UNITED STATES OF AMERICA

FEDERAL LABOR RELATIONS AUTHORITY

Office of Administrative Law Judges

WASHINGTON, D.C. 20424-0001

MEMORANDUM DATE: February 14, 2002

TO: The Federal Labor Relations Authority

FROM: WILLIAM B. DEVANEY
Administrative Law Judge

SUBJECT: SOCIAL SECURITY ADMINISTRATION
OFFICE OF HEARINGS AND APPEALS
CHARLESTON, SOUTH CAROLINA

Respondent

and Case No. AT-CA-01-0093

ASSOCIATION OF ADMINISTRATIVE
LAW JUDGES, INTERNATIONAL
FEDERATION OF PROFESSIONAL AND
TECHNICAL ENGINEERS, 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 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 OFFICE OF HEARINGS AND APPEALS CHARLESTON, SOUTH CAROLINA Respondent	
and ASSOCIATION OF ADMINISTRATIVE LAW JUDGES, INTERNATIONAL FEDERATION OF PROFESSIONAL AND TECHNICAL ENGINEERS, AFL-CIO Charging Party	Case No. AT-CA-01-0093

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. § 2423.34(b).

PLEASE BE ADVISED that the filing of exceptions to the attached Decision is governed by 5 C.F.R. §§ 2423.40-2423.41, 2429.12, 2429.21-2429.22, 2429.24-2429.25, and 2429.27.

Any such exceptions must be filed on or before **MARCH 18, 2002**, 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: February 14, 2002
Washington, DC

OALJ 02-17

FEDERAL LABOR RELATIONS AUTHORITY

Office of Administrative Law Judges
WASHINGTON, D.C.

SOCIAL SECURITY ADMINISTRATION OFFICE OF HEARINGS AND APPEALS CHARLESTON, SOUTH CAROLINA Respondent	
and ASSOCIATION OF ADMINISTRATIVE LAW JUDGES, INTERNATIONAL FEDERATION OF PROFESSIONAL AND TECHNICAL ENGINEERS, AFL-CIO Charging Party	Case No. AT-CA-01-0093

Mr. John Barrett
For the Respondent

Brent S. Hudspeth, Esquire
Tameka Andrea West, Esquire
For the General Counsel

Jean E. Van Slate, Esquire
For the Charging Party

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 Respondent violated the Statute by

[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)".

its refusal to bargain with the local agents of the Charging Party about its intention to reduce the number of parking spaces reserved for employees in the bargaining unit and whether Respondent violated the Statute by its unilateral implementation of the change on November 15, 2000. Respondent denies that it violated the Statute as alleged; points out that it was compelled to move from the Charleston Federal Building because of massive damage to the building by hurricane Floyd; asserts, inter alia, that free, sheltered, secure parking remains available for all members of the bargaining unit at its present location and, accordingly, it changed no condition of employment; or, if it did, the change was de minimis; and that allocation of reserved parking places at its present location was in accord with GSA Regulations.

This case was initiated by a charge filed on October 31, 2000 (G.C. Exh. 1(a)); the Complaint and Notice of Hearing issued January 30, 2001, and set the hearing for May 1, 2001, pursuant to which a hearing was duly held on May 1, 2001, in Charleston, South Carolina, 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, June 1, 2001, was fixed as the date for mailing post-hearing briefs and Respondent and General Counsel each timely mailed a helpful brief, received on, or before, June 5, 2001, which have been carefully considered. Upon the basis of the entire record, I make the following findings and conclusions:

FINDINGS

1. In 1978, Social Security's Charleston, South Carolina Office of Hearings and Appeals (hereinafter, "OHA") moved to the L. Mendel Rivers Federal Building at 334 Meeting Street (Tr. 12, 22). At that time OHA had ten parking spaces and, by consensus, it was decided to allocate the spaces by lottery (Tr. 12). In 1982, the Office became aware of the provisions of the Code of Federal Regulations that provided that parking for handicapped employees should come first; then carpools; and the rest could be allocated by lottery, and the Office complied (Tr. 12, 15). In 1987, Judge Robert E. Joyner became HOCALJ and he gave each ALJ a parking place, i.e., admission to the parking lot--park where you could (Tr. 16)--and any parking places left went to AFGE employees (Tr. 12). As the Office acquired additional judges, or a new member of management, one of the

AFGE slots would pass to the judge or management person (Tr. 17). In 1999, there were six ALJs plus the HOCALJ[2].

2. In October, 1999, Hurricane Floyd devastated the Federal Building (Tr. 59) and the Office moved to its present location at 200 Meeting Street. At the present location, all 40-50 people in the OHA Office have access to free parking in the building (Tr. 17). There are thirteen reserved parking places, i.e., reserved 24 hours each day[3], six of which were assigned to ALJs (Judge Joyner, as HOCALJ, occupied a management reserved space as does his successor, Judge Jackson B. Smith).

