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

SOCIAL SECURITY ADMINISTRATION, BALTIMORE, MARYLAND AND SOCIAL SECURITY ADMINISTRATION, OFFICE OF HEARINGS AND APPEALS, KANSAS CITY, MISSOURI, AND SOCIAL SECURITY ADMINISTRATION, OFFICE OF HEARINGS AND APPEALS, ST. LOUIS, MISSOURI Respondent	
and INTERNATIONAL FEDERATION OF PROFESSIONAL AND TECHNICAL ENGINEERS, ASSOCIATION OF ADMINISTRATIVE LAW JUDGES, REGION VII Charging Party	Case Nos. DE-CA-02-0657 DE-CA-02-0658

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 1, 2004**, and addressed to:

Federal Labor Relations Authority
Office of Case Control
1400 K Street, NW, 2nd Floor
Washington, DC 20424-0001

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WILLIAM B. DEVANEY
Administrative Law Judge

Dated: January 30, 2004
Washington, DC

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

MEMORANDUM DATE: January 30, 2004

TO: THE FEDERAL LABOR RELATIONS AUTHORITY

FROM: WILLIAM B. DEVANEY
ADMINISTRATIVE LAW JUDGE

SUBJECT: SOCIAL SECURITY ADMINISTRATION,
BALTIMORE, MARYLAND AND
SOCIAL SECURITY ADMINISTRATION,
OFFICE OF HEARINGS AND APPEALS,
KANSAS CITY, MISSOURI, AND
SOCIAL SECURITY ADMINISTRATION,
OFFICE OF HEARINGS AND APPEALS,
ST. LOUIS, MISSOURI

Respondents

and Case Nos. DE-CA-02-0657

DE-CA-02-0658

INTERNATIONAL FEDERATION OF
PROFESSIONAL AND TECHNICAL
ENGINEERS, ASSOCIATION OF
ADMINISTRATIVE LAW JUDGES,
REGION VII

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 transmittal form sent to the parties, and the service sheet. Also enclosed are the pleadings, motions, exhibits and briefs filed by the parties.

Enclosures

OALJ 04-10

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

SOCIAL SECURITY ADMINISTRATION, BALTIMORE, MARYLAND AND SOCIAL SECURITY ADMINISTRATION, OFFICE OF HEARINGS AND APPEALS, KANSAS CITY, MISSOURI, AND SOCIAL SECURITY ADMINISTRATION, OFFICE OF HEARINGS AND APPEALS, ST. LOUIS, MISSOURI Respondents	
and INTERNATIONAL FEDERATION OF PROFESSIONAL AND TECHNICAL ENGINEERS, ASSOCIATION OF ADMINISTRATIVE LAW JUDGES, REGION VII Charging Party	Case Nos. DE-CA-02-0657 DE-CA-02-0658

Hazel E. Hanley, Esquire
For the General Counsel

Mr. John Barrett
Ms. Marybeth Pepper
For the Respondents

Honorable Mark A. Brown
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: (a) whether Respondent implemented the relocation of the St. Louis Office of Hearings and Appeals before completing bargaining with the Union (G.C. Exh. 1 (e)); and (b) whether Respondent, contrary to § 14(b)(4) of the Statute, refused, "requested copies of 'any security surveys and crime assessments that have been prepared by GSA, FPS, SSA/OHA or any other entity for the OHA office on the ninth floor at 200 No. Broadway, St. Louis, Missouri.'" (G.C. Exh. 1(i)).

This case was initiated by a charge filed in Case No. DE-CA-02-0658 on August 9, 2002 (G.C. Exh. 1(b)) which alleged violations of §§ 16(a)(1), (5) of this Statute. A Complaint and Notice of Hearing issued on November 7, 2002 (G.C. Exh. 1(d)) and alleged violations of §§ 16(a)(1) and (5). On December 2, 2002, the Amended Complaint and Notice of Hearing issued (G.C. Exh. 1(e)), also alleged violations of §§ 16(a)(1) and (5) and set the hearing for February 25, 2003, at a place to be determined in St. Louis, Missouri.

The charge in Case No. DE-CA-02-0657 was also filed on August 9, 2002, and alleged violations of §§ 16(a)(1), (5) and (8) of the Statute (G.C. Exh. 1(a)). The Complaint and Notice of Hearing issued on December 31, 2002, alleged violations of §§ 16(a)(1), (5) and (8) and set the hearing for February 25, 2003, at a place to be determined in St. Louis, Missouri. On January 15, 2003, an Order issued Consolidating the Complaints in Case Nos. DE-CA-02-0657 and DE-CA-02-0658, and fixed the place of hearing (G.C. Exh. 1 (l)), pursuant to which a hearing was duly held on February 25 and March 19, 2003, before the undersigned in St. Louis, Missouri. All parties were represented at the hearing, were afforded full opportunity to be heard, to introduce evidence bearing on the issues involved, and were offered the opportunity to present oral argument which the Charging Party exercised. At the close of the hearing, by agreement of the parties, April 28, 2003, was set as the date for mailing post-hearing briefs. Charging Party, Respondent and General Counsel each timely mailed an excellent brief, received on, or before May 5, 2003, which have been carefully considered. Upon the basis of the entire record, including my observation of the witnesses and their demeanor, I make the following findings and conclusions:

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[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)".

FINDINGS

1. The Association of Administrative Law Judges, International Federation of Professional and Technical Engineers (hereinafter, "AALJ") is the certified exclusive representative of a nationwide unit of Administrative Law Judges of the Social Security Administration, Office of Hearings and Appeals (hereinafter, "Respondent") (G.C. Exh. 1(e) and 1(i).

There are two other units of Respondent's employees represented, nationwide, by the American Federation of Government Employees (hereinafter, "AFGE") and the National Treasury Employees Union (hereinafter, "NTEU") (Tr. 256, 352-53).

2. On August 30, 2001, AALJ and Respondent entered into a nationwide collective bargaining agreement (hereinafter, "Agreement") which covered all issues except Facilities and Services which was reserved for separate negotiation (Res. Exh. 2; Tr. 358).

AALJ and Respondent met and bargained on the Facilities and Services provisions but did not reach agreement (this Article involved, inter alia,: space allocation for offices, in particular, size of ALJ offices and hearing rooms; equipment and furnishings for ALJ offices and hearing rooms; whether ALJs should be permitted to have personally-owned furnishings in their offices; locks for office doors; and free parking for ALJs (G.C. Exh. 32, p. 4)); the services of the Federal Service Impasses Panel (hereinafter, "FSIP" or "Panel") were invoked; an informal conference was conducted on July 23 and 24, 2002; and the Panel issued its Decision and Order on October 24, 2002 (G.C. Exh. 32).

3. In the meantime, on August 8, 2001, Respondent notified the Union that the St. Louis office was relocating from the Old Post Office Building at 815 Olive Street, to the St. Louis Place Building at 200 North Broadway (G.C. Exh. 2; Tr. 24-25) and a proposed office floor plan was attached (G.C. Exhs. 2 and 34). On August 10, 2001, the Union requested I&I bargaining (G.C. Exh. 3). On August 24, 2001, Respondent set the negotiations for September 10, 2001, and asked that initial proposals be submitted by September 6, 2001 G.C. Exh. 4).

