly applicable here. That decision held, in the Respondent's view, that an increase in the same type of work is not a change in conditions of employment. Respondent contends that the scheduling changes here were simply a reflection of an increase in the number of disability interviews that needed to be conducted. While the CRs' workload may have increased, it was due to an increase in operational demands; the Agency did not change its policies, practices or standards, and thus it did not change conditions of employment. The Respondent also cites the Authority's decision in *U.S. Dep't of Veterans Affairs Medical Center, Sheridan, Wyo.,* 59 FLRA 93, 94 (2003)(*VA Sheridan*), for this principle.

Alternatively, the Respondent argues that any change in conditions of employment caused by the schedule adjustments of April 2009 was *de minimis*. *See Dep't of Health & Human Serv., Soc. Sec. Admin.,* 24 FLRA 403, 408 (1986)(*HHS, SSA*). Examining the nature and extent of the reasonably foreseeable effects of the schedule adjustments, it submits that Authority precedent requires a finding that the change was *de minimis*, citing *U.S. Dep't of Labor, Washington, D.C.,* 30 FLRA 572 (1987)(*DOL*). Respondent argues that the CRs' duties, hours of work, location, lunches, breaks, benefits, pay and grade remained unchanged;

they were not required to work overtime, nor did their overtime usage increase after the schedule change. It asserts that the impact of the schedule change on employees was even less here than in *DOL,* 30 FLRA at 579, where the affected employee was given some new tasks. The additional work given to the CRs here was exactly the same kind of work they had always done. Conversely, in cases where the Authority has found a change to be more than *de minimis,* such as *U.S. Dep't of Justice, Immigration & Naturalization Serv., U.S. Border Patrol, San Diego Sector, San Diego, Cal.,* 35 FLRA 1039, 1047 (1990), the affected employees have been assigned new or substantially different duties.

The Respondent further asserts that the evidence refutes the GC's claim that after April the CRs' responsibilities for assisting the SRs in the front office and on the telephone changed from what they had been doing. Adrian and Young both admitted that they had been required to help the SRs before April, and Ruff testified that if anything, CRs were doing this work less now than before April. Tr. 59, 106, 179. With regard to CRs helping in the front office as well as the other asserted changes in working conditions, the Respondent insists that the duties of the CRs are directly related to the office's operational needs and did not change after April. As for double-booked interviews, Agency witnesses testified that this only occurs when a CR is unexpectedly absent, and that there has been no change in Agency policy on this. Tr. 145-46, 173-76. Normally, if there are double bookings, a clerical employee or a Service Representative is assigned to try to reschedule them, and that CRs are

given this responsibility only when the other employees are unavailable. Tr. 174-75.

The Agency cites a number of significant distinctions between the instant case and *SSA Gilroy*. It asserts that the changes in the appointment schedule here may not be permanent. It further asserts that the number of appointments added to the CRs' schedule in *SSA Gilroy* was greater than here, and indeed Title II CRs in this case are now handling fewer appointments per week than before. The CRs in *SSA Gilroy* lost most of their adjudication day, while the CRs here lost only the time necessary to conduct one disability interview. Moreover, while at least one employee in *SSA Gilroy* worked additional overtime as a result of the change, both Ms. Adrian and Ms. Young worked overtime and credit hours both before and after April, and they could not establish that their overtime usage subsequently increased. Tr. 59, 106. Unlike *SSA Gilroy,* where management conceded that the loss of adjudication time was an emotional issue for the CRs, the instant case simply represents the isolated complaints of two employees who had also complained about their workload prior to the change. Tr. 147, 167. Moreover, one employee had written to her Union representative to tell him that the CRs in her office "have time to break and have lunch and complete our work." Resp. Ex. 1. Finally, where the additional interviews in *SSA Gilroy* may have interfered with employees' lunch breaks and leave, these were not issues in the instant case. Indeed, part of the reason that the 11:00 a.m. disability interviews were moved to 10:30 was to avoid having that interview run into employees' lunch time. Tr. 194.

