

98 FLRR 1-1131

**Social Security Administration, Malden
District Office, Malden, MA and AFGE,
Local 1164**

Federal Labor Relations Authority

BN-CA-50227; 54 FLRA No. 56; 54 FLRA
531

June 30, 1998

Judge / Administrative Officer

**Before: Segal, Chair; Wasserman and Cabaniss,
Members**

Related Index Numbers

**44.35 Subjects of Bargaining, Conditions of
Employment, Work Load**

**72.617 Employer Unfair Labor Practices,
Unilateral Change in Term or Condition of
Employment, Bargaining Over Impact and
Implementation of Change**

**72.661 Employer Unfair Labor Practices,
Unilateral Change in Term or Condition of
Employment, Defenses to Unilateral Change, De
Minimis**

Case Summary

THE GENERAL COUNSEL FAILED TO
DEMONSTRATE THAT THE AGENCY
UNILATERALLY CHANGED CONDITIONS OF
EMPLOYMENT OF UNIT EMPLOYEES

The union alleged that the agency violated the Statute by unilaterally implementing the reassignment of duties to certain claims representatives. The agency maintained that it had no duty to bargain over the impact and implementation of the change because its effect on unit employees was *de minimis*.

The ALJ determined that the additional duties imposed on unit employees as a result of the reassignment, such as assembling medical folders and logging in messages, were "slight," but more than *de minimis*. Therefore, the Judge concluded that the agency committed a ULP by unilaterally implementing the changes.

On appeal, the Authority found the record sufficient to support the ALJ's finding that the increase in the employees' workload was more than *de minimis*. If the time and effort required to accomplish the reassigned duties were insignificant, the Authority observed, there would have been no need to reassign the duties in the first place. However, the Authority found that the ALJ erred in concluding that the agency had unilaterally changed conditions of employment. According to the Authority, the ULP complaint conceded that the parties had negotiated over the change in question. Therefore, the complaint's assertion that the agency had not provided the union with notice or an opportunity to bargain over the change was without merit. The Authority dismissed the complaint accordingly.

Full Text

Decision and Order

I. Statement of the Case

This unfair labor practice case is before the Authority on exceptions to the attached decision of the Administrative Law Judge filed by the Respondent. The General Counsel (GC) filed an opposition to the Respondent's exceptions.*1

The complaint alleges that the Respondent violated section 7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute (the Statute) by implementing a reassignment of duties to certain bargaining unit employees without providing the Charging Party (the union) notice or the opportunity to negotiate the impact and implementation of the changes. The Judge found that the reassigned duties constituted more than a *de minimis* change in the employees, conditions of employment, and that the Respondent violated section 7116(a)(1) and (5) of the Statute by unilaterally implementing a reassignment of duties which differed from the proposal on which the parties had previously negotiated.

Upon consideration of the Judge's decision and the entire record, we adopt the Judge's findings,

conclusions, and recommendations only to the extent consistent with this decision. For the reasons explained below, we find that the Respondent did not violate the Statute and we dismiss the complaint.

II. Background and Judge's Decision

A. Background

The facts are set forth in detail in the Judge's decision and are briefly summarized here. The position of Data Review Technician (DRT) in the Social Security Administration (SSA) has been phased out recently. In the Malden District Office, the last DRT position was eliminated in late 1993 and the duties of that position were taken over by Operations Supervisors. Thereafter, the Respondent decided to reassign those duties to the approximately 12-14 Claims Representatives (CRs) in the office and notified the Union of its intention in December 1993.

Under the parties' two-step process, the Union requested "consultation" over the Respondent's proposed reassignment of duties.*2 The parties consulted from December 1993 to April 21, 1994. The Union suggested that instead of assigning all DRT duties to the CRs, the Respondent should divide the duties between the CRs and the Service Representatives (SRs). The Respondent agreed and incorporated the suggestion into a draft memo addressed to the office staff dated April 21, 1994. The Respondent gave a copy of the memo to the Union for review. That same day, the Union notified the Respondent that it was invoking formal negotiations, the second step in the parties' process.*3

During formal negotiations, the Union withdrew its suggestion and instead proposed that the Operations Supervisors continue to perform all of the former DRT functions. The Respondent rejected this proposal because it would defeat the purpose of the reassignment, i.e., to enable the supervisors to perform their regular duties in a timely manner.