4. On September 7, 2001, the Union submitted its initial proposal which proposed that: Respondent install a magnetometer, x-ray machine and hand held security wand at the public entrance to the new Hearing Office space; provide

eight free inside parking spaces for ALJs; that Respondent's proposed floor plan be modified as shown on the Union's proposed floor plan (G.C. Exh. 35; Tr. 37); that locks be installed on each ALJ's office door and on doors leading from the public waiting area to the hearing room and the door from the hearing room to private hallways and a keypad lock and peephole be placed on the door from the public elevator to employee restrooms; that each ALJ be given an allowance for purchase of new office furniture (G.C. Exh. 5, Attachment; Tr. 33-34, 35, 37).

5. The parties met on September 10, 2001 and the Union requested a copy of the lease but was told it did not exist (Tr. 40). Respondent, obviously, spoke with a forked tongue, because the lease, dated September 2, 2001 (Tr. 74), was belatedly furnished by Respondent on December 3, 2001 (Tr. 73, 74). The Union stated that its number one issue was security. Respondent replied that it was not authorized to bargain about security and refused to bargain about security at all (id.). The Union then tried to talk about parking and, again, Respondent said it was not authorized to talk about parking (Tr. 40-41). They did talk about the floor plan and ALJ's proposal about office furnishings (Tr. 41).

The parties resumed negotiations on September 11, 2001, but negotiations broke off early because of the attacks on the World Trade Center and the Pentagon (id.). During negotiations on September 10 and 11, 2001, the parties discussed the floor plan, and Respondent said it already had given its floor plan (G.C. Exh. 34) to the two other Unions, i.e., AFGE and NTEU, and couldn't enter into any agreement with the Union that would change its floor plan (G.C. Exh. 34).

The Union offered two ways to address the matter: (a) the Union was perfectly willing to have a bargaining session with all three unions together to negotiate about the floor plan (Tr. 43); or (b) Respondent could take the Union's proposed floor plan (G.C. Exh. 35), re-label it as Respondent's amended floor plan and submit it to AFGE and NTEU. If there were no complaints, then the floor plan was settled; and if there were objections, further negotiating would be required. Respondent refused to do either (Tr. 43). No date was set for the resumption of negotiations when the parties suspended on September 11, 2001.

6. On September 28, 2001, Ms. Leslye Sims, Respondent's Chief Negotiator, sent the Union Respondent's

". . . final bargaining proposal concerning the relocation of the St. Louis Hearing Office." (G.C. Exh. 6).

In her letter, Ms. Sims further stated,

> "As I expressed to you at the bargaining table, it is the position of the Agency that neither local nor regional management has an obligation to bargain over security, and parking. In addition, subsequent investigations have revealed that the issue of office furnishings is also an issue that neither local nor regional management has an obligation to bargain. The Union's demand to bargain on these issues properly belongs at the national level otherwise referred to as the level of exclusive recognition for the IFPTE. Management and the IFPTE agreed to bargain these very issues as part of the national agreement. The parties have not agreed to bargain these issues at the local or regional level. . . ." (id.).

Judge Mark A. Brown, who succeeded Judge John J. Robin as Chief Negotiator for the Union in late October, 2001 (G.C. Exh. 7; Tr. 46-47), stated that the floor plan attached to Ms. Sims' "final bargaining proposal" was unchanged, i.e., that it was the same as G.C. Exh. 34 (Tr. 45). The Union understood Ms. Sims' September 28 letter to be the precuser to mediation and on November 1, 2001, Judge Brown had a telephone conversation with Ms. Sims which he followed up with an e-mail on November 2, 2001, stating, in part, as follows:

> ". . . A literal reading of the second full paragraph of your 9/28/01 letter would indicate that the Agency is refusing to bargain at the local or regional level on: 1) security; 2) parking; and 3) office furnishings. If this is correct, then the judges union assumes you will engage in mediation over only: 4) the office floor plan. The judges' union is willing to engage in mediation on all 4 issues.
>
> "If we do not receive a reply from you within 5 working days of your reading this e-mail, then we shall assume you will agree to mediation on only the floor plan, and we shall proceed accordingly. . . ." (G.C. Exh. 7).

7. The parties met with FMCS Mediator Eugene Brawley on December 3 and 4, 2001, in Kansas City, Missouri (Tr. 73). Judge Brown on December 3, again asked about the

lease and Ms. Sims said, ". . . give them a copy of the lease" (id.). The assertion that nothing was agreed to by the parties in December (Tr. 82) is not entirely correct. The parties did work on a memorandum of understanding (MOU) at the mediator's suggestion and, as evidenced by the initials of Judge Brown and Ms. Sims, obviously reached agreement on what Judge Brown termed the ". . . mechanical issues related to the move . . . . Just the mechanical nuts and bolts of the physical move." (Tr. 61, 81-82; G.C. Exh. 15, Attachment). Notwithstanding their apparent agreement on the substance of the MOU, it was not signed. On January 25, 2002, Regional Chief Administrative Law Judge, Jesse H. Butler, sent the following letter to Judge Brown, stating, in part, as follows:

> "This is to notify that management intends to implement its 'last-best offer' dated December 4, 2001, concerning the relocation of the St. Louis Hearing Office.
>
> "On August 8, 2001 you were provided with the floor plans for the St. Louis Office Relocation. On August 10, 2001 you requested to bargain, and, after an exchange of initial bargaining proposals, further negotiations commenced on September 9, 2001. The parties negotiated for 1 ½ days with no agreement being reached. Due to the tragic events of September 11, 2001 the parties agreed to suspend negotiations at that time. They subsequently met with the mediator on December 3-4 with no agreement being reached, and the parties were declared at impasse by the mediator. The five major issues separating the parties are, size of judges offices, size of hearing rooms, parking, security, and general floor plan layout[.]
>
> "The size of judges' offices, the size of hearing rooms, and parking are matters for which there is no authority or duty to negotiate at this level of the organization. These issues are nationwide initiatives affecting all hearing offices and must be negotiated at the level of exclusive recognition. They have been fully explored and negotiated to impasse at this level, and there is no mutual agreement at that level to further bargain those matters below the level of exclusive recognition.
>
> "Security is contained in and covered by Article 23 Health and Safety, of the National Agreement. The Office of Hearings and Appeals has

> no obligation to bargain further on security since it was fully discussed and consciously explored during national level bargaining and contained within the agreement. Moreover, even if there were some ongoing duty and authority to negotiate those matters at this level of our respective organizations, we believe our 'last-best offer' is comparable to the industry standards for public employment - we cannot agree to more and also ensure the efficiency and effectiveness of our operations.
>
> "The general floor plan layout is effective and efficient. It provides employees with office space and workspace that complies with the Space Allocation Standards of the Social Security Administration. The other two unions representing employees affected by the office move, AFGE and NTEU, have agreed with the floor plan. We do not believe there is a demonstrated need to modify that layout, and believe it is consistent with the requirements of an efficient and effective hearing office.
>
> ". . . The build out will begin at One St. Louis Place on February 11, 2002. The projected move in date is the week of May 20, 2002.
>
> "Enclosed is a copy of our 'last-best offer' . . . ." (G.C. Exh. 15).

The "last-best offer" was the unsigned MOU plus, as ROCALJ Butler noted, Respondent's floor plan (G.C. Exh. 34).