3. On October 1, 1999, the Association of Administrative Law Judges, International Federation of Professional and Technical Engineers, AFL-CIO, was certified as the exclusive representative of all ALJs of the Office of Hearings and Appeals, Social Security Administration, nationwide (hereinafter, "Union")(Agency Exh. 1). In March, 2000, SSA/OHA and the Union entered into an interim Agreement (G.C. Exh. 2) which does not address parking (Tr. 26). Judge Joyner was replaced as HOCALJ by Judge Smith, apparently in October, 1999 (G.C. Exh. 17), because he had requested to transfer to Memphis, Tennessee, because of his wife's illness and her confinement in a facility there; however, he retained his named parking place until he moved to Memphis in January or February, 2001 (Tr. 17, 55), although it had not "belonged" to Judge Joyner since November 15, 2000 (Tr. 55, 82-83).

4. On November 1, 1999, Ms. Marilyn L. Ellison, Executive Vice President of AFGE, Local 3627, filed with Respondent a document entitled "CEASE AND DESIST ORDER", in which she, on behalf of Local 3627, protested Respondent's allocation of reserved parking spaces as a violation of

2 Because the HOCALJ was considered a management official, in this proceeding the number of slots for ALJs generally was referred to without including the HOCALJ who was included in the management slots. After the move to the present location where all employees, including AFGE employees numbering 30 to 35 (Tr. 25), receive free parking there are thirteen reserved spaces, i.e., spaces reserved for the judge, management official or AFGE 24 hours per day. Six went to ALJs; five to management, including the HOCALJ; and the remaining two went to AFGE (G.C. Exh. 17).

3 The record does not show any difficulty by employees finding parking in the building upon arrival for work in the mornings; however, this is a commercial parking facility and visitors can, and do, occupy non-reserved parking spots.

Article 4, Section 5 of their, AFGE's, National Agreement, stating, in part:

> ". . . Once again, Management in Charleston, OHA, has violated our Agreement with your plans to allow Management officials and ALJs to arbitrarily park in these reserved parking spaces without bargaining on this issue." (G.C. Exh. 17).

Ms. Ellison demanded bargaining and concluded, stating:

> "Until such time that this issue is bargained on, the 13 reserved parking spaces . . . should be marked as follows: 2 for handicapped spaces; and the other 11 spaces should be utilized on a first come first served basis for all Employees, . . . Failure to do so will result in charges being filed." (G.C. Exh. 17. p. 2).

5. By internal memorandum dated November 2, 1999, Hearing Office Director, Richard F. Schmidt, and Hearing Office Manager, Deborah W. Moorer, opined that there was nothing to negotiate because no change in working conditions had been made, "In our previous location, we had provided reserved spaces for our ALJs and management team"; however, they specifically acknowledged that Sue Burton, Regional Vice President, AFGE, " . . . was instrumental in assisting the Charleston management team in making <u>free</u> parking available to the entire staff . . . ." (G.C. Exh. 18).

6. When Mr. Schmidt responded to Ms. Ellison on December 6, 1999, obviously, he had wholly reversed his position because he now told her,

> "This is in response to the Case and Desist Order issued by you dated November 1, 1999 . . .
>
> "<u>These issues are currently being negotiated</u> at the local level. . . ." (G.C. Exh. 23)(Emphasis supplied).

On the same day, December 6, 1999 (G.C. Exh. 24), Mr. Schmidt in a memorandum to AFGE Acting Steward, Rhonda Bolding, (but see G.C. Exh. 20, dated December 3, 1999), confirmed that negotiations had been conducted and that Respondent had made three proposals, two of which were highly inimical to the Union: (a) Six Management, six AFGE, one ALJ; (b) Four Management, six AFGE, three ALJ (G.C. Exh. 24a)[the third, had been: "One Management, six AFGE, six ALJ" (<u>id.</u>)]

7. In the meantime, on December 2, 1999, Judge J.E. Van Slate notified Judge Smith that he, Van Slate, had been designated the local Union representative and listed four areas, ". . . we feel should be negotiated between our Union and Management . . . ." (G.C. Exh. 3), the first of which was "Assigned parking to judges" (id.). On December 9, 1999, Judge Van Slate, having learned that something was afoot with AFGE about reserved parking, stated, "I am aware that another Union (AFGE) has grieved the assignment of reserved parking spaces to judges" (G.C. Exh. 4), not being aware that Respondent had already opened negotiations with AFGE and that Respondent had already made proposals to AFGE that would have reduced ALJ reserved spots to one or to three, from six, and, again, requested, ". . . to bargain on the issue of assignment of individual parking spaces to the judges of the Charleston Office. . . ." (id.)

Respondent made no response to the Union's request to bargain until February 8, 2000, when it informed the Union that,

> ". . . Judge Henry G. Watkins, RCALJ, or his designee, is at this time the only management official who is authorized to negotiate in Region IV on such issues with the AALJ/IFPTE until a national agreement is finalized. He has not designated Judge R. Jackson Smith HOCALJ of that office as his designee. . . ." (G.C. Exh. 8).

Respondent also advised the Union, ". . . that Sue Burton, Regional VP, AFGE has also contacted us about the same matter. . . ." (id.).

8. On February 11, 2000, the Union requested bargaining on the Charleston parking issue at the Regional level (G.C. Exh. 9), but no bargaining with the Union took place.

