

OFFICE OF ADMINISTRATIVE LAW JUDGES

WASHINGTON, D.C. 20424

SOCIAL SECURITY ADMINISTRATION . Respondent . and
. Case No. WA-CA-20355 AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES,
.LOCAL 1923, AFL-CIO . Charging Party/ Union
Laurence M. Evans, Esquire For the General Counsel
Edward Novak, Esquire For the Respondent
Alvin S. Levy For the Charging Party
Before: BURTON S. STERNBURG Administrative Law Judge

DECISION

Statement of the Case

This is a proceeding under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the U.S. Code, 5 U.S.C. Section 7101, et seq., and the Rules and Regulations issued thereunder.

Pursuant to a charge filed on February 13, 1992, by the American Federation of Government Employees, Local 1923, AFL-CIO, (hereinafter called the Union) a Complaint and Notice of Hearing was issued by the Regional Director for the Washington Regional Office, Federal Labor Relations Authority, Washington, D.C., on May 20, 1992. The Complaint alleges that the Social Security Administration, (hereinafter called the Respondent or SSA), violated Section 7116(a)(1) of the Federal Service Labor-Management Relations Statute, (hereinafter called the Statute) by virtue of its actions in revoking the "Vendor's badge provided to attorney Irving L. Becker which allows unrestricted access to Respondent's buildings in Baltimore, Maryland" and thereafter subjecting him to the "Rolodex" method of entry which required the showing of identification and the filling out of a form each day.

A hearing was held in the captioned matter on July 22, 1992, in Washington, D.C. All parties were afforded the full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues involved herein. The General Counsel and the Respondent submitted post-hearing briefs on August 24, 1992, which have been duly considered.

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

Findings of Fact

Mr. Irving Becker was formerly employed by the SSA as a supervisory attorney in its Labor Relations Division. Upon his retirement in early 1987, he entered into the private practice of law. Shortly thereafter he was retained by the Union as a legal representative and allowed to use its office located in one of the buildings on the SSA complex in Baltimore, Maryland to handle the various legal duties assigned to him by the Union, i.e. unfair labor practices, arbitrations, grievances, EEOC, etc. Mr. Becker bills the Union an hourly rate for providing legal services to the Union and the unit employees. He is not on a salary. According to Mr. Becker, he always has Union business to take care of, so he comes into the Union's office everyday. He does not represent non-SSA employees while utilizing the facilities within the Union's office on the SSA complex. On occasion Mr. Becker visits the SSA complex at night in order to service the unit employees working on the night shift.

Following his retention by the Union in 1987, Mr. Becker, through the Union, made application to SSA for the type of entrance badge given to employees of the Union. Subsequently, he was given the requested Union employee badge which allowed him unrestricted access to the SSA complex. In the latter part of 1988, as a result of testimony during an arbitration hearing held for purpose of determining the amount of attorney's fees Mr. Becker was entitled to for the successful prosecution of a case against SSA, SSA took steps to revoke his Union employee badge. Mr. Becker's testimony in the arbitration proceeding indicated that he was a self employed attorney and not an employee of the Union. Based upon such testimony, SSA informed him that he was to turn in his Union employee badge by December 2, 1988 and thereafter utilize the Rolodex procedure to gain entry to the SSA complex.⁽¹⁾

The Union wrote a number of letters protesting SSA's action with respect to the revocation of Mr. Becker's Union employee badge and told Mr. Becker not to surrender it. Subsequently, management physically removed the badge from Mr. Becker. The Union then filed an unfair labor practice based upon the removal of the badge and Mr. Becker thereafter gained daily access to the complex through the medium of a Visitor's badge. In order to obtain a Visitor's badge someone from the Union's office was required to come down on a daily basis and sign Mr. Becker in.

Although the specifics are not included in the record, according to the testimony of Mr. Becker and Mr. Alvin Levy, Executive Vice President of the Union, the Washington Regional Office of the Federal Labor Relations Authority proposed taking a unilateral settlement, wherein Mr. Becker would be put on the Rolodex system of entry. However, before the unilateral settlement could be finalized, the AFGE and SSA agreed upon a new collective bargaining agreement applicable nationwide. During the signing ceremony on January 25, 1990, of the nationwide agreement, various officials of the SSA, i.e. assistants and special assistants to the Commissioner, approached the Union and suggested that they work out a settlement of all outstanding complaints and/or unfair labor practices. Included among the unfair labor practices that were to be settled was the one involving the removal of Mr. Becker's Union employee badge. It was agreed that Mr. Becker would be given a Vendor's badge which like the Union employee badge, gave him unrestricted access to the SSA complex. With the Vendor's badge Mr. Becker was no longer required to sign in, produce identification or wait in line.