Back to the December 3-4 mediation, Judge Brown stated that on December 4, Mediator Brawley told the Union that Respondent had already signed off on the floor plan with the other two unions (Tr. 78), which was the first time the Union knew that AFGE and NTEU had agreed with Respondent on the floor plan (id.). When the parties met jointly, Ms. Sims verified Mediator Brawley's statement (Tr. 79).

Judge Brown stated that Respondent asserted two reasons for its adamant insistence on its floor plan: (1) for work flow purposes (Tr. 75); and (2) St. Louis Hearing Office Chief ALJ, Judge Riley, said, in front of the mediator, ". . . that she didn't want all the white male judges sitting together down at the same end of the building" (Tr. 76), to which the Union had responded, ". . . you can't do that. That's illegal. . . ." (id.). In any event, Respondent refused to give any consideration to the

Union's proposed floor plan (G.C. Exh. 35) and from September, when it first met to negotiate, through mediation in December, 2001, it refused to consider any change to its floor plan (G.C. Exh. 34) except that on December 4, Respondent said it would be willing to exchange the Judge's office toward the bottom left with the office of the Group Supervisor's office, i.e., on G.C. Exh. 34, the last office on the bottom left (GS) would move to the third office (J) (Tr. 174). The Union rejected this switch (id.).

Judge Brown strongly disagreed with ROCALJ Butler's statement that the, ". . . parties were declared at impasse by the mediator. . . ." (G.C. Exh. 15; Tr. 83). To the contrary, Judge Brown stated,

> "The mediator said, 'I do not declare an impasse.' He said that several times. He said, 'The parties declare an impasse. I do not declare an impasse.' And so the mediator never declared an impasse . . . .") (Tr. 80; see also, Tr. 177).

7. On September 10, 2001, the Union told Respondent that it had located a free surplus magnetometer and a free wand and that the Union wanted to get it and install it; but Respondent refused to talk about it (Tr. 89). On September 18, while HOCALJ Riley and Hearing Office Director Kumpe were away, Judges Brown and O'Blennis picked up the surplus magnetometer and wand and installed the magnetometer (Tr. 89, 179). Judge Brown said the guards, ". . . were ecstatic that we had it" (Tr. 89). The day after Judge Riley and Ms. Kumpe returned, on September 21, 2001, they had the magnetometer and the wand removed and locked up and refused to talk to the Union about it (Tr. 179-180). In January, 2002, Respondent returned the magnetometer and wand to FDA (Tr. 180).

8. May 20, 2002, came and went but neither had construction begun nor had a new moving date been set, so on May 29, 2002, Judge Brown asked for clarification of the build-out and moving date (G.C. Exh. 20; Tr. 107) and Ms. Karen R. Kumpe, HOD, replied the same day by e-mail that, "It is my understanding that we will not be moving until sometime in July." (G.C. Exh. 19). Again, there was delay on the beginning of construction and on July 2, 2002, Ms. Sims notified Judge Brown that construction had begun on June 27, 2002; that completion was expected by September 27, 2002; and that occupancy was expected no later than September 30, 2002 (G.C. Exh. 22).

On August 7, 2002, the parties re-visited the MOU which they had largely completed on December 4, 2001 (G.C.

Exh. 28; Tr. 114). Judge Brown suggested a caption, ". . . as either a, open quote, partial MOU, close quote, or a, open quote, MOU on items not in dispute, close quote." The parties met on August 9 in the St. Louis OHA office and physically present were: Judges Brown and O'Blennis for the Union and for Respondent, Ms. Kumpe (HOD) and by telephone, Ms. Sims. The parties agreed on the phrase, "(Concerning only matters not currently disputed before FLRA and FSIP) to be added under the caption, "Memorandum of Understanding" (Tr. 118) and the parties signed the MOU on August 9, 2002 (G.C. Exh. 30, Attachment) which was approved by Respondent on September 6, 2002 (G.C. Exh. 30). At the time the MOU was signed, the Union's appeal of the Regional Director's dismissal of the charge in Case No. DE-CA-02-0229 was still pending and the appeal was not denied until September 6, 2002 (G.C. Exh. 33; Tr. 119). On August 9, 2002, but after the MOU had been signed (Tr. 125), the Union filed the charges herein (G.C. Exhs. 1(a) and 1(b).

9. There is no dispute that the Union's initial demand was for 8 free internal parking spaces (G.C. Exh. 5, Attachment) which appeared to continue through the December, 2001, bargaining-mediation (G.C. Exh. 15, Attachment); but Judge Brown testified that in December, 2001, the Union orally proposed that, because the lease provided that for stated amounts of space leased, the building would make available parking slots which had to be paid for, Respondent seek allocated parking slots for Judges who wished to park there, each judge paying the monthly fee (Tr. 160, 198-199) (Judge Brown said, based on the amount of space leased by Respondent there would be about 15 slots available (Tr. 199)). Judge Brown stated that Ms. Kumpe, one of Respondent's negotiators, responded, "'I'm not going to do that because then if I did that for all the judges, then there might not be any spaces left for any other bargaining unit members that might want the same thing.' And so, you know, my reaction was she's concerned about the other bargaining unit. We're supposed to be bargaining about our bargaining unit. And that's why the federal mediator called her obstructionistic. So we talked about it." (Tr. 199-200). Judge Brown said he talked about it again in January, 2002, with Ms. Sims who recommended, "he call the landlord" (Tr. 200-201).

Both Ms. Sims and Ms. Kumpe testified at the hearing and neither challenged nor denied Judge Brown's testimony. Accordingly, I credit Judge Brown's testimony that the Union made an oral demand to bargain on seeking allocated parking slots in the building lease for which each Judge interested would pay.

The Federal Service Impasses Panel (FSIP) in its October 24, 2002, Decision and Order with respect to Parking, Sections 8.A. and 8.C., stated, in part, as follows:

> ". . . we shall order that current parking practices concerning ALJs in the Employer's approximately 140 hearing offices be "grand fathered" until such time as the office lease expires, an office expands its current space, or an office is relocated. When any one of these triggering events occurs, the Employer then may make changes, as needed, with respect to the distribution of free parking for ALJs in that office. This approach should avoid short-term disruption in the conditions of employment for some ALJs while eventually permitting the Employer to reconcile discrepancies between its past practices and the criteria established in regulations and agency policy concerning priority distribution of parking spaces. . . . As to the Union's proposal in Section 8.C., ["In Section 8.C., the Union proposes that the agency 'use its best effort to obtain at least one parking space for judge use at each permanent remote site.'"] the meaning of the term "best effort" is unclear, and may lead to grievances over whether the Employer has satisfied its obligations under the provision. Accordingly, we shall order the Union to withdraw the proposal." (G.C. Exh. 32, page 20). (Emphasis supplied).

In its Order the FSIP stated:

> "11. Sections 8.A. and 8.C., Parking
>
> "In Section 8.A., the parties shall adopt the following wording:
>
> "The current parking situations for ALJs in the approximately 140 hearing offices shall remain in place. However, when an office lease expires, an office expands its current space, or an office is relocated, changes in the distribution of free parking for ALJs may be made by the Employer consistent with Government-wide regulations in 41 C.F.R. § 101 [now, 41 C.F.R. § 102-74.305] concerning the criteria for assignment of parking spaces, and OM Memorandum dated June 7, 2000.

