

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

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| SOCIAL SECURITY ADMINISTRATION SANTA ROSA DISTRICT OFFICE SANTA ROSA, CALIFORNIA Respondent | |
| and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, COUNCIL 147, AFL-CIO Charging Party | Case No. SF-CA-50155 |

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 **OCTOBER 30, 1996**, and addressed to:

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

GARVIN LEE OLIVER
Administrative Law Judge

Dated: September 30, 1996
Washington, DC

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY

Office of Administrative Law Judges

WASHINGTON, D.C. 20424-0001

MEMORANDUM

DATE: September 30, 1996

TO: The Federal Labor Relations Authority

FROM: GARVIN LEE OLIVER
Administrative Law Judge

SUBJECT: SOCIAL SECURITY ADMINISTRATION
SANTA ROSA DISTRICT OFFICE
SANTA ROSA, CALIFORNIA

Respondent

and

Case No. SF-CA-50155

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, COUNCIL 147, AFL-CIO

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

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| SOCIAL SECURITY ADMINISTRATION SANTA ROSA DISTRICT OFFICE SANTA ROSA, CALIFORNIA Respondent | |
| and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, COUNCIL 147, AFL-CIO Charging Party | Case No. SF-CA-50155 |

Wilson G. Schuerholz
Representative of the Respondent

Charles R. Estudillo
Representative of the Charging Party

John R. Pannozzo, Jr.
Counsel for the General Counsel, FLRA

Before: GARVIN LEE OLIVER
Administrative Law Judge

DECISION

Statement of the Case

The unfair labor practice complaint alleges that Respondent violated section 7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute (the Statute), 5 U.S.C. §§ 7116(a)(1) and (5), by unilaterally moving an employee named Steve Matich from the Supplemental Security Income (SSI) Post Entitlement Unit (PE Unit) to the SSI Disability Unit (DIB Unit) without notifying and bargaining with the Charging Party (Union) to the extent required by the Statute. The complaint alleges that the

Union had proposed that Respondent not implement the change, that such proposal concerned a subject set forth in section 7106(b)(1) of the Statute¹, and that by issuing Executive Order 12871, "Labor-Management Partnerships," on October 1, 1993 (58 Fed. Reg. 52201-52203, October 6, 1993) (Executive Order 12871 or Executive Order)², the President of the United States exercised the Respondent's discretion under section 7106(b)(1) to negotiate section 7106(b)(1) subjects, including the numbers, types and grades of employees or positions assigned to any organizational subdivision. The record establishes that the Union only wished to bargain over section 7106(b)(1) subjects and not matters relating to the impact and implementation of the change.

Respondent's answer admitted the jurisdictional allegations as to the Respondent, the Union, and the charge, and that the Union requested that Respondent not implement the change, but generally denied all other allegations.

For the reasons set out below, I conclude that Respondent did not violate the Statute by refusing to negotiate pursuant to section 7106(b)(1) of the Statute. Concerning the fundamental issue presented, the Respondent has not exercised its discretion to negotiate pursuant to section 7106(b)(1), and the President's directive to the

¹
Section 7106(b)(1) of the Statute provides, in pertinent part:

(b) Nothing in this section shall preclude any agency and any labor organization from negotiating--

(1) at the election of the agency, on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work[.]

²
Section 2(d) of the Executive Order, provides in pertinent part as follows:

Sec. 2. IMPLEMENTATION OF LABOR-MANAGEMENT PARTNERSHIPS THROUGHOUT THE EXECUTIVE BRANCH. The head of each agency subject to the provisions of chapter 71 of title 5, United States Code shall:

* * * * *

(d) negotiate over the subjects set forth in 5 U.S.C. 7106(b)(1), and instruct subordinate officials to do the same;

heads of agencies in Executive Order 12871 did not exercise that discretion.

A hearing was held in San Francisco, California. The Respondent, Union, and the General Counsel were represented and afforded full opportunity to be heard, adduce relevant evidence, examine and cross-examine witnesses, and file post-hearing briefs.

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

On October 31, 1994, the Respondent, by District Manager Randee Dimond, moved employee Steve Matich, a Title 16, SSI Claims Representative (Specialized), at his own request, from the SSI PE Unit to the SSI DIB Unit in the Santa Rosa District Office. District Manager Dimond concluded that the PE Unit was over staffed and the DIB Unit was understaffed. There was no change in Matich's job title, position description, performance standards, tour of duty, shift, general work area, or equipment, and although there were work or job-related differences in the work of the two units, work was equally difficult and available in both areas.

Prior to the move, the Union, by Charles R. Estudillo, Executive Vice President, had requested to negotiate, pursuant to Executive Order 12871 and section 7106(b)(1) of the Statute, on the decision to make the change. Mr. Estudillo advised the Respondent that "changes within the purview of the 'numbers, types and grades of employees or positions assigned to any organizational subdivision, work project . . . ' are now mandatory areas of bargaining" and proposed that Respondent "not implement this change in the number of employees assigned to the DIB Unit until we have bargained to agreement." The Union's proposal was based on what it perceived to be inequities in the respective workloads of the PE and DIB Units.

District Manager Dimond offered to negotiate with the Union concerning the impact and implementation of the move, but declined to bargain on the Union's section 7106(b)(1) proposal relating to the numbers, types and grades of employees doing the work. She based her decision on guidance received from the Regional Office in San Francisco to the effect that her office had not been trained in interest-based bargaining approaches and could not go

forward with bargaining over section 7106(b) (1) subjects until such training had been provided. District Manager Dimond's response to the Union did not raise the defense that the proposal was covered by other agreements.