Accordingly, the Respondent urges that the Complaint be dismissed.

Analysis

The Respondent Changed Conditions of Employment

Prior to implementing a change in conditions of employment, an agency is required 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. *United States Dep't of the Air Force, Air Force Materiel Command, Space & Missile Systems Ctr. Detachment 12, Kirtland Air Force Base, N.M.,* 64 FLRA 166, 173 (2009)(*Kirtland AFB*). Where, as here, 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 appropriate arrangements for employees adversely affected by the decision. *Soc. Sec. Admin., Malden Dist. Office, Malden, Mass.,* 54 FLRA 531, 536-37 (1998); *HHS, SSA,* 24 FLRA at 407-08. 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.

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, or the time and number of interviews they conduct, fits within the definition of "conditions of employment" under section 7103(a)(14) of the Statute. Rather, it argues that the schedule adjustments implemented in April 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 interviews each CR was assigned and (2) the times of those interviews; it further acknowledges (3) that it required each CR to conduct a disability interview for the first time on their adjudication day. In so doing, it "imposed a practice that was different from what previously existed and, consequently, constituted a change in conditions of employment." *Id*. at 704.

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 may constitute a change in conditions of employment. And this is what the Respondent did

here.

Prior to April 2009, CRs were assigned a specific number of interviews per week. This number did not fluctuate with the caseload or the backlog from week to week, or month to month.[6] CRs could plan their work days and weeks, and their transportation plans, with the knowledge of how many interviews would be scheduled for them. The agents in *Border Patrol* had to process whatever number of aliens were apprehended, and the employees in *VA Sheridan* had to treat whatever number of patients the hospital admitted; by contrast, the Respondent's scheduling procedures assigned each CR a specific number of interviews for each day of the week. Starting in April, CRs were also assigned disability interviews on their adjudication day for the first time, and the starting time of their second and third disability interviews was changed. It was the Agency's changes in these procedures or policies that constituted changes in the CRs' conditions of employment.

On the other hand, I find that the Agency did not change its policy or procedure for handling walk-in or double-booked claimants, or for having CRs assist the SRs, and in this respect, the *Border Patrol* and *VA Sheridan* decisions are analogous. While both Adrian and Young testified that CRs were required to help the SRs in the front office and on the telephone more frequently after April than before, they also conceded that they had previously been required to do so. Tr. 59, 106; see also Tr. 179-80. There is no documentation to show that anything substantively changed in or around April 2009 concerning this practice, and the GC's evidence concerning the frequency of the practice is flimsy, consisting only of the subjective perception of two witnesses.[7] Even if the CRs are correct that they have been required to assist SRs more frequently since April, the record suggests that this is simply a function of periodic increases in waiting times in the front office, not a discrete management decision to change its policy or practice.

The evidence of a change in the procedure for walk-in claimants is even more flimsy, primarily consisting of Adrian's brief reference to this occurring on her adjudication day after the interview schedule was changed. Tr. 24-25, 33-34. There was no real evidence of how

[6] **While the Title XVI CRs were assigned an additional disability interview back in 2006 (GC Ex. 7), that was over three years before the change that is now in dispute, and I do not find that evidence sufficient to show that employees regularly had their interview schedule adjusted to meet the caseload. Compare this to the evidence noted by the Authority in Border Patrol, 60 FLRA at 174 (citing United States Dep't of the Air Force, Headquarters, 96th Air Base Wing, Eglin Air Force Base, Fla.,**

