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

SOCIAL SECURITY ADMINISTRATION GILROY BRANCH OFFICE GILROY, CALIFORNIA Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 3172, AFL-CIO Charging Party	Case No. SF-CA-70046

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 27, 1997**, 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 25, 1997
Washington, DC

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

MEMORANDUM DATE: September 25, 1997

TO: The Federal Labor Relations Authority

FROM: GARVIN LEE OLIVER
Administrative Law Judge

SUBJECT: SOCIAL SECURITY ADMINISTRATION
GILROY BRANCH OFFICE
GILROY, CALIFORNIA

Respondent

and Case No. SF-CA-70046

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 3172, 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

FEDERAL LABOR RELATIONS AUTHORITY

Office of Administrative Law Judges
WASHINGTON, D.C.

SOCIAL SECURITY ADMINISTRATION GILROY BRANCH OFFICE GILROY, CALIFORNIA Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 3172, AFL-CIO Charging Party	Case No. SF-CA-70046

Wilson Schuerholz
Representative of the Respondent

Gary Klemz
Representative of the Charging Party

Yolanda Shepard Eckford
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 scheduling six appointments for claims representatives on Fridays, through Respondent's nationwide 800 telephone number, without negotiating with the Charging Party (Local 3172 or Union) on the change to the extent required by the Statute.

Respondent's answer denied any violation of the Statute. Respondent contends that the effect of the change on unit employees working conditions was *de minimis* and there was no duty to bargain.

For the reasons explained below, I conclude that a preponderance of the evidence supports the alleged violation.

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

The Parties

The American Federation of Government Employees, AFL-CIO (AFGE) is the exclusive representative of a nationwide consolidated unit of employees appropriate for collective bargaining with the Social Security Administration (SSA). AFGE and SSA are parties to a national collective bargaining agreement dated March 5, 1996. Local 3172 is an agent of AFGE for representing unit employees at the Respondent, SSA's Gilroy Branch Office.

Claims Representatives

The Gilroy Branch Office has 11 bargaining unit employees and two supervisors. The three Title II claims representa-tives (CRs) and four Title XVI CRs were the affected employees in this case. They interview the public and process social security (Title II) or supplemental security income (Title XVI) claims.

CRs receive claimant appointments for interviews in a variety of ways. Claimants may walk into the office and be interviewed, termed "walk-ins," or they may make an appoint-ment for interviews by visiting or calling the office or calling a nationwide 800 number. Every SSA office has access to the 800 appointment calendar and can make appointments for any SSA office. CRs also make their own interview appoint-ments for claims they are processing and which require claimant follow-up or yearly redetermination interviews.

The interviews last between 15 minutes and an hour. Subsequent processing of the claim by the CRs, which involves the paperwork to investigate, pay, deny, or refer the claim, commonly described as "adjudication," takes from 15 minutes to three hours, or an average of about 45 minutes, depending on the complexity of the case.

Friday Duties Prior to Change

From 1988 until the change at issue, the CRs took 12 appointments from the nationwide 800 number on each day Monday through Thursday. No Friday appointments were scheduled for the CRs. Appointments for Fridays at the Respondent were "blocked out" in the nationwide 800 calendaring system. However, claimant interviews on Fridays were performed by the CRs for walk-ins and in the case of follow-up appointments made by the CRs themselves. Otherwise, the CRs used this day to perform adjudication work on claims they had previously taken.

The exception to the rule that no appointments were scheduled on Fridays occurred during what was referred to as "crunch time" between approximately October and March. During this period of time, if appointment requests became so numerous that claimants were required to wait more than two weeks for an appointment, management asked the CRs to assist in decreasing the amount of time that a claimant had to wait for an appointment. Employees assisted in meeting this goal in various ways. Some CRs volunteered to take Friday appointments from the 800 system, but they were not required to do so.

Friday Change Discussed

Between March and July 1996, the Respondent made various proposals to add 10 to 12 claims appointments on Fridays from the nationwide 800 number appointment calendar. Respondent and the Union engaged in various discussions, including some "consultation" under Article 30, Section I of the agreement, and also allowed the bargaining unit employees to attempt to formulate an implementation plan, but no agreement could be reached.

Throughout this period the Respondent explained that changes were needed to add Fridays to the appointment calendar so that claimant appointments could be timely, not beyond two weeks, and available to the public on Monday through Friday as was common in other SSA offices. The Union, by Gary Klemz, identified the loss of adjudication time as a major concern, but also specifically stated that the loss of adjudication time was not the only concern of the Union with respect to adding Friday appointments.