9. On June 7, 2000, the Acting Director, Office of Management, Patricia A. Carey, issued to "All Regional Chief Administrative Law Judges" and "All Regional Management Officers" a memorandum on, "Instructions for Allocation and Assignment of Parking-Information" (G.C. Exh. 10), which provided, in pertinent part, as follows:

> "DISTRIBUTION OF PARKING SPACES WITHIN OHA SPACE ASSIGNMENTS
>
> ". . . the following guidelines are to be followed:

"After meeting the initial three SAS [Space Allocation Standard] provisions (disabled employees, 'in and out' program business, and carpools), consideration is given to the category of 'others.' This category includes parking for executive personnel and other employees.

• **Non-Bargaining Unit Staff** - In the 'other' category, executive personnel will be given priority consideration. . . in HPI HOS are the HOCALJ, the Hearing Office Director, and Group Supervisors.

• **Bargaining Unit Staff** - Any remaining parking spaces are to be distributed among bargaining unit components and remaining non-bargaining unit employees. The distribution will continue to be based on a percentage of the employees in these groups in the office.

. . . ." (id., pp. 3-4).

10. Mr. Schmidt in an undated e-mail message to Judge Van Slate stated as follows:

"I [Schmidt] received a copy of a June 7, 2000 memo entitled Instructions for Allocation and Assignment of Parking, this morning. I hope that you also received such a document. I wanted to know when it will be convenient for you to discuss and negotiate the implementation of parking procedures for the Charleston Hearing Office." (G.C. Exh. 10(a)).

Judge Van Slate credibly testified that: (a) Mr. Schmidt's e-mail (G.C. Exh. 10(a)) was received by him in October, 2000 (Tr. 36, 37); (b) the Union knew nothing about the June 7, 2000, memorandum (G.C. Exh. 10) until October, 2000, when a copy had been Fed Ex'd by Judge Ollie Garmon, Assistant Regional Chief Judge, on October 19, 2000 (G.C. Exh. 14; Tr. 36-37).

11. By letter dated October 20, 2000, to Mr. Schmidt, Judge Van Slate responded to the e-mail he received on October 20, 2000 (G.C. Exh. 10(a)) stating, in part, as follows:

". . . First . . . if it is your suggestion we negotiate the implementation of the above

Memorandum in Charleston, such suggestion, I find is a bit precipitatous. It is my understanding the issue of parking for judges is being negotiated at the National level and the specific issue of assigned parking for judges in Charleston is being negotiated at the Regional level.

"If it is the desire of Management to negotiate the specific issue of assigned parking for judges in Charleston at the local level, I would be happy to meet with you . . . ." (G.C. Exh. 11).

12. On October 20, 2000, Ms. Moorer, on behalf of Mr. Schmidt, sent an e-mail to Judge Garmon for advice (G.C. Exh. 12, overprinted at bottom of Exhibit 12). Judge Garmon replied to Mr. Schmidt by e-mail on October 23, 2000, and informed him as follows:

"You don't need to negotiate anything. You know how many reserved spots you have. You are simply to inform AFGE and AALJ/IFPTE of the number of reserved spaces they have. That's all.

"You look at the priority of the entities that can use those reserved spots per the memo.

"I don't think you would have any van or automobile pools . . . So as you go down through the list of priorities . . . the first entity that would have a right to some of those reserved spots would be management (you, the HOCALJ and group supervisors).

"Then, you keep going down the list. My guess is then you would get to the employees. You then would figure the ratio of AFGE bargaining unit employees to AALJ/IFPTE employees. You give the same ratio of parking spots to the AFGE and to AALJ/IFPTE . You do NOT decide nor do you get into any discussion about which employees from those two unions get to use those reserved spots. That is solely in the discretion of the Unions . . .

"The only problem that I can forsee . . . would be rounding of the numbers of the ratio of reserved slots. If you have a problem with that let us know. . .

"If either Union wants to bargain explain to them that you are following OHA policy, and you are not

> able to bargain locally on a national policy. If they have a problem with this then they must file a grievance and it will go up the channels.
>
> . . . .” (G.C. Exh. 12).

13. By Memorandum dated October 25, 2000, Mr. Schmidt advised Judge Van Slate,

> “. . . In accordance with the memo dated June 7, 2000 from Patricia A. Carey . . . IFPTE will be provided two (2) parking spaces. . . .” (G.C. Exh. 13).

The Union, again, asked to negotiate in an October 26, 2000, e-mail message to Judge Garmon (G.C. Exh. 14).

14. By Memorandum dated October 24, 2000, Mr. Schmidt had informed AFGE in pertinent part, as follows:

> “The 13 reserved parking spaces will be allocated in accordance with memo of June 7, 2000 from Patricia A. Carey . . . which will provide for seven (7) AFGE spaces (based upon 31 AFGE BUEs), four (4) Management spaces, and two (2) IFPTE spaces. . . .” (G.C. Exh. 15).

15. By Memorandum dated November 13, 2000, Mr. Schmidt advised all employees of the Charleston OHA that

> “Effective Wednesday, November 15, 2000, the assignment of parking spaces will be instituted in accordance with the policy issued on June 7, 2000 and the memoranda dated October 24th (G.C. Exh. 15) and 25th (G.C. Exh. 13).
>
> . . . . (G.C. Exh. 16)

A copy of General Counsel Exhibit 16 was delivered to Judge Van Slate (Tr. 50).