58 FLRA 626, 630 (2003)), of a pattern of modifying assignments to meet fluctuating workloads.

[7] **With respect to this alleged change, as well as those involving walk-ins and double bookings, I attach some weight to the fact that they were not mentioned in either the April 15 memo or any similar document. While an agency's policy change need not be put in writing to be implemented, it is still the most persuasive evidence of a change. I also recognize that the April 15 memo itself was inaccurate and incomplete in several respects, as already noted. But the lack of any direct Agency statement of policy on these issues, combined with the subjective and conflicting testimony of the witnesses, convinces me that the GC has not met its burden of proof.**

walk-in claimants were handled prior to April. G.C. Exhibit 2, the April 15 memo announcing a variety of changes, refers to a "Walk-In CR - (Floater)," but Kent testified that this practice was never implemented. Tr. 141. He said that he briefly considered assigning one CR a day, on a rotating basis, to interview walk-ins, but he "realized that we couldn't do it[.]" *Id.* Kent was not asked how walk-ins were handled prior to April, or subsequent to his decision that a "floater" couldn't be used for such situations. Taken as a whole, the record does not establish that the Agency took any particular action or changed any specific policy regarding walk-ins.

There is conflicting evidence regarding the double-booking of appointments, but again the record is simply insufficient to prove that the Agency changed its policy on this matter. The GC witnesses identified only two or three instances in which they were told to "deal with" double bookings, and I am not convinced that there was any established practice or procedure for handling what appears to have been a rare problem, much less that the Agency changed its practice. On one such occasion, Young said she could not remember how she handled the situation, while in another, she said that two supervisors ended up conducting both of the double-booked interviews. Tr. 92. GC Exhibit 12 illustrates what might have been another similar incident, but in this case the extra interview was listed under Supervisor Ruff's name, and she asked for volunteers if any of the CRs had a no-show that morning. This does not amount to a pattern of conduct on management's part or demonstrate that CRs were being assigned a responsibility not previously given them.

To summarize thus far, I find that the Agency did change the CRs' conditions of employment by increasing the number of disability interviews each CR was assigned, by changing the 11:00 a.m. disability interviews to 10:30 and the 1:00 p.m. disability interviews to 12:45, and by requiring CRs to conduct one disability interview on their adjudication day. I find that the Agency did not change their conditions of employment regarding assisting SRs or regarding walk-ins or double-booked interviews.

The Respondent was, of course, entitled to respond to the increase in disability cases and the resulting interview backlog by making changes in its interview and scheduling practices, 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. The Agency's April 15 memo did announce changes in the CRs' conditions of employment, so my analysis turns to the nature and extent of the effects of the 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. To start, I note that the General

Counsel is correct that the addition of 9:00 a.m. disability interviews resulted in additional

work for the CRs;[8] the Respondent is also correct that the additional work involved no new duties or responsibilities for the CRs, but rather consisted of tasks that the CRs had always been performing. In a qualitative sense, what changed in April was not the type of work the CRs were required to perform, but the rearrangement of the time and manner in which the CRs would be able to perform it. Title II CRs would now have a much higher ratio of disability to retirement interviews, those disability interviews would be compressed into a shorter period of time, and they would no longer have full control over their adjudication day. For Title XVI CRs, the increased number of disability interviews would leave them with less time to perform their other work, and they would lose full control over both their adjudication day and their day previously devoted to redeterminations.

Based on the evidence in the record, and particularly in the absence of any significant number of time records, it is impossible to quantify these changes precisely, but reasonable estimates can be made. My starting point in this process is that disability interviews take significantly longer to conduct than retirement or survivors' interviews. All the witnesses agreed on this point, and the evidence suggests that most retirement/survivor interviews are finished in about a half hour, while most disability interviews take sixty to ninety minutes, with a significant number taking two hours. In addition to the witnesses' direct testimony about the length of disability interviews, I note that although the Title II CRs regularly conducted five retirement interviews a day, at one-hour intervals, prior to April, there was no indication that they had any difficulty balancing these interviews with their breaks and lunch. On the other hand, there is ample evidence that some of the CRs had difficulty completing many disability interviews in the ninety-minute window afforded by the April changes. While I recognize that some disability interviews will take much longer than others, and that some employees will take longer to do the same work than others, I believe that on average, disability interviews last considerably longer (in the range of 75% to 100% longer) than retirement interviews. Therefore, when the Agency decided to assign each Title II CR four more disability interviews and six fewer retirement interviews per week, it was foreseeable that the CRs would be spending more time interviewing claimants than before, and that this would leave the CRs with less time to do their other work. Where those six retirement interviews took the CRs an average of three hours to complete, the four disability interviews would likely take four to six, and often as much as eight hours. Disability claims will also generally require more adjudication work for the CR (both pre- and post-effectuation) than retirement claims. This one change alone, therefore, could be expected to add anywhere from one to three hours (or more) per week to each Title II CR's workload.