"In Section 8.C., the Union shall withdraw its proposal." (id., page 23) (Emphasis supplied).

The March, 1998, Space Allocation Standards (Res. Exh. 1) provides, in part, as follows:

"F. Parking

"SSA policy is that free or subsidized parking for the general public or employees will not be furnished at additional expense to SSA due to budgetary costs. In some instances, SSA will request parking for carpools, disabled employees, and in and out parking for employee use and for program purposes. OHA may request a maximum of two parking spaces for 'in and out' business for program purposes. These spaces will be included as part of the lease. Neither the OHA ROs or hearing offices have the authority to request parking from GSA for any other reasons. Written approval from the Office of the SSA Deputy Commissioner for Finance, Assessment and Management, must accompany any request for parking to GSA other than as described in this section. Otherwise, GSA will not comply with the request for parking.

. . .

"SSA/OHA will accept free parking only when the lessor furnishes parking for building tenants which is included as part of the lease. This occurs when tenants are offered free parking spaces based on the amount of space leased. These parking spaces should be allocated on a priority basis to disabled employees, in and out business parking for program purposes, carpools, then others.

. . . ." (Res. Exh. 1, pp. 6-7) (Emphasis supplied).

10. Entry security, i.e., magnetometers, wands, x-ray machines; etc, was an AALJ demand at the national negotiations (Tr. 359, 435, 436). Most, if not all, hearing offices are Class Two under the June 28, 1995, Vulnerability Assessment of Federal Facilities issued by the Department of Justice following the bombing of the Murrah Building in Oklahoma City, Oklahoma in 1995 (Tr. 360, 401). The highest security level is Five, examples being the Central Intelligence Agency, Social Security's national computer

center and the White House. Most Agencies, including Headquarters of Social Security, are level four (Tr. 400, 402). Ms. Bobbi Kagen, Acting Director of Social Security's Office of Protective Security Services (Tr. 397) stated, ". . . SSA has an articulated policy that we do not install magnetometers in our level one and two offices." (Tr. 402); nevertheless, there are some level two field offices and hearing offices that have had, and still have, magnetometers (Res. Exh. 8; Tr. 388, 390, 410-411, 414, 415, 416, 417, 418).

Ms. Marybeth Pepper, employed in Social Security Administration's Office of Labor Management and Employee Relations for 20 years (Tr. 351), was a member of management's negotiating team and she said, ". . . at the national level we had decided that we wanted to negotiate those things that impacted all hearing offices. Security would be an area that we thought we should negotiate only at the national level because we wanted a uniform policy as to how security was implemented in our various hearing offices so we maintained jurisdiction at the . . . OHA level, national level over that issue, the agency never delegated that authority to negotiate those topics to the local level." (Tr. 362-363).

Judge James Horn, until June, 2001, Regional Vice President for the Chicago Region of the Union and one of the Union's negotiators for its master agreement (Res. Exh. 2; Tr. 434) testified that the AALJ proposed that all hearing offices be deemed or treated as level four offices based upon the Department of Justice vulnerability assessment from 1995 (Tr. 435); that the Union, ". . . asked for magnetometers, we wanted them as part of level four security, that was our initial position." (Tr. 436). Judge Horn further stated,

> "No. I wouldn't say we ever gave up magnetometers, we simply couldn't reach a resolution on the issue and the labor management agreement that would have this committee was designed to further address the issues of entry security . . . .
>
> "The other side of the coin had to do with existing offices that were being relocated or would be relocated after the contract became effective and the way we dealt with that was to recognize in the contract that as part of any relocation, the Federal Protective Service would go out to sites and evaluate the threat risk each office presented and would make recommendations . . . ." (Tr. 436-437).

Although Judge Horn first asserted that AALJ never agreed to take magnetometers off the table (Tr. 439), it is clear that it did. Thus, Judge Horn later on cross-examination stated,

> "Q And it was withdrawn at a later time?
>
> "A Well, it was supplemented by other proposals.
>
> . . .
>
> "Q Such as the health and safety committee consideration of entry security?
>
> "A That and the incorporation of the section 'E' of the space allocation standard, which referred to the fact that FPS would make individual assessments of the structures and we would abide by their recommendations." (Tr. 439).

By Judge Brown:

> "Q And was one of the things that supplemented that . . . Article twenty-three, section four 'E' . . .
>
> "A Correct." (Tr. 440).

11. The relevant provisions referred to in Paragraph 10 above are as follows:

ARTICLE 23

HEALTH AND SAFETY

Section 1

. . .

C. The Agency and the AALJ further agree to cooperate in a continuing effort to eliminate and/or reduce security concerns and otherwise enhance the personal safety of Judges in SSA/OHA hearing offices, satellite offices, and remote site locations.

. . .

Section 2

. . .

D. The Agency will comply with the Physical Protection and Building Security (Section E) provisions contained in the Space Allocation Standard for OHA Field Offices. It is the intent of the parties that Section 2(D) of this Health and Safety Article will apply prospectively to hearing office moves for which an initial Occupancy Agreement (OA) is signed after the date the National Agreement is in effect. This article is subject to the grievance procedure.

. . .

Section 4 - Health and Safety Committee

A. Pursuant to this agreement, there shall be formed a Health and Safety Labor Management Committee. The Committee shall meet to exchange information, study, discuss and provide recommendations for improving health and safety measures within the OHA. Entry security is the first health and safety issue the Committee will address.

B. The Health and Safety Committee shall consist of three (3) Judges appointed by the AALJ President and three (3) members, who are not members of the bargaining unit, appointed by the Associate Commissioner for Hearings and Appeals. The President of the AALJ and the Associate Commissioner for Hearings and Appeals or their designees shall each appoint one of their committee members to serve as Co-Chairperson of the Health and Safety Committee.

C. The committee will establish the ground rules under which it will operate. The Committee will meet quarterly for no more that (2) days. The proposed agenda items shall be forwarded to the Associate Commissioner by the Co-Chairs thirty (30) working days prior to these meetings.

D. OHA will provide a reasonable amount of official time, not counted against the official time bank, for AALJ participants to prepare for and participate in committee meetings. AALJ participants who travel to engage in committee meetings set by agreement will be provided travel and per diem reimbursement by OHA in accordance with the Federal Travel Regulations.

E. Establishment of this committee does not constitute a waiver of any of the AALJ's statutory rights to information, consultation, or negotiations. The activities of the H & S LMC will not replace the OHA's responsibility to provide appropriate notice and the opportunity to bargain over impact and implementation under Article 2, Mid Contract Negotiations of this agreement.

F. Establishment of this committee does not alter the authority of the Agency to determine its internal security practices." (Res. Exh. 2, Art. 23, pp. 105-108) (Emphasis supplied).

ARTICLE 2

MID CONTRACT NEGOTIATIONS

. . .

Section 4

A. The Parties agree that proposed changes that apply on a nationwide or multi-regional basis shall be negotiated at the OHA Central Office level.

B. Proposed changes which shall be implemented in hearing offices in more than one (1) region made pursuant to a national or multi-regional initiative that require variation in the changes to meet the needs of each individual hearing office shall be negotiated at the regional office level in each affected region.

C. Proposed changes that apply at more than one (1) hearing office within a region shall be negotiated at the regional office level.

D. Proposed changes that apply to one (1) hearing office shall be negotiated at the hearing office level.

. . .