Compromise Change Proposed - Bargaining Requested

By letter to the Union dated August 1, 1996, the Respondent, by Branch Manager Steve Ponzio, proposed a compromise involving the implementation of six appointments to be scheduled on Fridays through Respondent's 800 telephone number. In his letter, Ponzio stated, in part, that if, as

a result of the loss of adjudication time, backlogs occurred, management would "consider factors which affect performance that are beyond the control of the employee in accordance with Article 21, Section 4B of the AFGE/SSA labor agreement."[1]

Commencing August 15, 1996, the Union requested to negotiate regarding the proposed change. On October 8, 1996, the Respondent, by Ponzio, refused to negotiate with the Union regarding the proposed change, stating that "there does not appear to be any significant impact that has not already been addressed in the Agreement." Ponzio stated that there was "still ample adjudication time on Fridays and during the rest of the week and no changes with respect to hours of work, lunch/break times or changes in duties."

Change Implemented

On October 11, 1996, Respondent added six appointments, three retirement and three disability, to the appointment calendar on Fridays on a permanent basis. The Respondent implemented the change in the appointment schedule without bargaining with the Union.

Number of Friday Interviews

The affected CRs took six interviews on Fridays from the nationwide 800 number as opposed to 12 on the other days of the week. The interview and adjudication duties performed by the CRs on Fridays were the same as they performed on the other days of the week.

If the claimants appeared as scheduled, a single Title II CR held three retirement appointments on Fridays and the remaining three appointments were split between two Title XVI CRs. This presented a potential permanent increase of some 156 claims to the Title II CRs workload and 156 claims to the Title XVI CRs workload, depending on whether

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[1] That provision states, "When assessing performance, the employer will consider factors which affect performance that are beyond the control of the employee."

the disability claims were social security or SSI.[2] The CRs were scheduled to rotate through this work on Fridays, but this was subject to adjustment if the assigned CR had a sick and annual leave requirement.

Management of Workload - Overtime

Title II CR Lillian Ramos and Title XVI CR Madeline Brooks testified that the change in Friday appointments had an impact on their ability to manage and feel in control of their workloads. The CRs normally used Fridays to catch up on paperwork and schedule follow-up appointments with claimants. These employees credibly testified that the loss of this adjudication time has resulted in a backlog in their work and a significant increase in voluntary overtime. CR Brooks, who has worked for the Respondent for 22 years, testified that "my backlogs are probably greater than they have been since I started, since SSI began. And my feeling of not having control of, or of managing my work load, is greater than I felt in a long, long time." (Tr. 96).

Branch Manager Ponzio testified that sufficient adjudication time is built in the schedule, and the increase in overtime is not due to scheduling appointments on Friday, but to a general overall increase in the work and the availability of overtime. However, CR Ramos' testimony was undisputed that she has not worked voluntary overtime on special projects, but only works overtime if allowed to work on her backlog, doing the adjudication work that she previously worked on Fridays. Even then, she does not volunteer if she has visitation with her son on a particular weekend.

Lunches

The employee lunch period is generally between 11:30 a.m. and 1:00 p.m. Prior to Respondent's change, the CRs

[2] Branch Manager Steve Ponzio presented an exhibit comparing Friday appointments and interviews from May 1995 to June 1996 with those from October 1996 through June 1997. (Respondent's Exhibit No. 3). He found that there were more, but not "significantly more; some were about the same." The December 1996 to June 1997 figures appeared to reflect that there were 71 more appointments and 34 more interviews than in the same period for 1995-1996; however, the 1996 figures did not reflect whether some of the appointments/interviews were voluntary during the "crunch period." Both Title II CR Ramos and Title XVI CR Brooks credibly testified that their workload increased as a result of the Friday assignments.

were able to plan personal engagements during the 12 noon to 1 p.m. lunch period on Fridays. This was the only day that the freedom of such planning was available to the CRs, because every other day the CRs were scheduled for appointments with Social Security claimants at 11:30 a.m., the length of which could not be predicted. Thus, the CRs were only able to predict their lunch times with any degree of certainty on Fridays.

Branch Manager Ponzio was not aware of any complaints concerning the effect the change may have had on CRs making a personal luncheon engagement on Fridays, but acknowledged that the one 800 appointment scheduled for 11:30 a.m. on any given Friday could preclude a personal engagement during the noon hour. Mr. Ponzio admitted that the Respondent had no special interest in the particular time that the appointments were scheduled during the workday.

Since the CRs had six appointments on Fridays, as opposed to twelve appointments Mondays through Thursdays, there was more latitude with respect to the timing of the appointments. Thus, the timing of the appointments, in relation to the CRs lunch period, could have been the subject of bargaining proposals by the Union.