Between April 21 and May 24, 1994, the parties negotiated on the reassignment of duties, KWYT and training issues for 4 days. During the final 2 days of

negotiations, the parties were assisted by the Federal Mediation and Conciliation Service (FMCS). The parties agreed on KWYT and some aspects of training, but made no progress on the reassignment of duties issue. The Respondent took the position that the Union's proposal to have the supervisors continue performing the former DRT's duties was inconsistent with management's reserved right under the Statute to assign work. During these negotiations, the Union also made some "impact and implementation" proposals to address the CRs' increasing case workloads and range of duties, and the potentially negative effect of such increased duties on their performance (Tr. I, 28-29, 65).*4 Specifically, the Union proposed that the Respondent should review and prioritize the CRs' duties in consultation with the Union (G.C. Exh. 4b at 3). In addition, the Union proposed that the Respondent make every reasonable effort to preserve the CRs' "quiet time" of 1 day per week and, if a CR were required to conduct interviews on his or her "quiet time" day to make up the lost time within the next 2 weeks (G.C. Exh. 4b at 3-4; Tr. I, 28, 33; Tr. II, 94-95).*5 Finally, the Union proposed procedures for handling the "backup of units that are unattended because of employees' absence" (Tr. I, 28-29, 34).*6 No agreement was reached on these matters.

In June and July 1994, the parties submitted their positions to the Federal Service Impasses Panel (FSIP). With regard to the Union's position that the supervisors should continue performing the former DRT's duties, the Respondent contended that the proposal infringed on management's right under section 7106(a)(2) of the Statute to assign work and improperly directed management to assign work to individuals outside the bargaining unit (G.C. Exh. 6 at 2).

On October 28, 1994, the FSIP declined to assert jurisdiction over the parties' dispute on the reassignment of DRT duties, stating that the Respondent's questions concerning its obligation to bargain must be resolved in an appropriate forum. On November 4, 1994, the Union's chief negotiator

notified the Respondent's District Manager that the Union "will be referring these threshold questions to the appropriate forum in the required time frame" (G.C. Exh. 9). However, the Union took no further action.*7

On January 6, 1995, the Respondent notified the Union and staff that effective January 9, 1995, CRs would be responsible for performing the former DRT's duties (G.C. Exh. 10). The Union's reply later that day requested "the right to consult/negotiate on the 'impact and implementation' of the proposed changes" before they were implemented (G.C. Exh. 11). The Respondent effectuated the changes on January 9 as previously announced.

B. The Judge's Decision

The Judge first concluded that the Respondent changed the CRs' conditions of employment by assigning them new and additional duties previously performed by the DRTs and thereafter by the Operations Supervisors. He enumerated the tasks involved in associating and assembling a claimant's medical and non-medical folders, logging in CC messages, and transferring the folders either to the Payment Center for payment or to the closed case files if the claim were rejected by the Massachusetts DDS. He further found that approximately 10 minutes would be required for a CR to complete the process each time the DDS returned a claim folder to the Malden Office.*8 Citing Authority decisions,*9 the Judge concluded that although the change in the CRs' duties was "slight," it was more than de minimis. Judge's Decision at 7. In this regard, the Judge noted that the change would permanently affect all but one of the CRs by adding new duties to their daily workload.

The Judge next set forth what he described as the "tortuous course" of the parties, negotiations with respect to the reassignment of former DRT duties, and concluded that the Respondent violated section 7116(a)(1) and (5) of the Statute by unilaterally implementing the change on January 9, 1995. *Id.* In so concluding, the Judge found that when the

Respondent gave notice on January 6, 1995, of its intent to reassign those duties, it did not propose to implement the plan of April 21, 1994, on which the parties had bargained, but announced the implementation of a different plan on which the parties had not negotiated.