F. The Agency Associate Commissioner, or designee, and the AALJ President or designee, may agree to conduct negotiations at any mutually agreeable level other than the level provided above, where it would further the Parties' interest in uniform application of Agency initiatives during the term of this agreement.

G. Both Parties agree that officials of SSA/OHA and the AALJ at levels lower than the national level do not have authority to negotiate agreements that conflict with this national agreement." (Res. Exh. 2, Article 2, Sec. 4, pp. 6-7).

SPACE ALLOCATION STANDARD FOR OHA FIELD OFFICES
MARCH 1998

. . .

E. Physical Protection and Building Security

An intrusion detection system (IDS) is required to provide security to all OHA office space. Its exact design will depend upon the features of each site as explained below. All access points should be protected, and the IDS alarm signal indication should appear in the nearest GSA Law Enforcement Branch or contract alarm monitoring station. The system can be one or a combination of balanced magnetic or mercury door/window switches; metallic window foil; ultrasonic, infrared, or microwave motion detectors; photoelectric sensors; glass breakage sensors, or, capacitance or vibration sensors. GSA shall provide all necessary security measures and services identified by security surveys and crime assessments and requested by OHA for the individual building. The cost of and method of payment for such security measures and services will be identified in the OA. In all OHA Hearing Offices, the following features are minimum requirements:

- All hearing offices will be located above street level.

- All doors leading to OHA space will have dead-bolt locks with minimum 1-inch throws and have inaccessible hinge pins or have nonrising fixed-hinge pins. The locks must also be thumb-turn latches and not double keyway lock cylinders.

- All doors leading into OHA space will be constructed with solid wood cores or metal sheathed with inaccessible hinge pins or non-rising fixed-hinge pins and be equipped with panic hardware with key override.

- Each hearing office shall be provided with a separate employee entrance providing ingress without going through the reception room. The employee entrance door will be equipped with pushbutton combination-type locks capable of being

opened with one hand for ingress. Peepholes will be added to employee and rear entrances for security purposes.

- Adequate external lighting, especially at all entrances, must be provided.

In addition, each judicial bench in the hearing room(s) shall be equipped with a duress alarm (panic button) which will be connected to the hearing office's intrusion detection system (IDS). When activated the duress alarm would signal in the nearest GSA Law Enforcement Branch or contract monitoring station.

In hearing office space located in a multi-tenant building, the following is the minimum requirement:

- OHA space perimeter walls must be solid to the true ceiling (slab). Exception: Where slab-to-slab construction is precluded because access to the plenum is required, or in space located above the ground level where it would adversely affect the weight of the floor load, 9-gauge extruded wire mesh, will be installed from the top of the wall to the true ceiling.

Any additional protective measures or services needed to ensure reasonable security for employees, visitors, Government property and confidential records shall be determined on a case-by-case basis by the OHA Regional Office (RO), the Office of the SSA Regional Commissioner (RC) and the GSA Law Enforcement Branch. When it is possible to anticipate the security measures and services needed, they shall be included in the space request. (Res. Exh. 1, E, pp. 5-6) (Emphasis supplied).

12. By e-mail to ROCALJ Butler with copies, inter alia, to Ms. Kumpe and Ms. Sims, Judge Brown on November 21, 2001, submitted a request pursuant to § 14(b)(4) of the Statute and Article 2, Section D of the National Agreement (Res. Exh. 2, Art. 2, Sec. D.4.) which included:

"4) a copy of any 'security surveys and crime assessments' that were prepared by GSA or any other entity concerning the 200 No. Broadway location.

". . . Security surveys and crime assessments obviously relate to the safety and security of bargaining unit members and whether appropriate arrangements are needed to address these issues.

. . . . (G.C. Exh. 13).

ROCALJ Butler responded by letter dated November 28, 2001, and as to 4 [security surveys and crime assessments] he stated,

"4. No documents exist to satisfy this request.

. . . . (G.C. Exh. 14).

By e-mail to ROCALJ Butler, with a copy to Ms. Sims, Judge Brown on February 11, 2002, in part, stated:

"6) I am renewing my November 21, 2001 request for a copy of any "security surveys and crime assessments" that have been prepared by GSA, FPS, SSA/OHA or any other entity for the OHA office on the ninth floor at 200 No. Broadway, St. Louis, Missouri. On November 28, 2001 you wrote that 'no documents exist to satisfy this request', however, have any such documents been created since then? If no such documents currently exist, when do you reasonably anticipate their completion?; . . . ." (G.C. Exhs. 17, 26).

ROCALJ Butler responded by letter dated March 8, 2002, but made no response to Judge Brown's Paragraph 6, security surveys, etc. (G.C. Exh. 18).

On August 2, 2002, Judge Brown in a telephone discussion with Ms. Sims reminded her of his data requests of November, 2001, which he had renewed on February 11, 2002, and on August 2, 2002, sent Ms. Sims a copy of his prior data request (Tr. 99). Ms. Sims told Judge Brown it was just an oversight that Respondent had not replied to the request for security surveys and crime assessments for the North Broadway Street location (id.). Nevertheless, Respondent made no further response (Tr. 101-102).

In December, 2001, Judge Brown was told by Federal Protective Service Officer Bruce Frana that he, Frana, expected to have the security survey and crime assessment report completed in January, 2002 (Tr. 97). Later, Mr. Frana told Judge Brown he, ". . . completed it [the report] on January 11th, 2002, and I gave it to Mrs. Kumpe on January 24, of 2002." (Tr. 98).

13. The Union's showing of particularized need for the security surveys and crime assessments for its new location, 200 North Broadway Street, was abbreviated, to be sure (G.C. Exh. 13), but Respondent's only response prior to hearing had been, "No documents exist to satisfy this request" (G.C. Exh. 14), and, after the report was received by Respondent on January 24, 2002, when the Union renewed its request in February, 2002, ___ silence.

At the hearing, the Union fleshed out its showing of particularized need and Respondent asserted that release of the documents was prohibited by law.

The Union had been told by Officer Frana in November or December that, ". . . it was his intention to recommend for our new location that we get a magnetometer and wands and two guards." (Tr. 97). Judge Horn testified that in substitution for magnetometers, etc. the parties agreed upon Article 23, ". . . and the incorporation of the Section 'E' of the space allocation standard, which referred to the fact that FPS would make individual assessments of the structures and we would abide by their recommendations." (Tr. 439). Of course, Article 23, as material, is set forth herein above, and specifically provided in part as follows:

> Section 1.C. "The Agency and the AALJ further agree to cooperate in a continuing effort to eliminate and/or reduce security concerns and otherwise enhance the personal safety of Judges . . . .
>
> Section 2.D. "The Agency will comply with the Physical Protection and Building Security (Section E) provisions contained in the Space Allocation Standard for OHA Field Offices. . . .
> Section 4 - Health and Safety Committee
>
> > "A. Pursuant to this agreement, there shall be formed a Health and Safety Labor Management Committee . . . Entry security is the first health and safety issue the Committee will address." . . . ." Res. Exh. 2, Art. 23, pp. 105-107) (Emphasis supplied).

Section E of the Space Allocation Standard for OHA Field Offices specifically provides, in part, that

> "E. . . . GSA shall provide all necessary security measures and services identified by

security surveys and crime assessments and requested OHA for the individual building. . . .

