

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY

Office of Administrative Law Judges
WASHINGTON, D.C. 20424-0001

MEMORANDUM

DATE: April 10, 2002

TO: The Federal Labor Relations Authority

FROM: WILLIAM B. DEVANEY
Administrative Law Judge

SUBJECT: SOCIAL SECURITY ADMINISTRATION
OFFICE OF HEARINGS AND APPEALS
REGION II, BUFFALO OFFICE OF
HEARINGS AND APPEALS
BUFFALO, NEW YORK

Respondent

and

Case No. BN-CA-01-0377

ASSOCIATION OF ADMINISTRATIVE LAW
JUDGES, INTERNATIONAL FEDERATION
OF PROFESSIONAL AND TECHNICAL
EMPLOYEES, 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 REGION II, BUFFALO OFFICE OF HEARINGS AND APPEALS BUFFALO, NEW YORK Respondent	
and ASSOCIATION OF ADMINISTRATIVE LAW JUDGES, INTERNATIONAL FEDERATION OF PROFESSIONAL AND TECHNICAL EMPLOYEES, AFL-CIO Charging Party	Case No. BN-CA-01-0377

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 MAY 13, 2002, and addressed to:

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

WILLIAM B.
Administrative Law

DEVANEY
Judge

Dated: April 10, 2002
Washington, DC

FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C.

SOCIAL SECURITY ADMINISTRATION OFFICE OF HEARINGS AND APPEALS REGION II, BUFFALO OFFICE OF HEARINGS AND APPEALS BUFFALO, NEW YORK <p style="text-align: center;">Respondent</p>	
<p style="text-align: center;">and</p> ASSOCIATION OF ADMINISTRATIVE LAW JUDGES, INTERNATIONAL FEDERATION OF PROFESSIONAL AND TECHNICAL EMPLOYEES, AFL-CIO <p style="text-align: center;">Charging Party</p>	Case No. BN-CA-01-0377

Judith D. Katzenelson, Esquire
Mr. John Barrett
For the Respondent

Gary J. Lieberman, Esquire
Laurie R. Houle, Esquire
For the General Counsel

Marilyn Zahm, 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

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)".

and Regulations issued thereunder, 5 C.F.R. § 2423.1, et seq., concerns whether Respondent implemented a decision not to provide monthly parking permits, upon request, to Administrative Law Judges in its Buffalo Office without giving the certified Union notice and an opportunity to bargain about the change in conditions of employment of Administrative Law Judges.

This case was initiated by a charge filed on April 12, 2001, (G.C. Exh. 1(a)) which alleged a violation of § 16(a) (1) of the Statute and by a First Amended Charge, filed on May 24, 2001 (G.C. Exh. 1(b)) which alleged violations of §§ 16(a) (5) and (1) of the Statute. The Complaint and Notice of Hearing issued June 22, 2001 (G.C. Exh. 1(c)) and set the hearing for November 7, 2001, in Buffalo, New York, at a place to be determined. On October 31, 2001, Notice designating the place of hearing issued (G.C. Exh. 1(e)), pursuant to which a hearing was duly held on November 7, 2001, in Buffalo, New York, 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 General Counsel exercised. At the conclusion of the hearing, December 7, 2001, was fixed as the date for mailing post-hearing briefs which time subsequently was extended, on Motion of Respondent, to which the Charging Party objected, for good cause shown, to December 20, 2001. General Counsel and Respondent each timely mailed a brief which were received on, or before, January 9, 2002, which have been carefully considered. Upon the basis of the entire record, I make the following findings and conclusions:

FINDINGS

1. The Social Security Administration, Office of Hearings and Appeals (hereinafter, "SSA") is headed by an Associate Commissioner (at all times material, Ms. Rita Geier). Organizationally, it is divided into two parts: the Offices of Hearings and Appeals, headed by a Chief ALJ in Washington, D.C.; and the Appeals Council, which hears appeals from ALJ decisions (Tr. 16). There are about 140 local Offices of Hearings and Appeals (hereinafter, "OHA"), divided into ten regions (Tr. 16-18). The Buffalo, New York, OHA is part of Region II which includes fifteen OHA Offices in New York, New Jersey, and Puerto Rico (Tr. 18, 36).

2. Each Region is headed by a Regional Chief ALJ (ROCALJ). Each local OHA is headed by a Hearing Office Chief ALJ (HOCALJ). There is a Hearing Office Director (HOD), who reports to the HOCALJ, in charge of operations (Tr. 17, 18).

