

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

SOCIAL SECURITY ADMINISTRATION MALDEN DISTRICT OFFICE MALDEN, MASSACHUSETTS Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO, LOCAL 1164 Charging Party	Case No. BN-CA-50227

NOTICE OF TRANSMITTAL OF DECISION

The above-entitled case having been heard before 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. § 2423.26(b).

PLEASE BE ADVISED that the filing of exceptions to the attached Decision is governed by 5 C.F.R. §§ 2423.26(c) through 2423.29, 2429.21 through 2429.25 and 2429.27.

Any such exceptions must be filed on or before **SEPTEMBER 3, 1996**, and addressed to:

Federal Labor Relations Authority
Office of Case Control
607 14th Street, NW, 4th Floor
Washington, DC 20424-0001

WILLIAM B. DEVANEY
Administrative Law Judge

Dated: August 2, 1996

Washington, DC

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

MEMORANDUM

DATE: August 2, 1996

TO: The Federal Labor Relations Authority

FROM: WILLIAM B. DEVANEY
Administrative Law Judge

SUBJECT: SOCIAL SECURITY ADMINISTRATION
MALDEN DISTRICT OFFICE
MALDEN, MASSACHUSETTS

Respondent

and Case No. BN-
CA-50227

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, AFL-CIO, LOCAL 1164

Charging Party

Pursuant to section 2423.26(b) of the Rules and Regulations, 5 C.F.R. § 2423.26(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 filed by the parties.

Enclosures

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
OFFICE OF ADMINISTRATIVE LAW JUDGES
WASHINGTON, D.C. 20424-0001

SOCIAL SECURITY ADMINISTRATION MALDEN DISTRICT OFFICE MALDEN, MASSACHUSETTS Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO, LOCAL 1164 Charging Party	Case No. BN-CA-50227

Mr. John J. Barrett
Mr. Lawrence Kelly
For the Respondent

Linda I. Bauer, Esquire
For the General Counsel

Before: WILLIAM B. DEVANEY
Administrative Law Judge

DECISION

Statement of the Case

This proceeding, under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the United States Code, 5 U.S.C. § 7101, et seq. 1, and the Rules and Regulations issued thereunder, 5 C.F.R. § 2423.1, et seq., concerns whether: a) the assignment to Claims Representatives of the duties of "associating" medical folders with non-medical folders, logging in messages received over the wire and mailing claims to the payment center was more than a de minimis change of their conditions

1

For convenience of reference, sections of the Statute hereinafter are, also, referred to without inclusion of the initial "71" of the statutory reference, i.e., Section 7116 (a) (5) will be referred to, simply, as "\$ 16(a) (5)".

of employment; and/or b) had the parties already bargained on the impact and implementation of the reassignment of duties to Claim Representatives?

This case was initiated by a charge filed on January 10, 1995 (G.C. Exh. A), which alleged violations of §§ 16(a)(1), (5) and (8) of the Statute. The Complaint and Notice of Hearing issued June 30, 1995 (G.C. Exh. C, Attachment) but alleged violation only of §§ 16(a)(5) and (1) of the Statute², and set the hearing for September 7, 1995. By Order dated August 29, 1995 (G.C. Exh. E), the joint motion of Respondent and General Counsel to reschedule the hearing for November 13, 1995 (G.C. Exh. D), was granted and, pursuant thereto a hearing was duly held on November 13, 1995, in Boston, Massachusetts, before the undersigned; however, the hearing was not completed on November 13, and, because of the budget problem, was continued indefinitely. By Order dated November 21, 1995, the resumption of the hearing was rescheduled for January 9, 1996; but by Order dated January 5, 1996, on motion of the General Counsel, because of the continuing Federal Budget impasse, was postponed indefinitely. By Order dated February 16, 1996, resumption of the hearing was scheduled for March 5, 1996, pursuant to which the hearing was duly resumed on March 5, 1996, in Boston, Massachusetts, before the undersigned. All parties were represented at the hearing, were afforded full opportunity to be heard, to introduce evidence bearing on the issues involved, and were afforded the opportunity to present oral argument which each party waived. At the conclusion of the hearing, April 5, 1996, was fixed as the date for mailing post-hearing briefs and Respondent and General Counsel each timely mailed an excellent brief received on April 9, 1996, which have been carefully considered; however the transcript of the March 5, 1996, hearing was not received by this Office until June 18, 1996. Upon the basis of the entire record³, including my observation of the witnesses and their demeanor, I make the following findings and conclusions:

2

At the hearing, General Counsel stated that the Union had withdrawn the § 16(a)(8) allegation (Tr. 8).

3

General Counsel's motion to correct Transcript, to which no opposition was filed, is meritorious and is granted except the proposed change on page 51, line 2, of the November 13, 1995, transcript which could not be located; and the proposed notation concerning pages 35-53 of the March 5, 1996, transcript "Pages are duplicated", for the reason that no duplication was found. The transcript is hereby corrected as set forth in the attached, "Appendix".

Findings

1. The technology for the handling of Social Security claims has changed markedly in the last 20 years. In the mid to late 1970s, a Claim Representative interviewed claimants and entered the information on a paper claim form. This form would then go to a Data Review Technician (DRT), who did some coding, and then typed (keyed) the information into the main computer in Baltimore (Tr. II, 5). In 1985, a claims modernization project called, Field Office Systems Enhancement (FOSE), was begun whereby, inter alia, Claims Representatives were given direct computer access and, instead of entering information on a paper form, the Claims Representatives keyed the information into the main computer as the claimant was interviewed (Tr. II, 7). As most of the duties of the DRTs had been eliminated, the position of DRT was phased out (Tr. I, p. 101). The last DRT in the Malden District Office, Ms. Diana Henderson, was re-trained to be a Service Representative either in December, 1993 or January, 1994 (Tr. I, 102). As a DRT, Ms. Henderson's duties included, inter alia, the disputed work in this case, namely logging in folders received from the Massachusetts Disability Determination Services; logging in CC messages; and mailing claims to the payment center (Tr. I, 27, 64, 70). When Ms. Henderson was upgraded to a Service Representative, the disputed work was taken over by the operations supervisors (Tr. I, 64, 80, 108, 117).

2. Service Representatives (SRs) act as receptionists to greet the public; they process all applications for Social Security numbers; and they handle all maintenance issues after benefits have been granted, such as missing checks, changes of address, direct deposit, etc. (Tr. I, 9-10; Tr. II. 95).

3. Claims Representatives (CRs) interview claimants as they appear; but some method of distribution of follow-up work, after the initial interview, is necessary. Respondent had used an alphabetic method, whereby each CR was assigned certain letters of the alphabet and would do all follow-up work for claimants whose last name began with the letters assigned to that CR. Another method, which Respondent proposed in April, 1994, as discussed more fully hereinafter, is "Keep What You Take" (KWYT), whereby each CR does the follow-up work on the claimants the CR initially interviewed.

4. On April 21, 1994, Respondent made two proposed changes: one dealing with implementation, inter alia, of KWYT (G.C. Exh. 2) and the other dealing with the re-

assignment of duties (G.C. Exh. 3). The re-assignment of duties proposal, in relevant part, was:

SRs: distribute mail; input such items as DOWR [District Office Work Report, Tr. I, 70]; associate medical folders returned from the Massachusetts Disability Determination Service (DDS)

CRs: assemble the file and completing all necessary actions; mail file to Payment Center or file denials in closed files (G.C. Exh. 3).