. . . .” Res. Exh. 1, E, pp. 5) (Emphasis supplied).

As Judge Horn cogently stated,

“. . . it was recognized in section ‘E’ that there would be an assessment made and recommendations would be made and that they would be shared with the union. I just felt that that was the only way (sic) could find out what the FPS was saying about a particular office and what the needs were.” (Tr. 438).

Respondent asserted that release of the security survey and crime assessment report would violate the Freedom of Information Act (Tr. 372, 373, 409-410).

The Federal Protective Service conducts the physical security of its property (GSA owned or leased) under its jurisdiction and that would be property that Agencies lease from GSA or for federal buildings. They do surveys essentially of the perimeter; they look at the neighborhood; they look at the building and they make recommendations for enhancements for those offices and they will make mandatory those enhancements that they find necessary based on their surveys (Tr. 404). FPS gives the report to the office manager for the site that they survey or if it is a federal building to the members of the building security committee. The reports, “. . . usually are marked ‘Confidential’ or ‘Law enforcement sensitive’ . . . .” (Tr. 406). On cross-examination, Ms. Kagen admitted that when FPS (Part of GSA; now part of Homeland Security) does a survey, it is done in two parts: one is called, “The executive summary”, which is short and states recommendations in conclusionary form, and it was this Executive Summary that was given to the Hearing Officer Director (Tr. 425-426). The other is the detailed report which apparently is retained by GSA or FPS, but which is supplied to SSA’s Office of Protective Security Services upon request (Tr. 428).

The record shows that the FPS report is not classified, indeed, Respondent in his Brief states it only is, “. . . stamped as ‘Property of the General Services Administration’. . . . (Respondent’s Brief, p. 9). In Social Security Administration, Office of Hearings and Appeals, Macon, Georgia and Association of Administrative Law Judges, IFPTE, AFL-CIO, Case No. AT-CA-02-0648,

OALJ 03-56 (September 30, 2003 (hereinafter, "OALJ 03-56")) my colleague, the Honorable Susan E. Jelen, in a case involving a like, contemporaneous FPS report, except for an anticipated move to the Wachovia Building in Macon, Georgia rather than to the St. Louis Place Building in St. Louis, Missouri, noted that Respondent there asserted that the security assessment was, "For Official Use Only" (OALJ 03-56, slip op. 14).

Respondent stated that AFGE was permitted to review physical security surveys that Respondent administered (Tr. 407) but were not given access to FPS surveys (id.); that they, AFGE representatives, had to sign non-disclosure statements; and they were not allowed to copy or remove the surveys from the room (Tr. 407-408). Ms. Kagen stated FPS surveys are restricted to the perimeter of offices while Respondent's physical security surveys, ". . . goes a little bit beyond that and looks at the interior of its offices too and how they're set up to best protect its employees inside the office as well as just from the outside . . . ." (Tr. 400-401).

CONCLUSIONS

A. RESPONDENT VIOLATED § 16(a)(5), (8) and (1) of the Statute by its refusal to furnish, pursuant to § 14(b)(4) of the Statute, any security surveys and crime assessments prepared by GSA, FPS, SSA/OHA or any other entity for the OHA office at 200 NORTH BROADWAY, St. Louis, Missouri.

The data was normally maintained by Respondent in the regular course of business; was reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining. And furnishing the data was not, and is not, prohibited by law (§ 14(b)(4), (A), (B), (C)).

Neither the FPS survey nor Respondent's physical security survey is a classified document. The Union's request was first made on November 21, 2001, and the Union noted that, ". . . Security surveys and crime assessments obviously relate to the safety and security of bargaining unit members and whether appropriate arrangements are needed to address these issues. . . ." (G.C. Exh. 13). Respondent's only response was on November 28, 2001, that "No documents exist to satisfy this request." (G.C. Exh. 14). The Union was informed that the FPS report was delivered to Respondent's St. Louis HOD on January 24, 2002,

and on February 21, 2002, the Union renewed its demand for security surveys and crime assessments for the 200 North Broadway Street OHA Office, but Respondent made no reply. On August 2, 2002, the Union again reminded Respondent of its unanswered data request and was told it was an oversight. Nevertheless, Respondent never replied to the data request.

Article 23 of the National Agreement provides, in part,

> "Section 1.C. The Agency and the AALJ further agree to cooperate in a continuing effort to eliminate and/or reduce security concerns and otherwise enhance the personal safety of Judges . . . ." (Emphasis supplied).
>
> "Section 2.D. The Agency will comply with the Physical Protection and Building Security (Section E) provisions contained in the Space Allocation Standard for OHA Field Offices. . . ." (Emphasis supplied).
>
> (Res. Exh. 2, Art. 23, Section 1.C. and 2.D.)

Section E of the Space Allocation Standard specifically provides, in part, that,

> "E. . . . GSA shall provide all necessary security measures and services identified by security surveys and crime assessments and requested by OHA for the individual building. . . . (Emphasis supplied) (Res. Exh. 1, p. 5).

As Judge Horn testified,

> ". . . the way we dealt with that [existing offices that were being relocated or would be relocated after the contract became effective] was to recognize in the contract that as part of any relocation, the Federal Protective Service would go out to sites and evaluate the threat risk each office presented . . .
>
> . . .
>
> ". . . we believed that they [security surveys] would be turned over to us because it was recognized in section 'E' that there would be an assessment made and recommendations would be made and that they would be shared with the union. I just felt that that was the only way (sic) could find out what the FPS was saying about a particular office and what the needs were." (Tr. 437-438).

Article 23, Section 2.D. concluded, ". . . This article is subject to the grievance procedure." (Res. Exh. 2, Art. 23, Sec. 2.D., p. 106) (Emphasis supplied). Plainly, the Union's access to the underlying surveys and assessments are essential for the Union to determine whether Respondent has complied with Section E so as to be able to file a grievance.

The request did not involve personnel records; the Privacy Act of 1974, 5 U.S.C. § 552a, does not apply; and United States Department of Defense v. Federal Labor Relations Authority, 510 U.S. 487 (1994) is not applicable. Nor was this a request under the Freedom of Information Act, 5 U.S.C. 552; and Department of Justice v. Reporters Committee for Freedom of Press, 489 U.S. 749 (1989) is not applicable.

The request for data here was pursuant to § 14(b)(4) of the Statute and the applicable limitation is,

> ". . . to the extent not prohibited by law. . . ." (id.).

Section 6 of the Statute does not prohibit the disclosure of information. United States Department of Justice, Federal Bureau of Prisons, Federal Correctional Institution, Forrest City, Arkansas, 57 FLRA 808, 815 (2002); NLRB Union, Local 6 v. FLRA, 842 F.2d 483, 486 (D.C. Cir. 1988). The record does not show that Respondent made, or had made, a physical security survey of the OHA Office at 200 North Broadway, although Ms. Kagen stated that Respondent's physical security surveys go a little beyond the FPS survey and looks at the interior of its offices which implies that two surveys are made in each instance. Respondent never asserted any defense to its production; and admitted it had furnished its physical security surveys to AFGE.