III. Positions of the Parties

A. Respondent's Exceptions

As its first exception, the Respondent contends that, having found the change in work assignments "slight," the Judge erroneously concluded that it was more than de minimis. The Respondent asserts that each CR could expect to spend only a few minutes a day performing the new duties and, even if a particular CR were to receive 3 or 4 medical folders on a given day, "the total time to merely associate such a number would amount [to] a trifling portion of the employee's workday." Exceptions at 6. Finally, the Respondent states that the Judge ignored record testimony that, as of late 1995, there was no longer a need for employees to "associate" or "assemble" disability files because the medical and non-medical parts are no longer separated in the claims review process.

As its second exception, the Respondent asserts that the Judge erred in concluding that the Respondent had not bargained with the Union over the change at issue. The Respondent contends that it notified the Union of proposed changes in assigned duties and thereafter negotiated an agreement on KWYT with the help of an FMCS mediator in May 1994. The Respondent asserts that, although the parties were unable to resolve the other matters in dispute, what it implemented in January 1995 was fully consistent with what had been bargained for 4 days and agreed to in May 1994. According to the Respondent, the parties should not be required to bargain over those matters again.

B. General Counsel's Opposition

As stated above (see n.1), the General Counsel's opposition to the Respondent's exceptions was

untimely filed and has not been considered.

IV. Analysis and Conclusions

A. The Judge's Conclusion that the Change in Question Was more than De Minimis Is Supported by the Record

In SSA II, the Authority reassessed and modified its previous de minimis standard for determining whether a change in conditions of employment requires bargaining.*10 The Authority indicated that, in examining the particular facts and circumstances presented in the record of each case, it would "place principal emphasis on such general areas of consideration as the nature and extent of the effect or reasonably foreseeable effect of the change on conditions of employment of bargaining unit employees. Equitable considerations will also be taken into account in balancing the various interests involved." SSA II 24 FLRA at 407-08. Of the factors previously identified in SSA I for consideration in de minimis cases, the Authority further indicated that the number of employees affected by the change in conditions of employment would not be controlling and would serve to expand rather than limit the number of situations where bargaining will be required. The Authority also stated that the "Parties' bargaining history" would be subject to "limited application." SSA II, 24 FLRA at 408. Finally, the Authority indicated that it would no longer consider bargaining unit size as a factor at all.

Applying the foregoing standard here, we find that the record evidence supports the Judge's ultimate conclusion that the reassignment of certain duties from the Operations Supervisors to the CRs was more than de minimis. Thus, as the Judge found, it would take a CR approximately 10 minutes per case to perform the various tasks involved in associating and assembling files; logging in CC messages; and taking appropriate action on each claim depending upon whether the claim was approved or rejected.*11 As the Judge further found, each of the CRs in the Malden District Office would have, on the average, 1 or such cases to process on any given day. The tasks

in question had never before been done by the CRs. Management reassigned the tasks to the CRs in order to free the Operations Supervisors to perform the other duties of their positions. If the time and effort involved in accomplishing the reassigned duties were insignificant, the Respondent would have had no reason to propose the action it eventually took in January 1995 or to bargain with the Union over the matter in May 1994.

The Respondent asserts, however, that the Judge could not properly conclude that the change was more than de minimis while at the same time finding that it was "slight." We find that the Judge's characterization of the change as "slight" is not relevant. The legal standard for determining whether a change is de minimis, set forth in SSA II, is described above. The Judge's use of the adjective "slight" does not make it unnecessary to apply this legal standard and does not affect its application.

Next, the Respondent asserts that the Judge ignored testimony that the need to associate and assemble claim files was eliminated at the end of 1995 due to certain operational changes instituted by management, and therefore the Judge erred in finding that the change in job duties implemented in early January 1995 was intended to be permanent. This assertion lacks merit. Even if the CRs were no longer responsible for associating and assembling claim files as of the end of 1995, the change was to be permanent when instituted at the beginning of that year. Accordingly, we reject the Respondent's contention in this regard.