The Buffalo ALJs hold hearings on site at Buffalo and at three remote sites: Rochester, Jamestown, and Olean, New York. Each of these sites is about 75 miles from Buffalo (Tr. 67, 68, 126, 136). Each ALJ travels to each of the remote sites, i.e., Rochester, Jamestown and Olean, on average, once a month, i.e. each ALJ travels about three times per month to the remote sites within the Region (Tr. 68, 126, 127, 136) and, in addition, ALJs hold hearing out of the Region (Tr. 126).

3. Besides the HOCALJ, the Buffalo OHA has twelve ALJs and, in total, the Office has about 78 employees, consisting, in addition to the HOCALJ and twelve ALJs, the HOD, four group supervisors, about nine attorneys, fourteen paralegal specialists and about 37 administrative support staff employees (Tr. 69, 151).

4. On October 1, 1999, the Association of Administrative Law Judges, International Federation of Professional and Technical Engineers, AFL-CIO (hereinafter, "Union"), was certified as the exclusive representative of SSA ALJs nationwide (Joint Exh. 1; Tr. 19-21).

The American Federation of Government Employees (AFGE) represents administrative staff and paralegals at the Buffalo Office and the National Treasury Employees Union (NTEU) represents the attorneys (Tr. 21, 150-151, 153).

5. On March 27, 2000, SSA and the Union signed an Interim Agreement (Jt. Exh. 2), and, in June, 2001, entered into a Master Agreement, effective August 30, 2001 (Jt. Exh. 3; Tr. 25, 26). Neither the Interim Agreement nor the Master Agreement contains any provision on parking (Jt. Exh. 2, 3; Tr. 27, 28). The parties agreed to continue negotiations on a facilities article which would include parking, but as of the date of the hearing in this case no agreement had been reached (Tr. 30).

6. The Interim Agreement, which was in effect on April 30, 2001, when Respondent unilaterally changed the conditions of employment of the Buffalo ALJs, in Article 9, section 4, described the level at which negotiations should take place for proposed changes: nationally, for nation-wide or multi-regional changes; regionally, for changes at more than one OHA; and locally, for changes affecting a single OHA (Jt. Exh. 2, Article 9, section 4, p. 27; Tr. 24, 27, 71). Inasmuch as the change here affected only the Buffalo OHA, notice should have been given to the Buffalo Union representative, Marilyn D. Zahm.

7. Respondent provided parking passes to its Buffalo ALJs for at least twenty years (G.C. Exh. 9). Respondent has been located at 300 Pearl Street, in downtown Buffalo, since November, 1993 (Tr. 72, 128), and from November, 1993, until April 30, 2001, Respondent provided free parking to all of its ALJ's by issuing each ALJ with a monthly parking pass to the Convention Center Ramp ("Ramp") which is separated from the Office only by a small building (Tr. 72, 73, 127, 137). Indeed, appointment letters to new judges showed, for example, in 1994, 1995 and 1996, that Respondent advised, ". . . For convenience, use the Convention Center Parking Ramp. Please park in that ramp on the first work day, and obtain the usual time stamped card from the gate machine. At the end of the work day you will have obtained your permanent plastic gate card which will cancel the parking charge for that day." (G.C. Exh. 4, letter to Honorable Patrick J. Foley, August 9, 1994; the last sentence of paragraph 2 of the essentially same form letter in 1995 and 1996 read, "we will begin processing a request for your permanent plastic gate card covering access and parking charges for that ramp." (G.C. Exh. 4).

From December, 1990, until November, 1993, Respondent was located at the Gold Dome where all ALJs were provided free parking (Tr. 128). Before locating at the Gold Dome, Respondent had provided parking for all of its ALJs except for a short period in 1990, when the Office was at 268 Main Street, when the Office staff was enlarged and there were not enough parking for all ALJs until the Office moved to the Gold Dome about December 1, 1990 (G.C. Exh. 9; Tr. 127-128).

As HOD Mack testified, until April, 2001, the number of passes for ALJ was a fixed number based on the number of ALJs who wanted parking (Tr. 154).