FPS delivered a copy of the Executive Summary of its security survey and crime assessments to Respondent's St. Louis HOD and the full report, if not given to Respondent, was available to Respondent on request. By delivering custody of the report to Respondent, FPS relinquished to Respondent the determination of who could have access to it. Respondent states that the only marking on the survey was "Property of the General Services Administration" (Respondent's Brief, p. 16). Accordingly, FPS placed no restriction on release of the document by Respondent. But even where FPS marks a document, "For

Official Use Only" it does not prohibit release of the information.[2]

The Union needs the FPS and Respondent's physical security surveys to know whether Respondent has complied with Article 23 of the parties Agreement and with Section E of the Space Allocation Standard, incorporated thereby, and when to file a grievance for non-compliance.

B. Respondent violated § 16(a)(5) and (1) of the Statute by refusing to bargain in good faith on the floor plan for the OHA Office at 200 North Broadway.

On August 8, 2001, Respondent notified the Union that the St. Louis office was relocating to 200 North Broadway and attached a proposed floor plan (G.C. Exh. 34). On August 10, 2001, the Union requested I&I bargaining; Respondent set negotiations for September 10, 2001; and the Union submitted its initial proposals on September 11, including its proposed floor plan (G.C. Exh. 35). The parties met on September 10, 2001, and Respondent told the

[2] Although not introduced in this proceeding, the FPS Policy Handbook was an exhibit in Case No. AT-CA-02-0648, OALJ 03-56, supra, as R. Exh. 1, Tab B. As Judge Jelen set forth in her decision the FPS Policy Handbook at p. 49 states as follows:

> "b. "For Official Use Only" or "Official Use Only" . . . are used to identify . . .
>
> > "(3) Information pertaining to existing security strengths and vulnerabilities, or planned modifications, that, if released, could negatively impact upon the security posture of the facility.
> >
> > > "c. . . . Dissemination of information contained in the assessment report is limited to those persons whose official duties require knowledge or use. Federal employees who are provided "For Official Use Only" documents must protect the information and follow instructions that appear on the documents." (OALJ 03-56, pp. 15-16).

Members of the Union are, of course, federal employees and their official duties under the Statute require the knowledge and use of the assessments. To be sure, they must protect the information and comply with instructions.

Union it couldn't enter into any agreement that would change Respondent's proposed floor plan because it had given the floor plan to AFGE & NTEU. The Union offered two ways to address this problem: (a) have a bargaining session with all three unions to negotiate about the floor plan; or (b) submit the Union's floor plan to NTEU & AFGE as its (Respondent's) amended floor plan. If there were no objection, the floor plan would be settled; and if there were objections then further negotiations would be required. Respondent refused the Union's suggestion. The World Trade Center and Pentagon disasters caused the September 11 meeting to be cut short. There were no further meetings and on September 28, 2001, Respondent sent the Union its final bargaining proposal which was its original floor plan without change (the Union's other bargaining demands - security, parking and office furnishings were rejected as already in negotiation at the national level).

The parties met with FMCS Mediator Eugene Brawley on December 3 and 4, 2001, in Kansas City, Missouri. At the mediator's suggestion, the parties did reach agreement on what Judge Brown called the, ". . . mechanical issues related to the move . . . ." Although they reached apparent agreement on the substance of a MOU, it was not finally agreed to until August 7, 2002. On the question of floor plan, Respondent refused to give any consideration to the Union's floor plan and HOCALJ Riley said, ". . . she didn't want all the white male judges sitting together down at the same end of the building." (Tr. 76), to which the Union responded, ". . . you can't do that. That's illegal. . . ." (id.). Respondent insisted that its floor plan (G.C. Exh. 34) improved "work flow" but offered no explanation. Late on the second day of mediation, the mediator informed the Union that Respondent had told him it had already reached agreement with AFGE and NTEU on the floor plan, which Respondent confirmed.

Ms. Sims, Respondent's Chief Negotiator, did not recall the date that NTEU and AFGE signed off on the floor plan. HOD Kumpe said the exchange of paper, ". . . we didn't have face to face 'I' and 'I' bargaining with either, [NTEU or AFGE], it was more an exchange of paper (Tr. 313) and it began in the summer of 2001. Apparently, agreement was reached with AFGE and NTEU even before negotiations began with the Union on September 10, 2001; but Respondent did not disclose its agreement with AFGE and NTEU on the floor plan until late on the second day of mediation. Respondent never considered the Union's floor plan and never made any proposal to change its floor plan except to make a cynical offer on December 4, 2001, to exchange a judge's office with a Group Supervisor's office (G.C. Exh. 34; Tr. 174) which

offer was in total denigration of the Union's goal of promoting collegiality, discussion of legal and medical issues necessary to decision making and establishing proximity to assigned clerks. Respondent withheld disclosure of its agreement with NTEU and AFGE on the floor plan, although it did tell the Union it had given its floor plan to AFGE and NTEU, and falsely pretended it would negotiate the floor plan but failed and refused to do so. Indeed, the record shows that Respondent from the beginning had no intention of negotiating the floor plan with the Union and that it was determined to implement its floor plan to which the NTEU and AFGE had already agreed.

C. Respondent violated § 16(a)(5) and (1) of the Statute by refusing to bargain over reservation of parking slots provided by the building lease for purchase by ALJ.

The Union in December, 2001, orally proposed that, because the lease provided that for stated amounts of space leased, the building would make available certain stated number of parking slots which the tenant could purchase, Respondent seek these allocated parking slots for judges who wished to pay to park there. Judge Brown stated, both credibly and without contradiction, that HOD Kumpe, one of Respondent's negotiators, responded, "I'm not going to do that because then if I did that for all the judges, then there might not be any spaces left for any other bargaining unit members that might want the same thing." (Tr. 199). By refusing to consider the Union's proposal, bargaining on this issue was terminated.

Precisely what the lease provided was not shown, but based on Judge Brown's representation, which Respondent did not deny, based on the space leased, Respondent, or GSA, was entitled to purchase about 15 parking slots. For whatever number of parking slots were available based on space leased, there does not appear any reason to negotiate anything with the lessor. If Respondent, or GSA, could "claim" the slots provided by the lease, the Union certainly has a right to insist that it do so and to seek them for its members. United States Department of the Treasury, Internal Revenue Service and United States Department of the Treasury, Internal Revenue Service, Houston District, 25 FLRA 843 (1987). I find nothing in the issue submitted to FSIP, nor in FSIP's Decision and Order of October 24, 2002 (G.C. Exh. 32), or in Section F of the Space Allocation Standard (Res. Exh. 1) which would bar local negotiation of an issue not presented for negotiation at the national level and not covered by Respondent and GSA's Space Allocation Standard. Indeed, the issue before the FSIP was,

"distribution of free parking" and Section F likewise treats only "free parking . . . when the lessor furnishes parking for building tenants which is included as part of the lease. This occurs when tenants are offered free parking spaces based on the amount of space leased." (Res. Exh. 1, p. 7). As noted, the Union's proposal did not concern free parking. Local negotiation is required, pursuant to Article 2, Section 4.D. of the Parties National Agreement (Res. Exh. 2, Art. 2, Sec. 4.D., p. 7), because the provision of the lease with respect to this issue would be a wholly local matter and would apply to a single hearing office.