B. The Judge Erred in concluding that the Respondent Unilaterally Changed CRs' Conditions of Employment

The sole allegation of the complaint in this case is that the Respondent implemented a reassignment of duties to the CRs on January 9, 1995, without providing the Union "notice or the opportunity to negotiate the impact and implementation of the changes." In effect, the complaint alleges that the Respondent could not implement the reassignment of

duties while the Union's January 6 request to bargain over the impact and implementation of the proposed change was pending, irrespective of the parties' prior bargaining history on that issue. The complaint does not allege that, and the parties did not litigate whether, the Respondent violated the Statute by implementing the reassignment of duties while a negotiable proposal submitted by the Union remained to be bargained. The General Counsel had the burden of alleging and proving that a negotiable Union proposal was pending when the Respondent implemented the change. See, for example, U.S. Department of Health and Human Services, Social Security Administration, Baltimore, Maryland and Social Security Administration, Fitchburg, Massachusetts District Office, Fitchburg, Massachusetts, 36 FLRA 655, 669 (1990); Department of Health and Human Services, Social Security Administration, Baltimore, Maryland, 31 FLRA 651, 656 (1988). The General Counsel did not meet that burden. Accordingly, the complaint in this case must be dismissed.

Although not necessary to our disposition of this case, we note the Judge's conclusion that the Respondent violated its duty to bargain because it implemented a reassignment of duties on January 9, 1995, which differed from the proposed reassignment of duties on which the parties had previously negotiated. For the reasons set forth below, we disagree with the Judge's conclusion.

The complaint specifically acknowledges that the reassignment of duties which the Respondent announced to the office staff and the Union on January 6 and implemented on January 9, 1995, was "included in the negotiations" that resulted in the Union's request for FSIP assistance on June 14, 1994. That is, the complaint concedes that the parties had negotiated concerning the very change in conditions of employment that the Respondent implemented on January 9, 1995. See G.C. Exh. 1(c), para. 14, 16 and 17. Moreover, the record clearly shows--and the Union acknowledges--that the parties negotiated both with respect to the Union's proposal that the

Respondent's Operations Supervisors should continue performing the former DRT's duties rather than have those duties reassigned to the CRs and the Union's impact and implementation proposals designed to provide CRs relief from their increasing workloads. See Tr. I, 65; Tr. II, 87.

*1 The General Counsel's opposition was untimely filed and thus has not been considered. The Respondent's exceptions were served on the General Counsel by mail on September 3, 1996. Under section 2423.28(b) of the Authority's Regulations in effect at that time, General Counsel had 10 days from the date of service--i.e., until Friday, September 13--to file an opposition. Since the exceptions were served by mail, 5 days are added to the time limit under section 2429.22 of the Authority's Regulations. Accordingly, the General Counsel's opposition was due by September 18, 1996, but was not dated and postmarked until the following day.

*2 The Union also requested consultation over two other proposed changes: the "keep what you take" (KWYT) plan whereby CRs would do follow-up paper work only for claimants they had interviewed, and a schedule of training for the CRs.

*3 Accordingly, the Respondent's April 21 memos to the office staff were never issued.

*4 The hearing in this case was opened on November 13, 1995, but was adjourned and thereafter resumed on March 5, 1996. Consistent with the Judge's designations, "Tr. I" references are to the transcript of the first session; "Tr. II" refers to the transcript of the resumed hearing.

*5 "Quiet time" refers to the 1 day per week when a CR is not scheduled to interview new claimants, thereby permitting the CR to catch up on paperwork associated with processing the claims of those previously interviewed.

*6 As the Union's chief negotiator explained this proposal, CRs would be taken off the regular schedule of interviewing claimants on a rotating basis when other CRs were absent for more than 1 day, so that the

absent employee's desk would be covered, phones answered, and paperwork processed. In this way, the absent employee's workload would remain current.

*7 The Union's chief negotiator testified that, in the past when the FSIP declined to assert jurisdiction on similar grounds, the Union either would seek a formal declaration of nonnegotiability from management and then file a negotiability appeal with the Authority or seek to reopen negotiations over the impact and implementation of management's proposed charges (Tr. II, 89-90).