Ms. Deborah Haggett, a steward for the Union and, with Mr. William Ross, area Vice President for Area Two of AFGE, Local 1164, one of the Union's negotiators (Tr. II, 18), testified that despite differences in terminology, Respondent's assignment of duties to CRs included: logging in the receipt of medical folders and logging in CC messages (Tr. I, 88). Ms. Haggett also testified that Respondent had consulted with the Union in December, 1993, about the changes it intended and that at that time Respondent was proposing that all of the duties set forth above as assigned to SRs be assigned to CRs; that the Union, as a counterproposal, suggested that SRs input the DOWR and associate medical folders returned by DDS with non-medical folders; and that Respondent had, accordingly, included this proposal in its April 21, 1994, formal proposal (Tr. II, 82).

5. The parties negotiated, with the assistance of Federal Mediation and Conciliation, and agreed upon most items in dispute (G.C. Exh. 4C); but could not agree on proposed Memorandum of Understanding, Article II, Section 3 A-E (G.C. Exh. 4E). The Union had withdrawn its December, 1993, proposal that SRs associate medical folders returned from DDS with non-medical folders and, in formal negotiations, proposed that: SRs only input DOWR and control TPQY cards (id., Section 3A); and that association and assembly of medical and non-medical files, logging in of CC messages, etc. now performed by supervisors, continue to be performed by supervisors (id. Section B). The Union sought the assistance of the Federal Service Impasses Panel (G.C. Exh. 4A, 4B) (FSIP). By letter dated October 28, 1994, FSIP declined to assert jurisdiction because, ". . . our investigation reveals that the Employer has raised questions concerning its obligation to bargain with respect to . . . (1) the reassign-ment of duties which were formerly performed by the Data Review Technician . . . Such questions concerning the obliga-tion to bargain must be resolved in an appropriate forum before a determination can be made as to

whether the parties have, in fact, reached a negotiation impasse." (G.C. Exh. 8).

6. By letter dated November 4, 1994, the Union stated, in part,

" . . . The Union will be referring these threshold questions to the appropriate forum in the required time frame. . . ." (G.C. Exh. 9).

But the Union did nothing further.

7. On January 6, 1995, Respondent informed the Union (Tr. I, 96) and the staff that,

"Effective January 9, 1995 Claims Representatives will be responsible for logging in folders received from DDS and associating them with the non-medicals.

"Also, the Claims Representative will be responsible for logging in the CC messages received over the wire and mailing out the claims.

"An Operations Supervisor will continue to log in the WMS completed claims, retrieve them from the holding drawer and mail them. (G.C. Exh. 10).

8. By letter, also dated January 6, 1995, the Union exercised, ". . . the right to consult/negotiate on the 'impact and implementation' of the proposed changes" and demanded that no change be made until consultation/negotiations were completed (G.C. Exh. 11).

9. Respondent unilaterally implemented the changes set forth in its letter of January 6, 1995, on January 9, 1995.

CONCLUSIONS

A. Change was more than de minimis.

By assigning new and additional duties to its CRs, Respondent changed their condition of employment. Despite Respondent's assertion (Respondent's Brief, p. 8), it can not be said that the disputed duties were "inherently the duties of claims representatives" because CRs never performed them before January 9, 1995. To the contrary, it is agreed that these duties had been performed by DRTs; and when the position of DRT had been phased out, these duties had been taken over by supervisors.