16. Judge Van Slate said the two spots assigned to IFPTE, the Union, next to the entrance to the Office (G.C. Exh. 15(a)) are not assigned to individual ALJs (Tr. 58) and even if his name or Judge Joyner’s name is still posted, the spots are not assigned to any ALJ but are assigned to the Union and kept available to accommodate ALJs, like Judge Joyner after November 15, 2000, until he moved to Memphis (Tr. 56-57) and/or for ALJ returning from hearings to off-load files (Tr. 57). Judge Van Slate stated that he had to

park in the basement or on the fourth level but conceded there is elevator service to both locations (Tr. 58-59).

Judge Philip Elwin Wright testified that he had never, since November 15, 2000, been unable to enter the building and in the last six months on only four occasions had to drive around until a place opened (Tr. 85); that this occurred only between 11:30 a.m. and 3:30 p.m. when tourist traffic is heaviest; and he elected not to use the IFPTE spots (Tr. 84-85).

CONCLUSIONS

There is no dispute that from the time Respondent's Charleston, S.C., Office moved to 200 Meeting Street, in October, 1999, until November 15, 2000, each ALJ had an assigned, reserved parking space. The Charleston Office, after Hurricane Floyd compelled its move to 200 Meeting Street in October, 1999, "fell into" an unusual and fortuitous circumstance, namely, that free parking was available for all employees of the Office. At the Federal Building (334 Meeting Street) there had been free parking for only a few OHA employees, thus, in 1978, there were only 10 places, which number had increased, by October, 1999, to about 13 places. Of course, the overall size of the Office also increased over the years. In 1990, there were only 3 ALJs, and each ALJ was given a parking permit. By October, 1999, there were six ALJs, and each ALJ was given a parking permit. Management employees, including the HOCALJ, had parking permits and by October 1999, there were only two or three spots left over which went to AFGE.

At 334 Meeting Street, a "parking permit" meant only admission to a parking lot and each person parked where space was available. After November 15, 2000, the Union, IFPTE, had two assigned, reserved parking places and the ALJs elected not to assign these reserved parking places to

any ALJ, but to keep them available to accommodate special needs.4

(a) Respondent knew and participated in the of Granting ALJs Restricted Free Parking from 1987.

Beginning in 1987, each ALJ was given a free parking permit which allowed access to a restricted parking lot. This practice was initiated by Respondent's HOCALJ and continued at the Federal Building [334 Meeting Street] until October, 1999, and continued at 200 Meeting Street from October, 1999, until November 15, 2000, except that at 200 Meeting Street each of the six ALJs had an assigned, reserved parking place. By letter dated December 9, 1999, Local IFPTE Representative Judge Van Slate called this practice to the attention of HOCALJ Smith, who had succeeded Judge Joyner (G.C. Exh. 4), and by an internal memorandum to the Regional Office, dated November 2, 1999, it was noted, in part, that,

> "In our previous location, we had provided reserved spaces for our ALJ and management team. Those individuals have reserved spaces at our new location . . . ." (G.C. Exh. 18).

Initially, the reserved spots were designated by cardboard signs but later, metal signs (Tr. 35) were procured, at the behest of Respondent (G.C. Exh. 5), which,

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4 For example, to accommodate former HOCALJ Joyner, he used one reserved parking place from November 15, 2000, until he transferred in Memphis in January or February, 2001. Otherwise, the two IFPTE parking places are used by ALJs to park while loading or unloading hearing files, when the parking garage is full, or to accommodate other special needs as they arise.

Of course, the effect was to reduce the number of reserved ALJ parking placed from six to two. With no reserved parking places assigned, ALJs again, as they had at 334 Meeting Street before October, 1999, must park where space is available. While the record shows that tourists may fill the garage between 11:30 a.m. and 3:30 p.m., the record does not show that any ALJ was unable to find a parking place, indeed, the availability of the IFPTE spots, provide a "safety valve". Whether these spots are used is a personal choice; nevertheless there are elevators at all levels so that the inconvenience of parking on a different level is minimal.

". . . said OHA, and then the judge's name was placed on it . . . ." (Tr. 24).

Because OHA employees sometimes parked in ALJ's reserved spots, HOCALJ Smith, by letter dated January 5, 2000 (G.C. Exh. 5) was apprised of the problem and was asked to issue a policy stating that ". . . parking spaces are reserved for 24 hours . . . ." (id.) and such a memorandum was issued (Tr. 58).