The General Counsel's Position

In summary, the General Counsel contends that Respondent violated section 7116(a) (1) and (5) of the Statute when it refused to bargain over section 7106(b) (1) subjects in connection with Steve Matich's October 31, 1994 move from the PE Unit to the DIB Unit. The General Counsel claims that the Union's proposal was negotiable under section 7106(b) (1) of the Statute, since it involved the "numbers, types and grades of employees or positions assigned to an organizational subdivision or work project," and, therefore, under National Association of Government Employees, Local R5-184 and U.S. Department of Veterans Affairs Medical Center, Lexington, Kentucky, 51 FLRA 386, 393 (1995) (VAMC, Lexington), it is unnecessary to analyze the proposal under section 7106(a) to determine whether it interferes with Respondent's right to assign work under section 7106(a) (2) (A).

The General Counsel asserts that by issuing Executive Order 12871, President Clinton exercised the agencies discretion and elected to bargain over section 7106(b) (1) subjects. Therefore, the Respondent could not lawfully refuse to bargain over such matters in this case. The General Counsel claims he is not enforcing Executive Order 12871, but simply enforcing the Union's statutory section 7106(b) (1) bargaining rights.

The General Counsel further maintains that the general subject matter of the Matich move was not "covered by" or "contained in" various other agreements as alleged by the Respondent, including a national partnership agreement. The General Counsel claims that, assuming that the matter is "covered by" the national partnership agreement, there was a specific reservation of a bargaining right in "Objective (8)" to immediately bargain over section 7106(b) (1) subjects.

The Respondent's Position

The Respondent presents numerous defenses to the alleged unfair labor practice. Essentially, the Respondent asserts that, under the circumstances of this case, it has not exercised its discretion to bargain under section 7106 (b) (1) and, therefore, could not, and did not, violate the Statute. The Respondent contends that it did not choose to

bargain in this instance because evaluation and training procedures were not in place in the Region as required by the Executive Order and the parties' national partnership agreement and, further, a section 7106(b)(1) request was on the table at the national level. The Respondent also points out that the President's Executive Order is an internal management matter and created no rights enforceable administratively or judicially.

In addition, the Respondent contends that the move was de minimis, and the Union had no right to initiate mid-term bargaining. It also asserts that the move was not a section 7106(b)(1) issue because the alleged violation occurred in a unit within the district office. Respondent contends that its formal organizational structure only extends to the district office/branch office level. Therefore, the move of the employee to a different unit did not involve an "organizational subdivision," and Respondent claims that "work project" and "tour of duty" are also inapplicable under section 7106(b)(1).

Finally, the Respondent contends that the matter of moving the employee from one unit to another was "covered by" other collective bargaining agreements placed in evidence, including a July 18, 1992 reassignment memorandum of understanding, the September 10, 1991 or November 17, 1994 rotation plans, a December 21, 1994 reorganization agreement, or the national partnership agreement of June 22, 1994. (Respondent's Exhibits 1-4; General Counsel's Exhibits 10, 21.)

Discussion and Conclusions

I agree with the General Counsel that the Union's proposal, that the Respondent "not implement this change in the number of employees assigned to the DIB Unit until we have bargained to agreement," was negotiable at the Respondent's election under section 7106(b)(1) of the Statute. The Authority stated in VAMC, Lexington, that, in determining whether a proposal concerns a matter covered by section 7106(b)(1), it would "analyze whether the proposal . . . relates to: i) the numbers, types, and grades; ii) of employees or positions; iii) assigned to any organizational subdivision, work project, or tour of duty." Id., 51 FLRA at 394 (footnote omitted). The proposal here expressly involves the first two factors, the "number . . . of employees assigned," and I conclude that "to the DIB Unit" comes within the third factor, the broad statutory language of "any organizational subdivision." The DIB Unit is part of the Respondent, the Santa Rosa District Office. I reject the Respondent's position that a unit of the district office

is not an "organizational subdivision" because of the Social Security Administration's "formal organizational structure."

Section 7106(b)(1) makes it clear that matters concerning "numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty" are negotiable only at an agency's election. Under the circumstances of this case, Respondent has not exercised its discretion to negotiate the Union's section 7116(b)(1) proposal. Therefore, the Respondent did not violate section 7116(a)(1) and (5) of the Statute in this respect, as alleged.

The President of the United States did not exercise the Respondent's discretion. Executive Order 12871 at Sec. 2. (d) provides that "the head of each agency . . . shall . . . (d) negotiate over the subjects set forth in 5 U.S.C. 7106 (b)(1), and instruct subordinate officials to do the same [.]" Nevertheless, the Respondent has not exercised its discretion to negotiate pursuant to section 7106(b)(1) in this case. As the Respondent points out, Section 3 of Executive Order 12871 specifically states that the order "is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right to administrative or judicial review, or any right . . . enforceable . . . against the United States, its agencies . . ., officers or employees. . . ."

Despite the President's order to the head of each agency to negotiate section 7106(b)(1) matters, the President may agree with the Respondent's interpretation of the Executive Order and the parties' national partnership agreement in this case and conclude, for some of the same reasons advanced in this case, that such bargaining was not appropriate in this instance. In any event, any dispute as to the Respondent's failure to comply with the Executive Order to negotiate 7106(b)(1) subjects is a matter for internal resolution within the executive branch and is not an unfair labor practice under the Statute.

In view of this disposition, I find it unnecessary to resolve the additional arguments made by the Respondent in defense of this action and disputed by the General Counsel.

Based on the above findings and conclusions, it is recommended that the Authority issue the following Order:

ORDER

The Complaint is dismissed.

Issued, Washington, DC, September 30, 1996

GARVIN LEE OLIVER
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of this DECISION issued by GARVIN LEE OLIVER, Administrative Law Judge, in Case No. SF-CA-50155, were sent to the following parties in the manner indicated:

CERTIFIED MAIL:

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Dated: September 30, 1996
Washington, DC