The Vendor's badge given to Mr. Becker was issued by Mr. Charles Cote, the Acting Deputy Director of the Office of Labor Management Relations. According to Mr. Cote, who had issued the original order to pull Mr. Becker's Union employee badge in December 1988, he issued the Vendor's badge to Mr. Becker solely on orders from his superiors, one of whom was Mr. Dale Soper, Assistant Deputy Commissioner for

Management.

In 1991, Mr. Becker applied for renewal of his Vendor's badge. Mr. Cote co-signed the renewal without any further discussion since there was no challenge to the validity of the application. However, in January 1992, when Mr. Becker sought a second renewal of his Vendor's badge, Mr. Cote upon the recommendation of Mr. Richard Matthews, who at the time was Acting Labor Relations Branch Chief, denied the application and put Mr. Becker on Rolodex. Mr. Cote went along with Mr. Matthews' recommendation since he was well aware that Mr. Becker was not a Vendor. When asked why he had approved the renewal in 1991 and not in 1992, Mr. Cote pointed out that in 1992 the responsibility for handling all Union matters, including the issuance of badges, was with the Labor Relations Branch which was no longer answerable to Mr. Soper who had originally ordered Mr. Cote to issue the Vendor's badge to Mr. Becker.

According to Mr. Matthews, at the time that Mr. Becker submitted his 1992 application for renewal of his Vendor's badge, he, Mr. Matthews, was Acting Labor Relations Branch Chief. In this position, according to the newly revised security regulations, his office was responsible for the renewal or issuance of entry badges. Upon receiving and reviewing Mr. Becker's application, he, Mr. Matthews, having played a part in the settlement on the 1988 unfair labor practice involving the removal of Mr. Becker's Union employee badge and being aware that it had been determined that he was not eligible under the regulations for any mode of entry other than the Rolodex procedure, recommended to Mr. Cote that Mr. Becker renewal application be denied. He further recommended that Mr. Becker be given the type of entry recommended in the proposed 1988 unilateral settlement, namely Rolodex. Mr. Matthews also testified that he had no knowledge of how Mr. Becker acquired his Vendor's badge and was only interested or concerned with the type of badge that he, Mr. Becker, was then currently entitled to. Although not entirely clear from the record, it appears that he felt the terms of the 1988 proposed unilateral settlement should be applied since such terms gave Mr. Becker the access to the premises that he required. While he acknowledged that he was aware that the Mr. Becker's Vendor's badge had been renewed in 1991, he pointed out that he had played no part in such renewal. Other than the time when he served as Acting Chief, Mr. Matthews regular job is that of a Supervisory Employee Specialist. It was in this latter position that he became involved in the 1988 unfair labor practice involving Mr. Becker.

On or about February 1992, Mr. Becker was informed by Mr. Matthews that the SSA had put him on Rolodex. When he inquired as to the reason for the change, Mr. Matthews did not answer him. Immediately thereafter Mr. Becker went to Mr. Levy's office and informed him of what had transpired with respect to his Vendor's badge. Mr. Levy telephoned Ms. Ruth Pierce, the Deputy Commissioner for Human Resources, and told her what had happened with respect to Mr. Becker's Badge and asked her "Why are you harassing Irving Becker?" According to Mr. Levy and Mr. Becker who was standing near him, Mr. Levy then said "Are you saying you are not giving him the badge because he harasses SSA?" According to Mr. Levy, he asked Ms. Pierce if she was trying to harass the union or something." In response, Ms. Pierce said, "No, Mr. Becker is harassing us". Mr. Levy then asked what she meant and stated "because he is winning cases and getting attorney's fees". When Ms. Pierce stated "That's Right", Mr. Levy informed her he would do what he had to do, and then filed an unfair labor practice.