Parking for bargaining unit employees is a condition of employment within the meaning of §3(a)(14) of the Statute. U.S. Department of Labor, Washington, D.C., 44 FLRA 988, 994 (1982), and, because the specific practice of assigning each ALJ a reserved parking place had, with the full knowledge and participation of responsible management, existed for more than a year (October, 1999, to November 15, 2000) and, further, because the substantially like practice had existed since 1987, the practice had become a condition of employment which Respondent could not unilaterally terminate. Department of the Navy, Naval Underwater Systems Center, Newport Naval Base, 3 FLRA 413, 414 (1980) (". . . parties may establish terms and conditions of employment by practice . . . and . . . may not be altered by either party in the absence of agreement or impasse following good faith bargaining." (id. at 414)); Department of Health, Education and Welfare, Region V, Chicago, Illinois, 4 FLRA 736, 746 (1980)(where I stated that a practice, within the meaning of §3(a)(14) of the Statute, may constitute a condition of employment but the practice must: (a) be known to management; (b) responsible management must knowingly acquiesce; and (c) such practice must continue for a significant period of time." (id. at 746)5; Social Security Administration, Mid-America Service Center, Kansas City, Missouri, 9 FLRA 229, 240 (1982); standards applied, Department of Health and Human Services, Social Security Administration, 17 FLRA 126, 138 (1985); Department of the Treasury, Internal Revenue Service (Washington, D.C.) and Internal Revenue Service Hartford District (Hartford, Connecticut), 27 FLRA 322, 324-325 (1987); U.S. Department of the Navy, Naval Avionics Center, Indianapolis, Indiana, 36 FLRA 567, 570, 572 (1990). U.S. Department of Labor, Washington, D.C., 38 FLRA 899, 908 (1990).

5
See, also, U.S. Department of the Treasury, Internal Revenue Service, New Orleans District, New Orleans, Louisiana, 8 A/SLMR 497, 501 (1978); Internal Revenue Service, Southwest Region, Appellate Branch Office, New Orleans, Louisiana, 8 A/SLMR 1254, 1264 (1978).

(b) Reserved, assigned, parking is substantively negotiable.

It is well established that employee parking is substantively negotiable. United States Marshals Service, 12 FLRA 650 (1983); U.S. Immigration and Naturalization Service, 16 FLRA 1007, 1016 (1984); U.S. Customs Service, Washington, D.C., 29 FLRA 307 (1987); U.S. Department of the Air Force, Williams Air Force Base, Chandler, Arizona, 38 FLRA 549, 561-562 (1990); U.S. Department of Labor, Washington, D.C., 44 FLRA 988, 994 (1992); Immigration and Naturalization Service, Los Angeles District, Los Angeles, California, 52 FLRA 103, 116-118, 119 (1996). It is immaterial that none of these decision involved assigned (named) parking places, although some involved, "reserved", parking places which meant a permit to enter a parking facility, essentially like the arrangement at 334 Meeting Street, or, "reserved" in the sense that certain places were reserved for bargaining unit employees, because the practice of assigning named parking spots to ALJs had become an established condition of employment as set forth in (a) above, the condition of employment was substantively negotiable. Were it otherwise, and if Respondent were only obligated to bargain impact and implementation, there might be grave doubt that the impact was more than de minimis. Nevertheless, because the matter was, and is, substantively negotiable, it is unnecessary to decide, and I expressly do not make any decision, as to whether the impact was, or was not, more than de minimis.

(c) Respondent violated § 16(a)(5) and (1) of the Statute by its refusal to bargain and by its unilateral change of an established condition of employment.

1. Background

Although the Complaint does not allege a violation of either §16(a)(5) or §16(a)(1) of the Statute prior to October 25, 2000, by way of background, the record shows that: (a) By letter dated December 2, 1999, the Union's local representative, Judge Van Slate, notified HOCALJ Smith of four areas the Union felt should be negotiated, the first of which was "a. Assigned parking to judges" (G.C. Exh. 3); (b) Having learned that something was afoot with AFGE about reserved parking [AFGE on November 1, 1999, had filed with Respondent a document entitled "CEASE AND DESIST ORDER" (G.C. Exh. 17); Hearing Officer Director Schmidt in a memorandum dated November 2, 1999, opined there was nothing to negotiate with AFGE (G.C. Exh. 18); but on December 6, 1999, confirmed that he negotiated with AFGE and

had made proposals highly inimical to the Union but which had not been agreed to by AFGE]] Judge Van Slate on December 9, 1999, again requested to bargain about assigned parking; by e-mail dated February 7, 2000, to HOCALJ Smith, the Union, ". . . Because there has been no effort of management at any level to acknowledge officially our desire to bargain on . . . the issue of permanent assigned parking for the judges in the Charleston OHA Office. . . ." (G.C. Exh. 7); (c) Respondent made no response to the Union's repeated requests to bargain until February 8, 2000, when Assistant to the Regional Chief ALJ, Judge Ollie Garmon, notified the Union by e-mail that only the Regional Chief ALJ, Judge Watkins, or his designee, was authorized to negotiate (G.C. Exh. 8); (d) The Union by e-mail dated February 11, 2000, to Judge Garmon, requested bargaining on the Charleston parking issue at the Regional level and made an offer of settlement (G.C. Exh. 9).

Respondent made no response to the Union's request to bargain at the Regional level and there was no bargaining either locally, at Charleston with the Union, or at the Regional level.