The distinction between "associating" and "assembling" is debatable; but, apparently, "associating" means going to the file drawer, where the non-medical folders are filed in alphabetical order, and getting the folder for the claimant for whom the DDS has made its disability determination and putting them together. "Assembly", means putting a copy of the disability determination in the Supplemental Security Income (SSI) file, if there is an SSI claim, and putting the two files in a multi-pocket folder (Tr. II, 65-66, 74, 84). If the claim were denied by DDS, the entire folder would be placed in the closed files; and if the claim were allowed by DDS, the file is sent to the payment center for payment (Tr. II, 83-84). In addition, the CR had to call up the claimant's computer record and record the receipt of the DDS file; and, also, enter on the computer records all CC messages received. While describing "associating" and "assembling" probably takes longer than to do it (Tr. II, 66), it is necessary to go to the file cabinets, find the proper file, do the required association and assembly, send the file to the payment center, or put it in the closed files, log onto the computer to record receipt of the DDS file and record any CC messages, all of which requires time. Ms. Maureen T. Kelly, operations supervisor at Malden, stated that it would take, per case, "No more than 10 minutes, 5 minutes." (Tr. II, 67) and Ms. Haggett said, ". . . seven, eight minutes, maybe ten . . ." (Tr. II, 85). With 12-14 CRs who do disability cases (Tr. II, p. 70) and an average of about 10 folders from DDS per day, obviously distribution of the disability folders to the CR who handled the claim⁴ would mean, on the average, that no CR would have more than one or two per day. But whether 5 minutes, or 10 minutes, or longer, performance of the additional duties, which involved a variety of functions, involve significant duties requiring significant time. To determine whether a change has more than a de minimis impact, the Authority examines the totality of the facts and circumstances in each case, Department of Health and Human Services, Social Security Administration, Region V, Chicago, Illinois, 19 FLRA 827 (1985); Department of Health and Human Services, Social Security Administration, 24 FLRA 403 (1986); Department of Health and Human Services, Family Support Administration, 30 FLRA 346 (1987); U.S. Department of Health and Human Services, Social Security Administration, Baltimore, Maryland and Hartford, Connecticut, 41 FLRA 1309 (1991). Here, the change affected

4

Respondent states that inasmuch as the CR, "had forwarded the medical portion on to . . . [DDS] it is the claims representative to whom the completed medical file is addressed

. . . ." (Respondent's Brief, p. 9).

all CRs who handle disability claims (all CRs except one (Tr. II, 70)); was to be permanent; and, as noted, added duties to the work of the CRs. While the change in duties was slight it was more than de minimis.

B. Change Not Previously Bargained.

This case had a somewhat tortuous course. Initially, in its consultation with the Union, Respondent indicated its intention to assign all disputed work to CRs. The Union, as a counterproposal, suggested that SRs associate the medical folders received from DDS with non-medical folders and Respondent adopted this suggestion in its April 21, 1994, proposal; however, by then, the Union had backed away from its proposal and asserted, notwithstanding the unqualified management right, "to assign work" (§ 6(a)(2)(B)), that the assignment of work was negotiable. The parties did negotiate, did evoke the assistance of Federal Mediation, and the Union sought the assistance of FSIP, which, after investigation, declined jurisdiction. But, strangely, on January 6, 1995, when Respondent gave notice of its intent to implement the reassignment of duties it did not propose to implement its April 21, 1994, proposal, on which the parties had negotiated, but a different proposal, on which the parties had not negotiated. The Union on January 6, 1995, upon receipt of Respondent's notice demanded to bargain on the impact and implementation of the change and demanded that no change be made until negotiations were completed. Respondent, instead, unilaterally implemented the change on January 9, 1995, and thereby violated §§ 16(a)(5) and (1) of the Statute.

Having found that Respondent violated §§ 16(a)(5) and (1) of the Statute, it is recommended that the Authority adopt the following:

ORDER

Pursuant to § 2423.29 of the Authority's Rules and Regulations, 5 C.F.R. § 2423.29, and § 18 of the Statute, 5 U.S.C. § 7118, it is hereby ordered that the Social Security District Office, Malden, Massachusetts, shall:

1. Cease and desist from:

a) Changing conditions of employment of bargaining unit employees by reassigning duties, performed by supervisors and previously performed by Data Review Technicians, to Claims Representatives without first notifying American Federation of Government Employees, AFL-CIO, Local 1164 (hereinafter, "Union") the exclusive

representative of its employees, and affording it an opportunity to bargain regarding the procedures to be observed and appropriate arrangement for employees who have been, or may be, adversely affected by the implementation of any such change.