*8 The Judge credited the testimony of one of the Respondent's witnesses in finding that each folder returned from the DDS would take about 10 minutes to process. Other estimates ranged as high as 30 minutes.

*9 The Judge cited Department of Health and Human Services, Social Security Administration, Region V, Chicago, Illinois, 19 FLRA 827 (1985) (SSA I); Department of Health and Human Services, Social Security Administration, 24 FLRA 403 (1986) (SSA II); and U.S. Department of Health and Human Services, Social Security Administration, Baltimore, Maryland and Social Security Administration, Hartford District Office, Hartford, Connecticut, 41 FLRA 1309 (1991) (SSA III).

*10 Accordingly, to the extent that the Judge and the Respondent may have relied on SSA I herein, such reliance was misplaced.

*11 Contrary to the Respondent's suggestion in its exceptions, there was more involved in the reassignment of former DRT duties than "to merely associate" the files. Thus, DRT duties included "logging in folders received from the Massachusetts Disability Determination Services; logging in CC messages; and mail claims to the payment center." Judge's Decision at 3. logging in folders required not only "associating" but also "assembly," the process of combining a claimant's medical and non-medical files into one comprehensive folder; logging in CC messages required opening up claimants'

computerized records and making necessary entries into the computer; and processing claims required either returning the folders for denied claims to the appropriate file drawer or mailing approved claims to the payment center. Id. at 6.

Decision

Statement of the Case

This proceeding, under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 6 of the United States Code, 5 U.S.C. 7101, et seq.,*1 and the Rules and Regulations issued thereunder, 5 C.F.R. 2423.1, et seq., concerns whether: a) the assignment to Claims Representatives of the duties of "associating" medical folders with nonmedical folders, logging in messages received over the wire and mailing claims to the payment center was more than a de minimis change of their conditions of employment; and/or b) had the parties already bargained on the impact and implementation of the reassignment of duties to Claim Representatives?

This case was initiated by a charge filed on January 10, 1995 (G.C. Exh. A), which alleged violations of 16(a)(1), (5) and (8) of the Statute. The Complaint and Notice of Hearing issued June 30, 1995 (G.C. Exh. C Attachment) but alleged violation only of 16(a)(5) and (1) of the Statute,*2 and set the hearing for September 7, 1995. By Order dated August 29, 1995 (G.C. Exh. E), the joint motion of Respondent and General Counsel to reschedule the hearing for November 13, 1995 (G.C. Exh. D), was granted and, pursuant thereto a hearing was duly held on November 13, 1995, in Boston, Massachusetts, before the undersigned; however, the hearing was not completed on November 13, and, because of the budget problem, was continued indefinitely. By Order dated November 21, 1995, the resumption of the hearing was rescheduled for January 9, 1996; but by Order dated January 5, 1996, on motion of the General Counsel, because of the continuing Federal Budget impasse, was postponed indefinitely. By Order dated February 16, 1996, resumption of the

hearing was scheduled for March 5, 1996, pursuant to which the hearing was duly resumed on March 5, 1996, in Boston, Massachusetts, before the undersigned. All parties were represented at the hearing, were afforded full opportunity to be heard, to introduce evidence bearing on the issues involved, and were afforded the opportunity to present oral argument which each party waived. At the conclusion of the hearing, April 5, 1996, was fixed as the date for mailing post-hearing briefs and Respondent and General Counsel each timely mailed a excellent brief received on April 9, 1996, which have been carefully considered; however the transcript of the March 5, 1996, hearing was not received by this Office until June 18, 1996. Upon the basis of the entire record,*3 including my observation of the witnesses and their demeanor, I make the following findings and conclusions:

Findings

1. The technology for the handling of Social Security claims has changed markedly in the last 20 years. In the mid to late 1970s, a Claim Representative interviewed claimants and entered the information on a paper claim form. This form would then go to a Data Review Technician (DRT), who did some coding, and then typed (keyed) the information into the main computer in Baltimore (Tr. II, 5). In 1985, a claims modernization project called, Field Office Systems Enhancement (FOSE), was begun whereby, inter alia, Claims Representatives were given direct computer access and, instead of entering information on a paper form, the Claims Representatives keyed the information into the main computer as the claimant was interviewed (Tr. II, 7). As most of the duties of the DRTs had been eliminated, the position of DRT was phased out (Tr. I, p. 101). The last DRT in the Malden District Office, Ms. Diana Henderson, was re-trained to be a Service Representatives either in December, 1993 or January, 1994 (Tr. I, 102). As a DRT, Ms. Henderson's duties included, inter alia, the disputed work in this case, namely logging in folders received from the Massachusetts Disability Determination Services;

logging in CC messages; and mailing claims to the payment center (Tr. I, 27, 64, 70). When Ms. Henderson was upgraded to a Service Representative, the disputed work was taken over by the operations supervisors (Tr. I, 64, 80, 108, 117).

2. Service Representatives (SRs) act as receptionists to greet the public; they process all applications for Social Security numbers; and they handle all maintenance issues after benefits have been granted, such as missing checks, changes of address, direct deposit, etc. (Tr. I, 9-10; Tr. II. 95).

3. Claims Representatives (CRs) interview claimants as they appear; but some method of distribution of follow-up work, after the initial interview, is necessary. Respondent had used an alphabetic method, whereby each CR was assigned certain letters of the alphabet and would do all follow-up work for claimants whose last name began with the letters assigned to that CR. Another method, which Respondent proposed in April, 1994, as discussed more fully hereinafter, is "Keep What You Take" (KWYT), whereby each CR does the follow-up work on the claimants the CR initially interviewed.

4. On April 21, 1994, Respondent made two proposed changes: one dealing with implementation, inter alia, Of KWYT (G.C. Exh. 2) and the other dealing with the re-assignment of duties (G.C. Exh. 3). The re-assignment of duties proposal, in relevant part, was:

SRs: distribute mail; input such items as DOWR [District Office Work Report, Tr. I, 70]; associate medical folders returned from the Massachusetts Disability Determination Service (DDS)

CRs: assemble the file and completing all necessary actions; mail file to Payment Center or file denials in closed files (G.C. Exh. 3).

Ms. Deborah Haggett, a steward for the Union and, with Mr. William Ross, area Vice President for Area Two of AFGE, Local 1164, one of the Union's negotiators (Tr. II, 18), testified that despite differences in terminology, Respondent's assignment

of duties to CRs included: logging in the receipt of medical folders and logging in CC messages (Tr. I, 88). Ms. Haggett also testified that Respondent had consulted with the Union in December, 1993, about the changes it intended and that at that time Respondent was proposing that all of the duties set forth above as assigned to SRs be assigned to CRs; that the Union, as a counterproposal, suggested that SRs input the DOWR and associate medical folders returned by DDS with non-medical folders; and that Respondent had, accordingly, included this proposal in its April 21, 1994, formal proposal (Tr. II, 82).

5. The parties negotiated, with the assistance of Federal Mediation and Conciliation, and agreed upon most items in dispute (G.C. Exh. 4C); but could not agree on proposed Memorandum of Understanding, Article II, Section 3 A-E (G.C. Exh. 4E). The Union had withdrawn its December, 1993, proposal that SRs associate medical folders returned from DDS with non-medical folders and, in formal negotiations, proposed that: SRs only input DOWR and control TPQY cards (id., Section 3A); and that association and assembly of medical and non-medical files, logging in of CC messages, etc. now performed by supervisors, continue to be performed by supervisors (id. Section B). The Union sought the assistance of the Federal Service Impasses Panel (G.C. Exh. 4A, 43) (FSIP). By letter dated October 28, 1994, FSIP declined to assert jurisdiction because, ". . . our investigation reveals that the Employer has raised questions concerning its obligation to bargain with respect to . . . (1) the reassignment of duties which were formerly performed by the Data Review Technician . . . Such questions concerning the obligation to bargain must be resolved in an appropriate forum before a determination can be made as to whether the parties have, in fact, reached a negotiation impasse." (G.C. Exa. 8).