On March 5 and 9, 1998, the Acting Assistant Commissioner, Office of Business Performance, General Services Administration, and the Acting Association Commissioner, Social Security Administration, signed an agreement re: "Space Allocation Standard for Office of Hearing and Appeals (OHA), SSA" (Agency Exhibit 2) (hereinafter, "GSA-SSA Agreement.") This document does not deal with reserved parking (id.; Tr. 66, 67). The GSA-SSA Agreement provides, where the lessor furnishes parking as part of the lease,

> ". . . These parking spaces should be allocated on a priority basis to disabled employees, in and out business parking for program purposes, carpools, then others." (Agency Exhibit 2, p. 7).

Judge Van Slate stated that the GSA-SSA Agreement was published in 1998 (Tr. 65). Nevertheless, the record shows that for about 17 months after the GSA-SSA Agreement was signed, Respondent did not apply, or follow, its terms at the Federal Building at 334 Meeting Street. Thus, when OHA had only thirteen parking spaces, ALJs received 6, management, including the HOCALJ, 4 or 5, leaving only 2 or 3 for AFGE. The record showed no provision by Respondent for disabled employees, although by the same token, the record does not show that there were any disabled employees; nor any provision by Respondent for carpools, etc.

When Hurricane Floyd damage compelled the move to 200 meeting Street in October, 1999, all employees of OHA received free, sheltered parking so that the allocation of parking required by the GSA-SSA Agreement was, perforce, satisfied. The GSA-SSA Agreement does not address assigned parking; but Respondent had thirteen assigned places at 200 Meeting Street, and, as it had at the Federal Building, Respondent assigned six of these assigned placed to ALJs, 5 to management, including the HOCALJ, and only 2 were left for AFGE (G.C. Exh. 17). As Mr. Schmidt and Ms. Deborah W. Moorer (Hearing Office Manager) opined in their November 2, 1999, letter to the Regional Office,

> "We have had no changes in working conditions regarding the issue of parking. We, therefore, believe there is no issue to negotiate.
>
> "In our previous location, we had provided reserved spaces for our ALJs and management team. Those individuals have reserved spaces at our new location with the addition of Mike Hartzog, SSA District Manager . . . ." (G.C. Exh. 18).

As noted, Mr. Schmidt had a change of heart and negotiated with AFGE on December 6, 1999 (G.C. Exh. 24, 24A), inter alia, on the issue of assigned parking.

2. Respondent's unilateral issuance of June 7, 2000, memorandum

Respondent's Acting Director, Office of Management, Patricia A. Carey, on June 7, 2000, issued, without notice to the Union, a memorandum to "All Regional Chief Administrative Law Judges" and "All Regional Management Officers", re: Instructions for Allocation and Assignment of Parking–Information" (G.C. Exh. 10). For reasons set forth herein above, I fully credit the testimony of Judge Van Slate that the Union did not know of the June 7, 2000, memorandum until October, 2000, and did not receive a copy of the memorandum until on, or about, October 19, 2000 (G.C. Exh. 14, Tr. 36-37).

3. Respondent refused to bargain on the change of the established condition of employment at Charleston to provide ALJs assigned, reserved parking and unilaterally reduced the number of assigned, reserved ALJ parking spaces from six to two.

As noted, the Union had requested bargaining on the matter of assigned, reserved parking spaces at Charleston first at the local level in December, 1999, and when

Respondent, in February, 2000, advised that only the Regional Chief ALJ, or his designee, was authorized to negotiate with the Union, the Union promptly had requested bargaining at the Regional level and made an offer of settlement. Judge Garmon on February 8, 2000, had advised the Union, in part, as follows:

> ". . . we would like to try to resolve this matter without the necessity of formal bargaining, if that is possible, and save bargaining as the last resort. Hopefully, informal discussion will result in an expedient solution.
>
> "Please be advised also that Sue Burton, Regional VP, AFGE has also contacted us about the same matter. We look forward to working you in the near future." (G.C. Exh. 8).

No bargaining or informal discussions were held with the Union. In October, 2000, Mr. Schmidt, or Ms. Moorer on his behalf, sent an undated e-mail message to Judge Van Slate [apparently sent on October 20, 2000] which referenced a June 7, 2000, memo and stated, ". . . I wanted to know when it will be convenient for you (Van Slate) to discuss and negotiate . . ." (G.C. Exh. 10(a)). A copy of this e-mail was sent to Judge Garmon on October 20 and Judge Van Slate responded on October 20, 2000 (G.C. Exh. 11). Ms. Moorer sent an e-mail message to Judge Garmon on October 20, 2000, stating, "I received an e-mail from Judge Van Slate . . . in which he describes two basic questions. First, will the Regional Office be negotiating the specific issue of assigned parking for the Judges in Charleston, or is it the desire of management for the specific issue of assigned parking to be negotiated at the local level. Since I have already scheduled a negotiating session with AFGE on Tuesday . . . should I also schedule a 'pre-negotation conference' with Judge Van Slate? I will await further instructions . . . ." (G.C. Exh. 12; addendum).

Judge Garmon replied by e-mail on October 23, 2000, and advised Ms. Moorer and Mr. Schmidt that,

> "You don't need to negotiate anything. You know how many reserved spots you have. You are simply to inform AFGE and AALJ/IFPTE of the number of reserved spaces they have. That's all.
>
> "You look at the priority of the entities that can use those reserved spots per the memo [G.C. Exh. 10, June 7, 2000].