8. On, or about, March 22, 2001, HOD Mack informally told the Union's local representative, Zahm, that he and HOCALJ, McGuan, were being told by the ROCALJ to take the ALJ parking passes, but he did not give her any specific information (Tr. 86-87, 188). Ms. Zahm stated,

"A My response at that time, and it was the same when I did get more specific information, was I believe I said, 'You can't do that. It's illegal.' I said 'they can't do that' since I didn't believe Mr. Mack was the one who was doing it. 'They can't do that. It's illegal. They have to bargain first.'" (Tr. 87).

Ms. Zahm advised the Union's Regional Vice President for Region II (Tr. 18), Robin J. Arzt (Tr. 27. 86),

On April 4, 2001, HOD Mack told Ms. Zahm,

". . . that Judge McGuan [HOCALJ] had been directed to take our parking passes by Judge Wright [ROCALJ] and that we would be losing those passes. I think at that point he said either May 1st or June 1st. Two days later he told me it was May 1st." (Tr. 88).

On April 9, 2001, HOD Mack issued a memorandum to "All Staff, OHA Buffalo, NY" informing all employees of the Buffalo OHA of a new distribution order for parking passes effective May 1, 2001 (Jt. Exh. 4; Tr. 38, 88). No written notice was sent to the Union (Tr. 88). The memorandum provided, in material part, as follows:

"1. Please be advised that OHA Buffalo has been directed to comply with the June 7, 2000 memorandum on parking issued by the Acting Director, Office of Management. Accordingly, the following order of parking priority will be in effect beginning May 1, 2001, the next date the monthly permits renew.

"a. Severely handicapped employees.

"b. Executive personnel (defined in the June 7, 2000 memorandum as HOCALJ, HOD, and Group Supervisors) and persons who work unusual hours.

"c. Vanpool/carpool vehicles.

"d. Privately owned vehicles of occupant agency employees which are regularly used for Government business at least 12 days per month.

"e. Other privately owned vehicles of employees, on a space-available basis.

"2. The "other" category includes assignments of any remaining parking spaces to bargaining unit components and remaining non-bargaining unit employees. The distribution will be based on a percentage of the employees in these groups in the office.

. . . ." (Jt. Exh. 4)

Although the memorandum stated that the Office had been directed to comply with the June 7, 2000, memorandum of Acting Director Patricia A. Carey (Jt. Exh. 6), the language of subparagraphs a. through e. of paragraph 1. were taken from 41 C.F.R. § 101-20.104-2(d)(1) through (5), rather than the memorandum of June 7, except for the parenthetical definition of "Executive" in subparagraph "b.". Thus, Ms. Carey's memorandum was based on the March, 1998,

Agreement between the Acting Assistant Commissioner, Office of Business Performance, General Services Administration and the Acting Commissioner, Social Security Administration, entitled, "Space Allocation Standard for OHA Field Offices (Jt. Exh. 7)2. Under the GSA-SSA Agreement, 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." (Jt. Exh. 7, p. 7).

Ms. Carey's June 7, 2000, memorandum likewise provided,

"After meeting the initial three SAS provisions (disabled employees, 'in and out' program business, and carpools), consideration is given to the category of 'other.' This category includes parking for executive personnel and other employees." (Jt. Exh. 6, p. 3).

2

Joint Exhibit 7 in this case is not the complete document; but I take official notice of the same document introduced in its entirety and which I admitted in evidence in Social Security Administration, Office of Hearings and Appeals, Charleston, South Carolina, Case No. AT-CA-01-0093, OALJ - 02-17 (February 14, 2002), as Agency Exhibit 2.

Ms. Carey's memorandum further provided,

"• Non-Bargaining Unit Staff -- In the 'other' category, executive personnel will be given priority consideration. . . . in HPI HOs are the HOCALJ, the Hearing Officer 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. at 3-4).

9. I credit the testimony of Ms. Arzt that the Union received no notice of Ms. Carey's June 7, 2000, memorandum (Jt. Exh. 6) until April 2001 (Tr. 47, 91).

10. On March 7, 2001, Chief ALJ Charles R. Boyer sent ROCALJ G. Stephen Wright the following letter:

"I have recently been advised that NTEU has alleged that the Buffalo Hearing Office is not complying with the Agency policy concerning parking. The information provided by the office reveals that NTEU may be correct. Attached is the June 7, 2000, memo from Patricia Carey that provides clarification and guidance concerning the Agency's parking policy.

"If NTEU is correct, you are directed to have the Buffalo Hearing Office get into compliance with that policy. I realize that compliance with the policy may require notice to the AALJ/IFPTE bargaining unit. It is my expectation that any bargaining obligation with regard to the unions will be met. . . ." (Jt. Exh. 5) (Emphasis supplied).