6. By letter dated November 4, 1994, the Union stated, in part,

The Union will be referring these threshold questions to the appropriate forum in the required

time frame. . . ." (G.C. Exh. 9).

But the Union did nothing further.

7. On January 6, 1995, Respondent informed the Union (Tr. I, 96) and the staff that,

"Effective January 9, 1995 Claims Representatives will be responsible for logging in folders received from DDS and associating them with the non-medicals.

"Also, the Claims Representative will be responsible for logging in the CC messages received over the wire and mailing out the claims.

"An Operations Supervisor will continue to log in the WMS completed claims, retrieve them from the holding drawer and mail them. (G.C. Exh. 10).

8. By letter, also dated January 6, 1995, the Union exercised, ". . . the right to consult/negotiate on the 'impact and implementation' of the proposed changes" and demanded that no change be made until consultation/negotiations were completed (G.C. Exh. 11).

9. Respondent unilaterally implemented the changes set forth in its letter of January 6, 1995, on January 9, 1995.

Conclusions

A. Change was more than de minimis.

By assigning new and additional duties to its CRs, Respondent changed their condition of employment. Despite Respondent's assertion (Respondent's Brief, p. 8), it can not be said that the disputed duties were "inherently the duties of claims representatives" because CRs never performed them before January 9, 1995. To the contrary, it is agreed that these duties had been performed by DRTs; and when the position of DRT had been phased out, these duties had been taken over by supervisors.

The distinction between "associating" and "assembling" is debatable; but, apparently, "associating" means going to the file drawer, where the non-medical folders are filed in alphabetical order,

and getting the folder for the claimant for whom the DDS has made its disability determination and putting them together. "Assembly," means putting a copy of the disability determination in the Supplemental Security Income (SSI) file, if there is an SSI claim, and putting the two files in a multi-pocket folder (Tr. II, 65-66, 74, 84). If the claim were denied by DDS, the entire folder would be placed in the closed files; and if the claim were allowed by DDS, the file is sent to the payment center for payment (Tr. II, 83-84). In addition, the CR had to call up the claimant's computer record and record the receipt of the DDS file; and, also, enter on the computer records all CC messages received. While describing "associating" and "assembling" probably takes longer than to do it (Tr. II, 66), it is necessary to go to the file cabinets, find the proper file, do the required association and assembly, send the file to the payment center, or put it in the closed files, log onto the computer to record receipt of the DDS file and record any CC messages, all of which requires time. Ms. Maureen T. Kelly, operations supervisor at Malden, stated that it would take, per case, "No more than 10 minutes, 5 minutes." (Tr. II, 67) and Ms. Haggitt said, ". . . seven, eight minutes, maybe ten . . ." (Tr. II, 85). With 12-14 CRs who do disability cases (Tr. II, p. 70) and an average of about 10 folders from DDS per day, obviously distribution of the disability folders to the CR who handled the claim*4 would mean, on the average, that no CR would have more than one or two per day. But whether 5 minutes, or 10 minutes, or longer, performance of the additional duties, which involved a variety of functions, involve significant duties requiring significant time. To determine whether a change has more than a de minimis impact, the Authority examines the totality of the facts and circumstances in each case, Department of Health and Human Services, Social Security Administration, Region V, Chicago, Illinois, 19 FLRA 827 (1985); Department of Health and Human Services, Social Security Administration, 24 FLRA 403 (1986); Department of Health and Human Services, Family Support Administration, 30 FLRA 346 (1987); U.S.

Department of Health and Human Services, Social Security Administration, Baltimore, Maryland and Hartford, Connecticut, 41 FLRA 1309 (1991). Here, the change affected all CRs who handle disability claims (all CRs except one (Tr. II, 70)); was to be permanent; and, as noted, added duties to the work of the CRs. While the change in duties was slight it was more than de minimis.