"I don't think you would have any van or automobile pools . . . So as you go down through the list of priorities for those spots, the first entity that would have a right to some of those reserved spots would be management (you, the HOCALJ and group supervisors).

"Then, you keep going down the list. My guess is then you would get to the employees. You then would figure the ratio of AFGE bargaining unit employees to AALJ/IFPTE employees. You give the same ration of parking sports to the AFGE and to AALJ/IFPTE.

. . .

"If either Union wants to bargain explain to them that you are following OHA policy, and you are not able to bargain locally on a national policy. If they have a problem with this then they must file a grievance and it will go up the channels.

. . . ." (G.C. Exh. 12)

By memorandum dated October 25, 2000, Mr. Schmidt advised Judge Van Slate that,

". . . We have 13 reserved parking spaces. In accordance with the memo dated June 7, 2000 from Patricia A. Carey . . . IFPTE will be provided two (2) parking spaces. . . ." (G.C. Exh. 13).

By memorandum dated October 24, 2000, Mr. Schmidt had advised AFGE, in pertinent part, as follows:

"In accordance with our negotiation, the parties below agree to the following:

. . .

"The 13 reserved parking spaced be allocated in accordance with memo of June 7, 2000 . . . which will provide for seven (7) AFGE spaces (based upon 31 AFGE BUEs), four (4) Management spaces, and two (2) IFPTE spaces. . . ." (G.C. Exh. 15).

By memorandum dated November 13, 2000, Mr. Schmidt advised <u>all</u> employees of the Charleston OHA that,

"Effective Wednesday, November 15, 2000, the assignment of parking spaces will be instituted in

> accordance with . . . the memoranda dated October 24th [to AFGE; G.C. Exh. 15] and 25th [to the Union; G.C. Exh. 13]
>
> . . . ." (G.C. Exh. 16).

By its refusal to bargain with the Union over reserved, assigned parking for ALJs at Charleston and by its unilateral action in reducing the number of reserved, assigned parking spaces of ALJs from 6 to 2, Respondent violated §§16(a)(5) and (1) of the Statute. Providing all ALJs at Charleston reserved, assigned parking was a condition of employment and Respondent was obligated to give the Union notice and an opportunity to negotiate the substance – not the impact and implementation – of any proposed change of this established condition of employment.

The memorandum of June 7, 2000 (G.C. Exh. 10), mirrors the GSA-SSA Agreement (Agency Exhibit 2) and the record show that the GSA-SSA Agreement does not deal with reserved parking (id.; Tr. 66, 67). Nor does the memorandum of June 7, 2000. Thus, the section entitled,"DISTRIBUTION OF PARKING SPACES WITHIN OHA SPACE ASSIGNMENTS" provide, in part, as follows:

> "Whether in a FOB, or in a leased building, after meeting all of the provisions of the SAS and the CFR, and after making the distinctions between pre- and post-1988 situations, and parking is still available for distribution, the following guidelines are to be followed: . . . ." (G.C. Exh. 10, p. 3). (Emphasis supplied).

On its face the reference is to parking spaces, and inasmuch as, at Charleston, all OHA employees were provided free parking, the requirements of the June 7, 2000, memorandum were fully satisfied. Further, the June 7, memorandum further stated, in part,

> "After meeting the initial three SAS provisions (disabled employees, 'in and out' program business, and carpools), consideration is given to the category of 'others.' This category includes parking for executive personnel and other employees. . . ." (id.)

Respondent arbitrarily ignored, as the record shows, that ALJs routinely engage in "in and out" program business, namely they conduct hearings both in Charleston and outside of Charleston, which require the transport of files to the hearings and return of the files to the office after

hearings. Respondent's refusal to bargain with the Union, from the Union's initial request to bargain on December 9, 1999, to its November 15, 2000, unilateral implementation of its equally unilateral decision to change the ALJs established condition of employment, violated §§16(a)(5) and (1) of the Statute.

I understand that Respondent would apply the rote argument that it must treat each union alike, and therefore, because the ALJs had affiliated with a union, it must treat AFGE and the Union alike. But Respondent's simplistic argument is without merit because it wholly ignores the fact that assigned, reserved parking for ALJs was an established condition of employment which Respondent was not free to change without notice to the Union and fulfilment of its obligation to bargain in good faith; and because Respondent ignored the terms of its own memorandum which showed that it was not intended to apply to the Charleston situation; but, if it did apply, its terms show that the "in and out" program business of ALJs justify different treatment.