11. HOD Mack conceded that he gave no notice to the Union of the intent to terminate ALJ parking (Tr. 187) nor did he know of any notice given by the HOCALJ (id.); that ROCALJ Wright, in a conference call with him and HOCALJ McGuan [into April, 2001, but the date was not fixed other than the week of April 2d (G.C. Exh. 5)] directed that we come into compliance with Ms. Carey's June 7, 2000, memorandum; that, "To me it was an unambiguous order to come into compliance with the June 2000 memo." (Tr. 161); that he and HOCALJ McGuan concluded June 1st would be a realistic date and he discussed this date with Ms. Debra Qweler, an attorney

on the regional staff that ROCALJ Wright had told him to call, and, “. . . She was very adamant to me that May 1st should be the date to implement. . . .” (Tr. 162); and, accordingly, he had issued his memorandum of April 9, 2001, implementing the change as of May 1, 2001, “. . . the next date the monthly permits renew.” (Jt. Exh. 4).

When HOD Mack informed Ms. Zahm that the Regional Office had directed the Buffalo Office to terminate the ALJ parking, she informed Ms. Arzt who contacted ROCALJ Wright who told her that he had, “. . . received a direct order from Judge Boyer to implement this policy change regarding parking. He felt constrained to do this but he didn't feel that he had the ability to negotiate or make any changes about it.” (Tr. 40). ROCALJ Wright confirmed this by his e-mail to Ms. Arzt, sent April 12, 2001, which, in relevant part, read as follows: “Pursuant to a written order from my immediate superior, I directed the HOCALJ in Buffalo to bring the HO parking in conformity to the policy, as embodied in the June 7, 2000 memo from OHA Office of Management. . . .” (G.C. Exh. 3).³

Obviously, ROCALJ Wright, “spoke with a forked tongue” when he told Ms. Arzt he had no discretion [ability] to negotiate. To the contrary, Chief Judge Boyer quite specifically instructed ROCALJ Wright that “. . . compliance . . . may require notice to the AALJ/IFPTE bargaining unit. It is my expectation that any bargaining obligation . . . will be met” (Jt. Exh. 5). Not only did ROCALJ Wright deliberately misrepresent Chief Judge Boyer's Instruction to him, he also intentionally refused to comply with Chief Judge Boyer's direction that he give notice and fulfill the obligation to bargain.

12. The effect was that as of May 1, 2001, nine ALJs lost their parking passes (Tr. 96-97). [One Judge, who is visually impaired, had given up his pass (Tr. 154); HOCALJ McGuan has a pass as an executive (Tr. 155); and two ALJs

3

Ms. Arzt said she spoke to Chief Judge Boyer on April 11,

“. . . Basically I explained to him that if this can't be resolved, we're going to have to file an unfair labor practice action He said that unfortunately that's going to be the way that it has to go. He didn't really see that he was going to be able to get this thing resolved. . . .” (Tr. 40).

Ms. Arzt filed the charge herein on April 12, 2001 (G.C. Exh. 1(a)).

are located in Rochester (Tr. 155)] Three ALJs received passes as handicapped persons because of their medical condition (G.C. Exh. 6; Tr. 97); the Union received one pass that is rotated; and ALJs lost five parking passes (Tr. 97). Because employee parking is substantively negotiable, United States Marshals Service, 12 FLRA 650 (1983); Immigration and Naturalization Service, Los Angeles District, Los Angeles, California, 52 FLRA 103, 116-118, 119 (1996), it is unnecessary to decide whether the impact of the change on ALJs was more than de minimis. Nevertheless, the record shows serious impact on ALJs, e.g. finding other parking or other means of getting to and from work (Tr. 82, 129, 138); the cost of parking (Tr. 83, 84); ability to transport files (Tr. 101, 104, 105, 131, 132), etc., and if it were necessary to make such a determination, I would most assuredly find that the impact of the change on ALJs was more than de minimis.

13. HOD Mack candidly testified that Respondent retaliated against its ALJs because they had joined a union, as follows:

"Q And what was your understanding of why the judges had received parking passes prior to May of 2001? Under what authority?

"A Probably because they were considered by virtue of their position the highest level employees. Really I don't want to use the word employees. There's a deference that goes to being an ALJ.

. . .

"Q And your testimony is that deference of respect has changed?