B. Change Not Previously Bargained.

This case had a somewhat tortuous course. Initially, in its consultation with the Union, Respondent indicated its intention to assign all disputed work to CRs. The Union, as a counterproposal, suggested that SRs associate the medical folders received from DDS with non-medical folders and Respondent adopted this suggestion in its April 21, 1994, proposal; however, by then, the Union had backed away from its proposal and asserted, notwithstanding the unqualified management right, "to assign work" (6(a)(2)(B)), that the assignment of work was negotiable. The parties did negotiate, did evoke the assistance of Federal Mediation, and the Union sought the assistance of FSIP, which, after investigation, declined jurisdiction. But, strangely, on January 6, 1995, when Respondent gave notice of its intent to implement the reassignment of duties it did not propose to implement its April 21, 1994, proposal, on which the parties had negotiated, but a different proposal, on which the parties had not negotiated. The Union on January 6, 1995, upon receipt of Respondent's notice demanded to bargain on the impact and implementation of the change and demanded that no change be made until negotiations were completed. Respondent, instead, unilaterally implemented the change on January 9, 1995 and thereby violated 16(a)(5) and (1) of the Statute.

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 2423.29 of the Authority's Rules and

Regulations, 5 C.F.R. 2423.29, and 18 of the Statute, 5 U.S.C. 7118, it is hereby ordered that the Social Security District Office, Malden, Massachusetts, shall:

1. Cease and desist from:

a) Changing conditions of employment of bargaining unit employees by reassigning duties, performed by supervisors and previously performed by Data Review Technicians; to Claims Representatives without first notifying American Federation of Government Employees, AFL-CIO, Local 1164 (hereinafter, "Union") the exclusive representative of its employees, and affording it an opportunity to bargain regarding the procedures to be observed and appropriate arrangement for employees who have been, or may be, adversely affected by the implementation of any such change.

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

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

a) Restore the status quo ante by forthwith rescinding and withdrawing its January 9, 1995, assignment to Claims Representatives responsibility for: logging in folders received from DDS and associating them with the non-medicals; logging in the CC messages received over the wire and mailing out the claims.

b) Notify the Union of any proposed reassignment to Claims Representatives, or to any other bargaining unit employee, of duties and, upon request, bargain with the Union as to the procedures to be observed in implementing such work reassignment and appropriate arrangement for employees adversely affected thereby.

c) Post at its facilities at the District Office, Malden, Massachusetts, 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 District Manager and shall be posted and maintained for 60 consecutive days thereafter, in conspicuous places, including all bulletin boards and other places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that such Notices are not altered, defaced, or covered by any other material.

d) Pursuant to 2423.30, of the Authority's Rules and Regulations, 5 C.F.R. 2423.30, notify the Regional Director of the 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 herewith.

*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)".

*2 At the hearing, General Counsel stated that the Union had withdrawn the 16(a)(8) allegation (Tr. 8).

*3 General Counsel's motion to correct Transcript, to which no opposition was filed, is meritorious and is granted except the proposed change on page 51, line 2, of the November 13, 1995, transcript which could not be located; and the proposed notation concerning pages 35-53 of the March 5, 1996, transcript "Pages are duplicated," for the reason that no duplication was found. The transcript is hereby corrected as set forth in the attached, "Appendix."

*4 Respondent states that inasmuch as the CR, "had forwarded the medical portion on to . . . [DDS] it is the claims representative to whom the completed medical file is addressed (Respondent's Brief, p. 9).

Appendix

Corrections to Transcript

BN-CA-50227

Transcript of Testimony of November 13, 1995

PAGE LINE FROM TO

10 17 jurisdiction jurisdiction

10 18 impact impasse

13 7 implemented proposed

19 21 eight (a)

22 22 too to

49 20 necessarilly necessarily

55 3 taking taken

77 5 nogotiated negotiated

Transcript of Testimony of November 13, 1995

PAGE LINE FROM TO

throughout Barren Barrett

throughout Heggett Haggett

6 14 state data

24 6 physician position

26 11 22 12

33 14 "quite time" "quiet time"

86 4 INI I and I

90 13 INI I and I