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

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

a) Restore the status quo ante by forthwith rescinding and withdrawing its January 9, 1995, assignment to Claims Representatives responsibility for: logging in folders received from DDS and associating them with the non-medicals; logging in the CC messages received over the wire and mailing out the claims.

b) Notify the Union of any proposed reassignment to Claims Representatives, or to any other bargaining unit employee, of duties and, upon request, bargain with the Union as to the procedures to be observed in implementing such work reassignment and appropriate arrangement for employees adversely affected thereby.

c) Post at its facilities at the District Office, Malden, Massachusetts, 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 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 § 2423.30, of the Authority's Rules and Regulations, 5 C.F.R. § 2423.30, notify the Regional Director of the Boston Region, Federal Labor Relations Authority, 99 Summer Street, Suite 1500, Boston, Massachusetts 02110-1200, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

WILLIAM B. DEVANEY
Administrative Law Judge

Dated: August 2, 1996
Washington, DC

NOTICE TO ALL EMPLOYEES

POSTED BY ORDER OF THE

FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the Social Security District Office, Malden, Massachusetts, violated the Federal Service Labor-Management Relations Statute and has ordered us to post and abide by this notice.

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT change working conditions of unit employees by reassigning duties to Claim Representatives without first notifying American Federation of Government Employees, AFL-CIO, Local 1164 (hereinafter, "Union"), the exclusive representative of our employees, and affording it an opportunity to bargain regarding the procedure to be observed and appropriate arrangement for employees who are adversely affected by the implementation of any such change.

WE WILL NOT in any like or related manner interfere with, restrain or coerce our employees in the exercise of their rights assured them by the Federal Service Labor-Management Relations Statute.

WE WILL restore the status quo ante by herewith rescinding and withdrawing our January 9, 1995, assignment to Claims Representatives responsibility for: logging in folders received from DDS and associating them with the non-medicals; logging in CC messages received over the wire and mailing out the claims.

WE WILL NOTIFY the Union of any proposed reassignment of duties which would affect bargaining unit employees' working conditions and, upon request, bargain with the Union as to the procedures to be observed and appropriate arrangements for employees adversely affected by implementation of any such change.

(Activity)

Date:

By:

(Signature)

(Title)

This Notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material.

If employees have any questions concerning this Notice or compliance with any of its provisions, they may communicate directly with the Regional Director, Boston Regional Office, Federal Labor Relations Authority, whose address is: 99 Summer Street, Suite 1500, Boston Massachusetts 02110-1200, and whose telephone number is: (617) 424-5730.

APPENDIX
Corrections To Transcript
BN-CA-50227

Transcript of Testimony of November 13, 1995

PAGE

LINE

FROM

TO

10

17

jurisdction

jurisdiction

10

18

impact

impasse

13

7

implemented

proposed

19

21

eight

(a)

22

22

too

to

49

20

necessarilly

necessarily

55

3

taking

taken

77

5

nogotiated

negotiated

Transcript of Testimony of November 13, 1995

PAGE

LINE

FROM

TO

throughout

Barren

Barrett

throughout

Heggett

Haggett

6

14

state

data

24

6

physician

position

26

11

22

12

33

14

"quite time"

"quiet time"

90

13

INI

I and I

CERTIFICATE OF SERVICE

I hereby certify that copies of this DECISION issued by WILLIAM B. DEVANEY, Administrative Law Judge, in Case No. BN-CA-50227, were sent to the following parties in the manner indicated:

CERTIFIED MAIL:

Mr. John J. Barrett
Management Representative
Office of Labor-Management Relations
Social Security Administration
G-H-10 West High Rise Building
6401 Security Boulevard
Baltimore, Maryland 21235

Mr. Lawrence Kelly
Management Representative
Human Resources/LMR
Social Security Administration
JFK Federal Building, Room 1900
Boston, Massachusetts 02203

Linda I. Bauer, Esquire
Federal Labor Relations Authority
99 Summer Street, Suite 1500
Boston, Massachusetts 02110-1200

REGULAR MAIL:

National President
American Federation of Government
Employees
80 F Street, NW
Washington, DC 20001

Dated: August 2, 1996

Washington, DC