Leave

Branch Manager Ponzio testified that he had not noticed any change in the leave pattern of employees on Fridays. However, CR Ramos credibly provided detailed testimony that the requirement that CRs conduct nationwide 800 number appointments on Fridays affected the manner in which the Title II CRs previously scheduled their leave. Prior to the change, the three Title II CRs often scheduled leave on Fridays when there were no nationwide 800 number appointments in order to avoid affecting other Title II CRs in the unit. Because there were no Friday appointments, if a Title II CR was absent on Friday, no coverage was required from another Title II CR in the unit. After the change, if the absent employee was one of the two Title II CRs scheduled for retirement and disability appointments, another employee was required to take the absent employee's scheduled appointments on Friday just as on Monday through Thursday.

Discussion and Conclusions

The Positions of the Parties

The General Counsel does not dispute in this case the right of the Respondent to assign work, pursuant to section 7106(a)(2)(B) of the Statute, by requiring CRs to take Friday

appointments. The General Counsel only contends that the reasonably foreseeable impact of such an assignment was more than *de minimis*, thus requiring the Respondent to bargain with the Union concerning the impact and implementation of its decision pursuant to section 7106(b)(2) and (3) of the Statute.

The Respondent agrees with the issue posed by the General Counsel, but maintains that the change was indeed *de minimis*, and the case should be dismissed under the Authority's framework for making that determination.

The Authority's Framework

In determining whether a change is more than de minimis, the Authority

> will place principal emphasis on such general areas of consideration as the nature and extent of the effect or reasonably foreseeable effect of the change on conditions of employment of bargaining unit employees. Equitable considerations will also be taken into account in balancing the various interests involved.

Department of Health and Human Services, Social Security Administration, 24 FLRA 403, 408 (1986) (SSA). The Authority has held that the appropriate inquiry involves an analysis of the reasonably foreseeable effect of the change based on what the Respondent knew, or should have known, at the time of the change. Portsmouth Naval Shipyard, Portsmouth, New Hampshire, 45 FLRA 574, 575 (1992).

Application of Framework

Seven CRs were affected by the change, and the change was permanent. It is significant, although not dispositive, that the employees suffered no change in their work duties, location, breaks, benefits, or wages. However, it was reasonably foreseeable that the change would add a significant number of appointments to the CRs workload. Further, the CRs were deprived of time that they had previously used for evaluation of cases and scheduling of follow-up appointments. Employees credibly testified that they normally used Fridays to catch up on paperwork and schedule follow-up appointments with claimants, and the loss of this adjudication time resulted in increases in voluntary overtime and impacted the CRs' ability to manage and control their workload. Branch Manager Ponzio acknowledged that adjudication time on Fridays was an "emotional issue" among the CRs.

Respondent's change also affected the CRs' Friday lunch periods. The record establishes that prior to the change, the CRs were able to plan personal engagements during their lunch period on Fridays. As the General Counsel points out, the employees' lunch period is the period of time during the work day that belongs to the employee, rather than the employer. This respite during the work day affords employees the oppor-tunity to take care of personal business, meet friends, or simply retreat from the workplace. As noted, Branch Manager Ponzio admitted that the Respondent had no special interest in the particular time that the appointments were scheduled during the workday. Since the CRs had six appointments on Fridays, as opposed to twelve appointments on Mondays through Thursdays, there was more latitude with respect to the timing of the appointments which could possibly have been the subject of bargaining proposals by the Union.

The record establishes that the change also had an impact on the manner in which the three Title II CRs previously scheduled leave. Prior to the change, they scheduled planned leave on Fridays in order to avoid burdening other Title II CRs in the unit with their assigned duties on other days.

The addition of Friday appointments went beyond performance issues. Accordingly, the Respondent's position must be rejected, that the change in working conditions had no impact because of language in the collective bargaining agreement, which addressed performance impacted by matters outside the employees' control.

Violation Established

Applying the SSA analysis to this case, it is concluded that adding six nationwide 800 number appointments to the workload of the CRs on Fridays had an impact or reasonably foreseeable impact involving employees' workload, workflow, personal lunch periods, and leave patterns which was more than *de minimis* and gave rise to a duty to bargain. The Respondent's failure and refusal to negotiate with the Union concerning its impact and implementation, that is, the procedures which management officials would observe in exercising its authority and appropriate arrangements for adversely affected employees, as required by section 7106(b)(2) and (3), violated section 7116(a)(1) and (5) of the Statute, as alleged.