For the Title XVI CRs, the April 2009 changes added two disability interviews a week to their schedule, as I discussed *supra*. Prior to that date, they were assigned three disability interviews a day, three days a week; a fourth day was devoted to redetermination cases and the fifth day was their adjudication day. Starting April 27, they were assigned a 9:00 a.m. disability interview on both their redetermination day and their adjudication day.

[8] **The Respondent does not dispute that Title XVI CRs were assigned more interviews than before, and I so find; see my discussion at pp. 4-5, supra. Respondent contends that while Title II CRs were given additional disability interviews, their retirement interviews were reduced, resulting in no net workload increase, but as I will discuss infra, I find that the schedule changes resulted in a workload increase for Title II CRs as well.**

A month or two later, the Agency adjusted the Title XVI unit's schedule further, giving each CR an additional two disability interviews on their redetermination day and relieving them of their redetermination caseloads, but my focus is primarily on the reasonably foreseeable effects of the changes made in April. Therefore, I am evaluating the changes as they were evident on April 27: at that time, instead of holding nine disability interviews a week, Title XVI CRs were assigned eleven; their adjudication and redetermination days were interrupted by 9:00 a.m. disability interviews; and they still had to handle their redetermination cases in the reduced time left. The two additional disability interviews alone would add from two to three hours of work, sometimes more, per week, plus the extra adjudication time necessary for those interviews.

I consider the addition of one to three hours of work per week per employee (for the Title II CRs) to be more than a *de minimis* change in an employee's workload; *a fortiori,* the addition of two to three hours of work per week (for the Title XVI CRs) would also be greater than *de minimis*. However, I think it is potentially misleading to look at each aspect of the changes separately and in isolation from each other, because ultimately it is the total impact of the multiple schedule changes that must be evaluated. This is particularly true for the changes that moved the 11:00 a.m. disability interviews to 10:30 and the 1:00 p.m. interviews to 12:45. If this had been the only change made to the CRs' schedule in April, I would be inclined to say that it would have a *de minimis* impact on the employees. While their 9:00 interview might frequently be ongoing when the 10:30 interview was due to start, and this would pressure the CRs to skip their morning break, the earlier second interview might give them more time for lunch, and the earlier 12:45 interview would give them slightly more time to do other work in the afternoon. But when this change is imposed on the
CRs at the same time as their total number of disability interviews is increased, and the Title XVI CRs are no longer given a full day to do their redetermination cases, it is clear that the Agency has ratcheted up the pressure on the CRs significantly. This pressure is felt by the CRs whenever two interviews run into each other, which is much more likely to happen when the second interview of the day is scheduled for 10:30 than when it is at 11:00. The pressure is also felt by the claimants who are left waiting, and who pass the pressure back again to the CRs. That pressure is further increased when a CR must choose between keeping a claimant waiting or skipping a break: this is a no-win choice that is not alleviated merely because some employees may choose to take their break. The pressure is also reflected in memos from supervisors, concerned that other work is not getting done in a timely manner. *See, e.g.,* GC Ex. 6.