4. Remedy

I fully agree with General Counsel that a status quo ante remedy is appropriate. Department of the Navy, Naval Aviation Depot, Naval Air Station, Alameda, California, 36 FLRA 509, 511 (1990). Nothing in the record shows, or even suggests, that such an order would interfere in any manner with Respondent's performance of its functions. To the contrary, while Respondent unlawfully negotiated with AFGE and unlawfully assigned AFGE seven (7) reserved spaces while refusing to negotiate with the Union, Respondent has reserved four (4) spaces for management (G.C. Exh. 15) and these four, plus the two (2) assigned to the Union will permit restoration of all six spots to ALJs, and the record shows that Respondent in negotiation with AFGE had proposed that management give up its assigned parking spaces (G.C. Exh. 24A). Respondent has acted in bad faith by failing and refusing to negotiate with the Union from December 9, 1999, to the date of unlawful unilateral implementation of the change of ALJs established condition of employment on November 15, 2000, and a status quo ante order is both necessary and appropriate to remedy Respondent's adamant and continuous refusal to bargain with the Union. The Regional Chief Administrative Law Judge and the Regional Hearing Office Director will be directed to sign the Notice because Respondent informed the Union that the authority to negotiate rested with the Regional Chief Administrative Law Judge or his designee, and the record shows that the Charleston Hearing Office Director was subject to the direction of the Regional Office.

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 § 2423.41(c) of the Authority's Rules and Regulations, 5 C.F.R. § 2423.41(c), and § 18 of the Statute, 5 U.S.C. § 7118, it is hereby ordered that the Social Security Administration, Office of Hearings and Appeals, Charleston, South Carolina, shall:

1. Cease and desist from:

(a) Refusing to bargain with the Association of Administrative Law Judges, International Federation of Professional and Technical Engineers, AFL-CIO (hereinafter, "Union"), the exclusive representative of all of Respondent's full time and part time Administrative Law Judges concerning any proposed change of conditions of employment of Administrative Law Judges.

(b) Eliminating reserved, assigned parking places formerly provided all Administrative Law Judges at Charleston, South Carolina, without first giving the Union notice and an opportunity to bargain concerning the substance of any proposed change.

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

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

(a) Forthwith reinstate the reserved, assigned parking places for all Administrative Law Judges at Charleston, South Carolina, as they existed prior to November 15, 2000.

(b) Before changing any existing condition of employment of its Administrative Law Judges at Charleston, South Carolina, give the Union notice and, upon request, bargain in good faith, and maintain the status quo until completion of bargaining pursuant to provisions of the Statute.

(c) Post at its Office of Hearings and Appeals, Charleston, South Carolina facilities and at its Regional

Office of Hearings and Appeals, Atlanta, Georgia, facilities 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 Regional Chief Administrative Law Judge and by the Regional Hearing Office Director, 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, both at Charleston and at Atlanta, 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 § 2423.41(e) of the Authority's Rules and Regulations, 5 C.F.R. § 2423.41(e), notify the Regional Director, Atlanta Region, Federal Labor Relations Authority, Marquis Two Tower, Suite 701, 285 Peachtree Center Avenue, Atlanta, Georgia 30303-1270, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply.

WILLIAM B. DEVANEY
Administrative Law Judge

Dated: February 14, 2002
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 Administration, Office of Hearings and Appeals, Charleston, South Carolina, 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 refuse to bargain with the Association of Administrative Law Judges, International Federation of Professional and Technical Engineers, AFL-CIO (hereinafter, "Union"), the exclusive representative of all our Administrative Law Judges, concerning any proposed change of conditions of employment of Administrative Law Judges.

WE WILL NOT eliminate reserved, assigned parking places formerly provided all Administrative Law Judges at Charleston, South Carolina, without first giving the Union notice and an opportunity to bargain concerning the substance of any proposed change.

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

WE WILL, FORTHWITH, reinstate reserved, assigned parking places for all Administrative Law Judges at Charleston, South Carolina, as they existed prior to November 15, 2000.

WE WILL, before changing any existing condition of employment of our Administrative Law Judges at Charleston, South Carolina, give the Union notice and, upon request, bargain in good faith, and WE WILL maintain the status quo until completion of bargaining pursuant to provisions of the Federal Labor Management Relations Statute.

Social Security Administration
Office of Hearings and Appeals

DATED: _____ By: _____
Regional Chief Administrative Law Judge

DATED: _____ By: _____
Regional Hearing Office Director

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, Atlanta Region, Federal Labor Relations Authority, whose address is: Marquis Two Tower, Suite 701, 285 Peachtree Center Avenue, Atlanta, Georgia 30303-1270, and whose telephone number is: (404) 331-5380.

CERTIFICATE OF SERVICE

I hereby certify that copies of this DECISION issued by WILLIAM B. DEVANEY, Administrative Law Judge, in Case No. AT-CA-01-0093, were sent to the following parties in the manner indicated:

CERTIFIED MAIL AND RETURN RECEIPT	**CERTIFIED NOS:**
Brent S. Hudspeth 0535 Tameka A. West Counsel for the General Counsel Federal Labor Relations Authority Marquis Two Tower, Suite 701 285 Peachtree Center Avenue Atlanta, GA 30303-1270	7000 1670 0000 1175
John J. Barrett 0528 Labor Relations Specialist Social Security Administration 6401 Security Boulevard G-H-10 West High Rise Building Baltimore, MD 21235-6401	7000 1670 0000 1175
J.E. Van Slate 0511 Representative AALJ, IFPTE c/o SSA, OHA 200 Meeting Street, Suite 202 Charleston, SC 29401	7000 1670 0000 1175

Dated: February 14, 2002

Washington, DC