"A The deference of respect -- the equation has been altered by virtue of the ALJs becoming a labor union . . . The arguments are that at the time they become a labor union they subject themselves to the same rights and privileges that the other labor unions enjoy." (Tr. 165-166).

14. The Buffalo OHA was the only Office in Region II where Respondent refused to maintain the ALJ parking status quo. Thus, in the Queens, New York, OHA, ROCALJ Wright agreed that ALJs would retain their parking pending the outcome of National Contract Negotiations (Tr. 34-35, 94); at Albany, New York, Respondent agreed not to make any change to parking pending completion of national negotiations (Tr. 36,

94); and at Syracuse, New York, no attempt has been made to redistribute parking (Tr. 94). However, the Union's request for status quo at the Buffalo OHA pending completion of national negotiations was denied (G.C. Exh. 3).

CONCLUSIONS

There is no doubt whatever that, except for a few months in 1990 when not all new ALJs could be provided parking, the Buffalo OHA has provided all ALJs free parking for at least twenty years. From December, 1990, at the Gold Dome and from November, 1993, at its present location at 300 Pearl Street, Respondent continuously provided free parking to all ALJs by issuing monthly parking passes. Indeed, its appointment letters to new ALJs announced this benefit.

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 (1992) and, as noted above is substantively negotiable. Because the specific practice of providing all Buffalo ALJ with free parking had continuously been followed since December, 1990, and except for a few months in 1990, Respondent had furnished all Buffalo ALJs free parking for more than twenty years, this 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)); 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).

Respondent violated §§ 16(a)(5) and (1) of the

Statute by its refusal to bargain and by its unilateral implementation of the change of an established condition of employment of Administrative Law Judges by withdrawing free parking for all Buffalo ALJs effective May 1, 2001. U.S. Department of Justice, Immigration and Naturalization Service, 55 FLRA 892, 902-903 (1999). Here, Respondent announced its decision as final, without discretion to bargain.

Respondent's defenses are without merit. As General Counsel's Brief notes, the GSA parking regulations have, to Respondent's knowledge, been in existence for many years (Tr. 173, 174) (General Counsel's Brief, p. 27). It is possible, of course, that Respondent simply ignored them; but in view of the long running dispute (Tr. 174-175) it is probable, as Mr. Mack stated, ALJs were ". . . considered by virtue of their position the highest level employees." (Tr. 165) which made them executive personnel entitled, under 41 C.F.R. 101-20.104-2(d), to priority for parking after "a. Severely handicapped employees. . . ." and before vanpools, etc. In any event, 41 C.F.R. § 101-20-104-4 (f) plainly contemplates a bargaining obligation before implementation, so that Respondent's assertion that GSA Regulations required immediate implementation is without merit. Under its March, 1998 Agreement with GSA, Respondent agreed that, "These parking spaces should be allocated on a priority basis to disabled employees, in and out business parking for program purposes, carpools, then others." (Jt. Exh. 7, p. 7). Pursuant to this Agreement, ALJs may have been considered by Respondent to fall in the category of "in and out business parking for program purposes"; or as executive employees in the "other" category. If not, Respondent must, necessarily, simply have ignored its March, 1998 Agreement with GSA because it did, in fact, adhere to its established practice of providing all ALJs in the Buffalo OHA with parking passes. Respondent in the Interim Agreement (Jt. Exh. 2), Article 9, section 3, which was in effect in April, 2001, agreed that it would not, ". . . unilaterally establish or change any personnel policy, practice or condition of employment not specified by this agreement, except as provided by this Section, or by law." Moreover, because the practice of providing all Buffalo OHA ALJs parking passes had become a condition of employment, and Respondent could not change that condition of employment without notice to the Union and without affording the Union an opportunity to bargain on the proposed change. Respondent's June 7, 2000, memorandum (Jt. Exh. 6) also was issued without notice to the Union. Respondent ignored this memorandum until, in April, 2001, in a vindictive act, because of their union membership, Respondent on April 9,

2001, unilaterally terminated free parking for all ALJs at Buffalo.

The status of ALJs has not changed one iota. Their selection, tenure, pay, duties and responsibilities are unchanged and every category, i.e., selection, tenure, pay, duties and responsibilities, set them apart from other OHA employees and the characteristics of their job which justified their priority allotment of parking remains unchanged. The fact that they have affiliated with a professional organization does not change or alter any characteristic of their function as Administrative Law Judges.