Moreover, it is in the context of the above changes that the "loss" of the adjudication day must be considered. (All CRs were assigned one disability interview on their adjudication day, while the Title XVI CRs were also assigned a disability interview on their

redetermination day.) For the CRs, their work lives are primarily regulated by the tick of the ever-present clock: for three days every week prior to April 2009, the Title XVI CRs had to fit their multiple responsibilities around the demands of the three disability interviews that they were assigned; the Title II CRs had to fit their other responsibilities around disability interviews that were scheduled one day a week and retirement/survivor interviews three days a week. This left the Title II CRs one day, and the Title XVI CRs two days, when the tyranny of the clock disappeared. They still had plenty of work to do, but for those days, they had the freedom and flexibility to structure their work and their days according to their own

preferences. But when the new schedule changes were made, this freedom was lost, and the tyranny of fixed daily interviews ruled every morning of the workweek. The CRs still had freedom to structure the rest of their "down" days as they wanted, but no longer was even one day a week free from this pressure. The Respondent minimizes the significance and impact of this change, reasoning that all time is fungible, and that the CRs still had flexibility to manage their workloads, but I view the imposition of interviews into the CRs' adjudication and redetermination days as more than merely quantitative. It crossed a border that cannot be measured simply by time. In qualitative terms, it was a significant loss of flexibility to the employees.

In addition to increasing the employees' workload and reducing their discretion and flexibility, the schedule changes affected their break and lunch schedule, caused at least some of them to feel they had to work overtime and credit hours to accomplish their work, and affected their non-work lives. While Adrian and Young were not required to work the overtime and credit hours, it carries some weight in the *de minimis* analysis that they felt they had to work extra just to keep up with their workload. The changes disrupted the carpool arrangements they had previously made and caused them to alter their normal arrival and departure times. The extra disability interviews, because of their length, have also exacerbated Young's pre-existing back and hip problems.

As part of its position that the schedule changes had little impact on employees, the Respondent sought to portray Adrian and Young as complainers and people who had difficulty completing their work even before the changes were made. Tr. 147, 167-68, 182-84. It introduced an email from a different CR, who advised her Union representative, "We have time to break and have lunch and complete our work." Resp. Ex. 1 at 1. Supervisor Ruff further testified to her observation that most CRs are able to complete their disability interviews in plenty of time before their break or their next interview. Even if I accept the premise that it may take Adrian and Young longer to perform their work than some of the other CRs, I do not accept the premise that the schedule changes had (or were likely to have) little or no adverse impact on the CRs. First, the record reflects that other CRs were also having problems with the new schedule and were feeling increasing stress and pressure.

Tr. 105; GC Ex. 3 at 3, 5; GC Ex. 4 at 2. Moreover, even if Adrian and Young had complained about their workload and had difficulty keeping up with their work prior to the changes, this would have made it more likely that adding more disability interviews to their workload would cause worse problems. These two employees represented 20 percent of the

CRs in the office, and the exacerbation of an existing problem for that portion of the workforce is significant. Part of a union's role is to represent employees who are having difficulty with their work, and to alleviate potential disciplinary and other problems that such employees may incur by the implementation of changes, and that clearly was what the Union had in mind here, when it requested to discuss and to bargain regarding the April 2009 changes. GC Ex. 3, 4.

Finally, I cannot accept the argument that the addition of this number of disability interviews and the elimination of part of their adjudication and redetermination days would not have a significant impact on even the most efficient CRs in the office. Where the Title II CRs previously conducted fifteen retirement and survivor interviews and three disability

interviews a week, they now conduct nine retirement and seven disability interviews. That is a major change in the overall balance of their workload, especially when it is undisputed that disability interviews are generally more complex and time-consuming than retirement interviews, and require additional adjudication work. Where the Title XVI CRs previously conducted nine disability interviews a week, they were assigned eleven as of April 27, and they continued to be responsible for their redetermination caseload despite the addition of a disability interview on their redetermination day and on their adjudication day. While time may be fungible, it is not flexible: if a CR has to conduct a disability interview on the day set aside for redeterminations, she will have one or two fewer hours to devote to those redeterminations (that is a one-eighth to one-quarter reduction). The same is true of the disability interviews being assigned on their adjudication days. It was not just "reasonably foreseeable" that the scheduling of disability interviews on employees' redetermination days would interfere with their ability to accomplish their redetermination duties, it was inevitable. Mr. Kent quickly discovered this law of physics for himself, as evidenced by his decision a month or two later to assign the redetermination cases to another employee. This second unilateral management change does not, however, negate the first one or remove the obligation to bargain with the Union over the impact and implementation of such changes. *See Border Patrol,* 60 FLRA at 179 (dissenting opinion of then-Member Pope).