D. Respondent did not violate either § 16(a)(5) or (1) of the Statute by refusing to negotiate on entry security.

Entry security was an issue in national negotiations and AALJ submitted a demand for magnetometers, wands, x-ray equipment and treatment of OHA offices as Class 4 for security rather than Class 2. The parties negotiated and ultimately agreed upon Article 23, Health and Safety, and AALJ accepted, in particular, Section 2.D. (Res. Exh. 2, Art. 23, Sec. 2.D., p. 106) and Section 4 - Health and Safety Committee. (Res. Exh. 2, Art. 23, Sec. 4, pp. 107-108) in lieu of its proposals on entry security. The concluding sentence of Section 4.A. reads: "Entry security is the first health and safety issue the Committee will address." (id. at 107).

The Union obtained an excess magnetometer and wand and installed the magnetometer which the guards warmly welcomed but, two days later, Respondent removed it and declined to discuss it with the Union. While the Union's ploy was enterprising, it was unauthorized and all matters of entry security are subject to, and covered by, Article 23 of the National Agreement.

E. Respondent did not violate either § 16(a)(5) or (1) of the Statute by refusing to bargain on matters, including private office furnishings, parking, ALJ office space and OHA hearing room space, contained in the Facilities and Services article.

All of these issues applied nationwide, were negotiated at the national level and, when the parties reached an impass, were resolved by the Decision and Order of FSIP on October 24, 2002 (G.C. Exh. 32). Section 4, subsection G of Article 2, specifically provides,

"G. Both Parties agree that officials of SSA/OHA and the AALJ at levels lower than the national

level do not have authority to negotiate agreements that conflict with this national agreement." (Res. Exh. 2, Art. 2, Sec. 4.G., p. 7).

Because all issues covered by the Facilities and Services article, which included ALJ office size, OHA hearing room size, ALJ office furnishings and free parking, were negotiated at the national level and, ultimately, were resolved by FSIP, Respondent had no obligation to bargain on any of these issues with the Union.

Having found that Respondent failed and refused to comply with § 14(b)(4) of the Statute and violated §§ 16(a)(5), (8) and (1) of the Statute, it is recommended that the Authority adopt the following:

ORDER[3]

Pursuant to § 2423.41(c) of the Rules and Regulations of the Authority, 5 C.F.R. § 2423.41(c), and § 18 of the Federal Services Labor Management Statute, 5 U.S.C. § 7118, the Social Security Administration, Baltimore, Maryland and Social Security Administration, Office of Hearings and Appeals, Kansas City, Missouri, and St. Louis, Missouri, hereinafter, "Respondent", shall:

1. Cease and desist from:

(a) Failing and refusing to furnish the Association of Administrative Law Judges, IFPTE, AFL-CIO, (hereinafter, "Union") the exclusive representative of our Administrative Law Judges, with a copy the FPS, now Homeland Security, Physical Building Assessment Report for the 200 North Broadway, St. Louis, Missouri location and a copy of the physical security report of the OHA office at 200 North Broadway prepared by Respondent's Office of Protective Security Services, or by its contractors.

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[3] General Counsel requested nationwide posting. I have considered her arguments but do not find any convincing reason for nationwide posting. The issues involved grew out of local bargaining. The Commissioner of Social Security was not involved and Regional posting, because of the direct involvement of the Region, will effectively show employees that Respondent acknowledges its obligations under the Statute. I also note that local posting was ordered in OALJ 03-56.

(b) Refusing to bargain in good faith with the Union on the office floor plan for the OHA office at 200 North Broadway.

(c) Refusing to bargain in good faith with the Union over reservation of parking slots provided by the building lease for purchase by ALJ's.

(d) Implementing changes in conditions of employment of bargaining unit employees prior to the lawful completion of bargaining.

(e) Refusing to provide the Union information requested under § 14(b)(4) of the Statute.

(f) In any like or related manner, interfering with, restraining, or coercing bargaining unit employees in the exercise of their 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 Statute:

(a) Furnish forthwith to the Union a copy of the FPS, now Homeland Security, Physical Building Assessment Report for the 200 North Broadway, St. Louis, Missouri location and a copy of the physical security report of the OHA office at 200 North Broadway prepared by Respondent's Office of Protective Security Services, or by its contractors.

(b) Upon request of the Union, bargain in good faith on the floor plan for the OHA office at 200 North Broadway and implement all negotiated changes.

(c) Upon request of the Union, bargain in good faith over reservation of parking slots provided by the building lease for purchase by ALJs.

(d) Post at all facilities in the Kansas City Region, including its facilities in St. Louis, Missouri, where bargaining unit employees are located, 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 shall be posted and maintained for 60 consecutive days thereafter, in conspicuous places, including all bulletin boards and other places where notices to ALJs are customarily posted. Reasonable steps shall be taken to

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

(e) Pursuant to section 2423.41(e) of the Authority's Rules and Regulations, 5 C.F.R. § 2423.41(e) notify the Regional Director of the Denver Region, Federal Labor Relations Authority, 1244 Speer Boulevard, Suite 100,

Denver, Colorado 80204-3581, in writing, within 30 days of

the date of this Order, as to what steps have been taken to comply.

_____

WILLIAM B. DEVANEY
Administrative Law Judge

Dated: January 30, 2004
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, Kansas City, Missouri, and St. Louis, Missouri, have 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 fail or refuse to furnish the Association of Administrative Law Judges, IFPTE, AFL-CIO, (hereinafter, "Union") the exclusive representative of our Administrative Law Judges, with a copy the FPS, now Homeland Security, Physical Building Assessment Report for the 200 North Broadway, St. Louis, Missouri location and a copy of the physical security report of the OHA office at 200 North Broadway, St. Louis, Missouri, prepared by Respondent's Office of Protective Security Services, or by its contractors.

WE WILL NOT refuse to bargain in good faith with the Union on the office floor plan for the OHA office at 200 North Broadway.

WE WILL NOT refuse to bargain in good faith with the Union over reservation of parking slots provided by the building lease for purchase by ALJ's.

WE WILL NOT implement changes in conditions of employments of bargaining unit employees prior to the lawful completion of bargaining.

WE WILL NOT refuse to provide the Union information requested under Section 7114(b)(4) of the Statute.

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

WE WILL, upon request of the Union, bargain in good faith on the floor plan for the OHA office at 200 North Broadway and **WE WILL** implement all negotiated changes.

WE WILL, upon request of the Union, bargain in good faith over reservation of parking slots provided by the building lease for purchase by ALJs.

Social Security Administration

DATE: _____ BY: _____
Kansas City
Chief Administrative Law Judge

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, Denver Region, Federal Labor Relations Authority, whose address is: 1244 Speer Boulevard, Suite 100, Denver, Colorado 80204-3581, and whose telephone number is: 303-844-5226.

CERTIFICATE OF SERVICE

I hereby certify that copies of this **DECISION** issued by WILLIAM B. DEVANEY, Administrative Law Judge, in Case No. DE-CA-02-0657 and 0658, were sent to the following parties:

_____

_

CERTIFIED MAIL & RETURN RECEIPT **CERTIFIED NOS:**

Hazel E. Hanley **7000 1670 0000 1175 3314**
Federal Labor Relations Authority
1244 Speer Boulevard, Suite 100
Denver, CO 80204-3581

Mr. John Barrett **7000 1670 0000 1175 3321**
SSA, OLMR
2170 Annex Building
6401 Security Boulevard
Baltimore, MD 21235

Ms. Marybeth Pepper **7000 1670 0000 1175 3338**
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