General Counsel requests a status quo ante relief, ". . . pending completion . . . of the on-going national level negotiations." (General Counsel's Brief, p. 35). I fully agree that a status quo ante order should be granted Federal Correctional Institution, 8 FLRA 604 (1982); Department of the Air Force, Warner Robins Air Logistics Center, Robins Air Force Base, Georgia, 52 FLRA 225, 230, 246 (1996); but I do not agree that such order be tied to completion of on-going national level negotiations. The violation alleged and found was at the local level; notice of any future change at the Buffalo OHA must be given to the local representative of the Union; and negotiations must address any local proposed change of established conditions of employment. While a local agreement may not be negotiated which would be contrary to a national agreement, a local agreement may properly address local conditions in a manner consistent with any national agreement.

General Counsel's request for a non-traditional remedy, "should they legitimately lose their free parking passes after appropriate bargaining . . ." (General Counsel's Brief, p. 35) is denied as inappropriate. I shall, however, order Region wide posting because the same problem exists at other offices in Region II, and the ROCALJ had taken action concerning ALJ parking at other offices in Region II, although ALJ parking had been terminated only at Buffalo.

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, Region II, Buffalo, New York, shall:

1. Cease and desist from:

(a) Unilaterally changing established conditions of employment of the Buffalo, New York, Office of Hearings and Appeals' Administrative Law Judges, including the providing of free parking passes for all Buffalo OHA ALJs who request them.

(b) Refusing to bargain with the Association of Administrative Law Judges, International Federation of Professional and Technical Employees, AFL-CIO (hereinafter, "Union"), the exclusive representative of its Administrative Law Judges (hereinafter, "ALJs").

(c) In any like or related manner, interfering with, restraining, or coercing its employees in the exercise of 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 practice of providing all ALJs in the Buffalo OHA who request it, with free parking passes, as the practice had existed before May 1, 2001.

(b) Before changing any condition of employment of ALJs at the Buffalo OHA, including parking, give the Union notice and, upon request, bargain in good faith; maintain the status quo until completion of bargaining pursuant to the provisions of the Statute; and, in determining eligibility for allocation of parking, consider solely the status of Administrative Law Judges and not any professional affiliation.

(c) Post at each Office of Hearings and Appeals in Region II 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 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, Boston Region, Federal Labor Relations Authority, 99 Summer Street, Suite 1500, Boston, Massachusetts 02110-1200, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply.

DEVANEY
Judge

WILLIAM B.
Administrative Law

Dated: April 10, 2002
Washington, D.C.

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, Region II, Buffalo Office of Hearings and Appeals, Buffalo, New York, 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 Unilaterally change any established condition of employment of the Buffalo, New York, Office of Hearings and Appeals' Administrative Law Judges, including the providing of free parking passes for all Buffalo OHA Administrative Law Judges who request parking.

WE WILL NOT refuse to bargain with the Association of Administrative Law Judges, International Federation of Professional and Technical Employees, AFL-CIO (hereinafter, "Union"), the exclusive representative of our Administrative Law Judges (hereinafter, "ALJs").

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 the practice of providing all ALJs in the Buffalo OHA who request it, with free parking passes, as the practice existed before May 1, 2001.

WE WILL before changing any condition of employment of ALJs at the Buffalo OHA, including parking, give the Union notice and, upon request, bargain in good faith.

WE WILL maintain the status quo pending completion of bargaining pursuant to the provisions of the Statute.

WE WILL, in determining eligibility for allocation of parking, consider solely the status of Administrative Law Judges and **WE WILL NOT** consider affiliation of ALJs.

SOCIAL SECURITY ADMINISTRATION
OFFICE OF HEARINGS AND APPEALS
REGION II

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 its provisions, they may communicate directly with the Regional Director, Boston Region, Federal Labor Relations Authority, whose address is: 99 Summer Street, Suite 1500, Boston, Massachusetts 02110-1200, and whose telephone number is: (617) 424-5730. [Case No. BN-CA-01-0377]

CERTIFICATE OF SERVICE

I hereby certify that copies of this DECISION issued by WILLIAM B. DEVANEY, Administrative Law Judge, in Case No. BN-CA-01-0377, were sent to the following parties in the manner indicated:

CERTIFIED MAIL AND RETURN RECEIPT

CERTIFIED NOS:

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Dated: April 10, 2002
Washington, DC