The Remedy

In addition to the traditional bargaining order, the General Counsel requests a *status quo ante* remedy pursuant to the Authority guidelines in Federal Correctional Institution, 8 FLRA 604 (1982). In this regard, while the Respondent gave notice to the Union prior to implementing the change in the appointment schedule, Respondent willfully implemented the change in working conditions in the face of the Union's request to bargain. Additionally, the nature and extent of the impact experienced by adversely affected employees was more than *de minimis*. The Respondent initiated the mandatory Friday interviews in order to meet the regional guideline of claimant interviews within 14 days and to have claimant appointments available every workday consistent with the practice of other SSA offices. While this evidence demonstrates why the addition of such Friday operations is desirable, such evidence does not support a finding that *a status quo ante* remedy would disrupt or impair the efficiency and effectiveness of Respondent's operations. The Respondent has not proffered such an argument and the record shows that it operated without mandatory Friday appointments for at least nine years. The record evidence does not support a finding that it could not do so while it fulfilled its bargaining obligation to the Union. Accordingly, a *status quo ante* remedy is deemed appropriate in this case.

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

ORDER

Pursuant to section 2423.29 of the Federal Labor Relations Authority's Rules and Regulations and section

7118 of the Statute, it is hereby ordered that the Social Security Administration, Gilroy Branch Office, Gilroy, California,
shall:

1. Cease and desist from:

(a) Implementing changes in the claims representatives' (CRs') appointment schedule, such as by adding disability and retirement appointments to the Friday appointment schedule, without first affording the American Federation of Government Employees, Local 3172, AFL-CIO (AFGE, Local 3172), the agent of the exclusive collective bargaining representative for employees at the Gilroy Branch Office, an opportunity to bargain to the extent required by the Statute concerning any proposed change.

(b) Refusing to bargain with the AFGE, Local 3172 concerning changes in the CRs' appointment schedule, such as the addition of Friday retirement and disability appointments through the nationwide 800 number.

(c) In any like or related manner interfering with, restraining or coercing employees in the exercise of rights assured by the Federal Service Labor-Management Relations Statute.

2. Take the following affirmative action in order to effectuate the purposes and policies of the Federal Service Labor-Management Relations Statute:

(a) Rescind the change to the CRs' appointment schedule, implemented on October 11, 1996, scheduling six retirement and disability appointments on Fridays through Respondent's nationwide 800 telephone number.

(b) Bargain with the Union to the extent required by the Statute concerning any proposed change in the CRs' appointment schedule, such as the requirement that the CRs conduct retirement and disability appointments on Fridays.

(c) Post at its 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 Branch 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 insure that

such Notices are not altered, defaced, or covered by any other material.

(d) Pursuant to section 2423.30 of the Authority's Rules and Regulations, notify the Regional Director of the San Francisco Region, Federal Labor Relations Authority, 901 Market Street, Suite 220, San Francisco, CA 94103-1791, in writing within 30 days of the date of this Order, as to what steps have been taken to comply herewith.

Issued, Washington, DC, September 25, 1997

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GARVIN LEE OLIVER
Administrative Law Judge

NOTICE TO ALL EMPLOYEES

POSTED BY ORDER OF THE

FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the Social Security Administration, Gilroy Branch Office, Gilroy, California 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 implement changes in the claims representatives' (CRs') appointment schedule, such as by adding disability and retirement appointments to the Friday appointment schedule, without first affording the American Federation of Government Employees, Local 3172, AFL-CIO (AFGE, Local 3172), the agent of the exclusive collective bargaining representative for employees at the Gilroy Branch Office, an opportunity to bargain to the extent required by the Statute concerning any proposed change.

WE WILL NOT refuse to bargain with the AFGE, Local 3172 concerning changes in the CRs' appointment schedule, such as the addition of Friday retirement and disability appointments through the nationwide 800 number.

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

WE WILL rescind the change to the CRs' appointment schedule, implemented on October 11, 1996, scheduling six retirement and disability appointments on Fridays through Respondent's nationwide 800 telephone number.

WE WILL bargain with the AFGE, Local 3172 to the extent required by the Statute concerning any proposed change in the CRs' appointment schedule, such as the requirement that the CRs conduct retirement and disability appointments on Fridays.

(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 of the Federal Labor Relations Authority, San Francisco Region, 901 Market Street, Suite 220, San Francisco, CA 94103-1791, and whose telephone number is: (415) 356-5000.

CERTIFICATE OF SERVICE

I hereby certify that copies of this DECISION issued by GARVIN LEE OLIVER, Administrative Law Judge, in Case No. SF-CA-70046, were sent to the following parties in the manner indicated:

CERTIFIED MAIL, RETURN RECEIPT **CERTIFIED NOS:**

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Gary Klemz **P 600 695 477**
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Dated: September 25, 1997
Washington, DC