Ms. Pierce admits having a conversation with Mr. Levy concerning the revocation of Mr. Becker's Vendor's badge. During the conversation Mr. Levy attributed the revocation to the fact that SSA's labor relations office was intentionally harassing Mr. Becker. According to Ms. Pierce, she then stated to Mr. Levy, "Well, I probably think there is harassment on both sides, but I will check and find out what is going on." According to Ms. Pierce that was the extent of the conversation. Finally according to Ms. Pierce, it was Mr. Levy who

attributed the alleged harassment of Mr. Becker to the fact that Mr. Becker had won a number of cases against SSA.

In this latter connection, the testimony of Mr. Levy and Mr. Becker concerning the numerous recent wins by Mr. Becker against SSA stands uncontested. It further appears from the record that Mr. Becker, following the aforementioned wins, was successful in achieving the payment of substantial attorney's fees from SSA.

Discussion and Conclusions

The General Counsel takes the position that the record evidence supports the conclusion that Mr. Becker's Vendor's badge was revoked because of his recent successes against the Respondent. In such circumstances, the General Counsel would find that Respondent violated Section 7116(a)(1) of the Statute since the restrictions imposed upon Mr. Becker would interfere with the employees access to him and have a chilling effect on their statutory rights to challenge management through an attorney. Thus, according to the General Counsel the employees would be hesitant to challenge management for fear that a successful prosecution of a right might well result in retaliation.

Respondent on the other hand takes the position that record evidence fails to support the allegations of the complaint. According to Respondent there is no evidence that the revocation of Mr. Becker's Vendor's badge was attributable to any reason other than Respondent's desire to comply with its own security regulations. Inasmuch as it is clear that Mr. Becker is not a Vendor or employee of the Union, according to Respondent, he is only entitled to entry through the Rolodex procedure.

In agreement with Respondent, I find that the General Counsel had failed to carry the burden imposed upon him by Section 2423.18 of the Authority's Rules and Regulations, namely, to prove the allegations of the Complaint by a preponderance of the evidence.

Having observed the witnesses and their demeanor while on the witness stand and analyzed their respective testimony, I credit Ms. Pierce's testimony that, in response to Mr. Levy's accusation that SSA was deliberately harassing Mr. Becker, she merely stated that there might be harassment on both sides and that she would look into the matter. I also credit Mr. Matthews' testimony that it was he who first questioned the validity of Mr. Becker's Vendor's badge when, in his capacity as Acting Chief of the Labor Relations Branch, he was called upon to rule on Mr. Becker's application for renewal of such badge. Having been involved in a proposed unilateral settlement of the prior unfair labor practice involving the removal of Mr. Becker's Union employee badge and being unaware of the circumstances surrounding the issuance of the Vendor's badge to Mr. Becker, he successfully recommended that Mr. Becker be given the method of entry called for in the prior proposed unilateral settlement, namely Rolodex. While not entirely clear from the record, it appears that Mr. Cote went along with Mr. Matthews' recommendation since there had been a change in the chain of command and he was no longer answerable to those upper management officials who had originally ordered the issuance of the Vendor's badge to Mr. Becker in settlement of the prior unfair labor practice complaint.

In view of the foregoing, plus the fact that Mr. Becker's relationship to the Union does not otherwise

support the issuance of a Vendor badge to him, I find that there is insufficient evidence to sustain the theory of the Complaint, namely, that the Vendor's badge was revoked in retaliation for his successful prosecution of complaints against Respondent and that such action would chill the unit employees in the exercise of their statutory rights.

Moreover, and in any event, I cannot see how the imposition of the Rolodex method of entry upon Mr. Becker carries with it the dire threats to the unit employees rights suggested by the General Counsel. Thus, the record indicates that, at most, under the Rolodex method of entry Mr. Becker might on a daily basis have to spend up to 15 minutes at the entrance gate showing identification and filling out papers before achieving unrestricted access to the complex and the unit employees.

Accordingly, it is recommended that the Authority adopt the following Order dismissing the Complaint in its entirety.

ORDER

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

Issued, Washington, DC, November 2, 1992

BURTON S. STERNBURG

Administrative Law Judge

Dated: November 2, 1992

Washington, DC

1. Under the Rolodex procedure Mr. Becker's name would be listed on the Rolodex along with other people, who were not vendors or employees, but needed access to the complex on a frequent basis. A person listed on the Rolodex, unlike a Union employee or a Vendor, would be required to show identification and sign in on daily basis. He would then be given a paper badge or pass which would be valid for only one day. The

following day the procedure would have to be repeated. Depending on the number of people seeking access to the complex, it could take up to fifteen minutes to achieve access to the complex.