Although it can be useful to explore prior Authority decisions to identify factors which the Authority has found to be significant in a *de minimis* determination, such research can be misleading, by taking those factors out of their relevant factual context. Thus, while the assignment of a new type of duties was important in determining that the change was greater than *de minimis* in *U.S. Dep't of Justice, Immigration & Naturalization Serv., United States Border Patrol, San Diego Sector, San Diego, Cal.,* 35 FLRA 1039 (1990), that does not mean that an increase in work the employees have traditionally done is necessarily *de minimis. See, e.g., U.S. Dep't of Health & Human Serv., Soc. Sec. Admin., Baltimore, Md.,* 41 FLRA 1309, 1318 (1991), where CRs continued to perform the same work in the same manner, but a change in the manner of distributing the work was found to be greater than *de minimis*. In *SSA Gilroy,* also involving the assignment of additional interviews to Social Security Claims Representatives, the employees were not given new types of work, but the increase in their workload and the accompanying loss of time for adjudication were found to be significant. 53 FLRA at 1369. *See also Dep't of Health & Human Serv., Soc. Sec. Admin.*, 26 FLRA 344 (1987), where the ALJ found that additional work assigned to employees would take them 20 hours per year to perform, and that this was greater than *de minimis*. The evidence in *SSA Gilroy* differs in many details from our case, and it would be inappropriate to conclude that that case is determinative of this one. Nonetheless, the facts and decision in *SSA Gilroy* support the General Counsel's position far more than the Respondent's.

Ultimately, the determination in each case must stand on the evidence in that case of how employees were affected by the changes in their conditions of employment. Here, for the reasons outlined above, I conclude that the additional disability interviews sufficiently increased the CRs' workload as to cause a greater than *de minimis* change in their conditions of employment. The scheduling of disability interviews on the CRs' adjudication and redetermination days had further adverse effects on the employees, as it gave them less time to perform their non-interviewing duties and interfered with their ability to manage and

control their workload. Moreover, while the change in interview times from 11:00 to 10:30 a.m. and from 1:00 to 12:45 p.m. might not, in isolation, be expected to have a greater than *de minimis* effect on the CRs, the imposition of this change in combination with the others exacerbated the time and work pressures on the employees and magnified its adverse impact. Accordingly, the Respondent should have negotiated with the Union regarding these changes before implementing them. By failing to do so, the Respondent violated section 7116(a)(1) and (5) of the Statute.

Remedy

In order to remedy the unfair labor practice, the GC seeks the rescission of the aforesaid changes, in addition to the traditional cease and desist order and posting of a notice to employees. The Respondent did not address a remedy, other than to seek dismissal of the complaint. *Fed. Corr. Inst.,* 8 FLRA 604 (1982)(*FCI*), sets forth the considerations in evaluating whether to impose a *status quo ante* remedy when an agency has failed to negotiate the impact and implementation of a decision that is within its reserved management rights. As noted there, 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." *Id.* at 606.

Looking at the criteria outlined in *FCI,* I note first that the Agency did provide the Union with notice, albeit an inaccurate and incomplete one, of its proposed changes two weeks before the changes were implemented. GC Ex. 2. The inaccuracy of the notice, however, only emphasizes the Agency's miscalculation and the effect of its error on employees. The Union requested bargaining two days later, outlining the likely adverse impact of the proposed changes and requesting more information from Kent regarding the nature and extent of the schedule changes. GC Ex. 3, 4. Rather than answering any of the Union's questions, Kent simply reminded the Union representative that the changes were not negotiable and that the Agency was not required to answer interrogatories. GC Ex. 3 at 2, 4.

Subsequently, it turned out that Kent's April 15 memo was wrong with regard to the Walk-In CR and the times for retirement interviews. Thus, the Agency's one "courtesy" to the Union actually proved to be misleading rather than helpful. As noted already, the Agency's refusal to negotiate was willful, and the CRs affected by the schedule change have been subjected to significant additional work and time pressures, as well as other adverse effects described already. These considerations all weigh in favor of rescinding the changes until the Agency has met its bargaining obligations.

The *SSA Gilroy* case offers the closest model for a remedy, since it also involved an SSA office that unilaterally changed the schedules of Claims Representatives. As in the instant case, the Agency in *SSA Gilroy* made those changes in order to meet significant operational demands, such as the mounting waiting times for claimants to obtain an interview and the need to schedule appointments every workday. 53 FLRA at 1370. The judge, whose recommended remedy was approved by the Authority, stated: "While this evidence demonstrates why [the change] is desirable, such evidence does not support a finding that a *status quo ante* remedy would disrupt or impair the efficiency and effectiveness of Respondent's operations." *Id.* And as in *SSA Gilroy,* the Respondent here has not offered any testimony or other evidence that it could not return to the old schedule, which was in effect for at least three years, while it fulfilled its bargaining obligation. *Id.* In light of the

other factors weighing in favor of a *status quo ante* remedy, I cannot reject such a remedy based on speculation. If the Agency still believes that it needs to make these changes, it must first provide the Union with appropriate notice, and if the Union requests bargaining, it must meet that bargaining obligation. Finally, since Mr. Kent was the management official who made the decision to implement the unilateral changes, he should be the official to sign the notice to employees.

Accordingly, I recommend that the Authority issue the following remedial 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, San Luis Obispo District Office, San Luis Obispo, California (Respondent), shall:

1. Cease and desist from:

(a) Implementing changes in the schedules of Claims Representatives (CRs), by changing the numbers or the times of disability and retirement interviews scheduled for each CR or by scheduling disability interviews on days they previously did not conduct such interviews, without first affording the American Federation of Government Employees, Local 3172, AFL-CIO (the Union), an opportunity to bargain regarding the procedures to be observed in implementing the changes and appropriate arrangements for employees who have been, or may be, adversely affected by the implementation of such changes.

(b) 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) Rescind the aforesaid changes in the CRs' schedules that were implemented in April 2009.

(b) Upon request, bargain with the Union concerning the impact and implementation of any proposed changes in the CRs schedules.

(c) Post at its facilities where bargaining unit employees 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 District Manager of the San Luis Obispo District Office, and shall be posted and maintained for 60 consecutive days, 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, San Francisco 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., July 25, 2011.

_____

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 Department of Defense, Social Security Administration, San Luis Obispo District Office, San Luis Obispo, California, 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 implement changes in the schedules of Claims Representatives (CRs), by changing the numbers or the times of disability and retirement interviews scheduled for each CR or by scheduling disability interviews on days they previously did not conduct such interviews, without first affording the American Federation of Government Employees, Local 3172, AFL-CIO (the Union), an opportunity to bargain regarding the procedures to be observed in implementing the change and appropriate arrangements for employees who have been, or may be, adversely affected by the implementation of any such changes.

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 rescind the aforesaid changes to the CRs' schedules that were implemented in April 2009.

WE WILL, upon request, bargain with the Union concerning the impact and implementation of any proposed changes in the CRs' schedules.

(Agency/Activity)

Dated: _____ By: _____
(Signature) (District 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, San Francisco Region, Federal Labor Relations Authority, and whose address is: 901 Market Street, Suite 220, San Francisco, CA 94103, and whose telephone number is: 415-356-5000.

CERTIFICATE OF SERVICE

I hereby certify that copies of this **DECISION**, issued by RICHARD A. PEARSON, Administrative Law Judge, in Case No. SF-CA-09-0560, were sent to the following parties:

CERTIFIED MAIL & RETURN RECEIPT **CERTIFIED NOS:**

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_____
Catherine Turner
Office of Administrative Law Judges
Federal Labor Relations Authority

Dated: July 25, 2011
Washington, DC