

Opinion and Award

In the Matter Between

**Local 2505
American Federation of Government Employees
AFL-CIO
(AFGE, Local, Union)**

&

**Social Security Administration
District Office
Bartlesville, Oklahoma
(SSA, Agency)**

Grievance: DF-2007-R-0005

Patrick Halter, Arbitrator

Appearances

For AFGE:

**Ralph C. de Juliis
Ralph.Dejuliis@ssa.gov**

For SSA:

**Brian C. Linden, Esq.
Brian.Linden@ssa.gov**

**Date of Hearing
June 25, 2008**

**Date of Award
July 1, 2008**

**Issue
Contract Interpretation**

**Award Summary
Grievance Denied**

A hearing in this matter was held before the undersigned with each party afforded an opportunity to present evidence, to examine and cross-examine witnesses, and to argue its contentions. There are seven (7) joint exhibits, five (5) Union exhibits and seven (7) Agency exhibits. Each party presented a closing summation at the end the hearing. The record in this proceeding closed on June 25, 2008.

Issues

Did the Agency violate Articles 1, 2, 6 and 11 in the 2005 National Agreement? If so, what is the appropriate remedy?

Relevant Contract Provisions

- Article 1: Governing Laws, Regulations and Existing Conditions of Employment
- Article 2: Union Rights and Responsibilities
- Article 6: Dues Withholding
- Article 11: Union Use of Official Facilities and Communications
- Article 24: Grievance Procedure

[Jt. Exh. 1]

Background

Peggy H. Hutcherson requested a hardship transfer from her position as a Social Insurance Specialist (Technical Expert), GS-105-12, in Houston, Texas, to an identical position at the Agency's district office in Bartlesville, Oklahoma. Hutcherson's request was approved; she was reassigned to Bartlesville effective April 30, 2006. [Jt. Exh. 7; Ag. Exh. 7]

The Bartlesville office is within the jurisdiction of Local 2505. In early December 2006, Local 2505 received a dues withholding form indicating that Hutcherson had transferred to Bartlesville. [Un. Exh. 1] This was the first notice to the Local that a bargaining-unit employee had transferred into a district office within the Local's jurisdiction.

On December 28, 2006, the Union filed a grievance with the Regional Commissioner alleging violations of Articles 1, 2, 6 and 11 in the National Agreement. On January 22, 2007, the Commissioner informed the Union that the grievance involved only Bartlesville so the district manager would respond. [Jt. Exhs. 2, 3]

On February 16, 2007, the Union invoked arbitration pursuant to Article 24, § 10. On March 5, 2007, the Agency issued a response to the grievance. [Jt. Exhs. 4, 5]

Summary of the Union's Position

At the outset of the hearing, the Union presented a motion to sanction the Agency for failing to timely respond to the grievance and for not including rationale in its decision as required by Article 24, § 11. According to the Union, the absence of rationale in the grievance decision operates to the Union's disadvantage in its preparation for arbitration since the Local does not know in advance the Agency's positions to be argued at the hearing or its witnesses. The Union requested that the Agency be restricted in its case presentation to cross-examination of the Union's witnesses.

Peggy Hutcherson transferred from the SSA office in Houston to the SSA office in Bartlesville in April 2006. The Houston office is within the jurisdiction of Local 3184. From April 2006 until January or February 2007, Local 2505 did not receive dues from Hutcherson because the Agency continued to credit Local 3184 with that money. As a remedy SSA should compensate or reimburse Local 2505 for Hutcherson's dues in the amount of approximately \$175.00.

Although Hutcherson transferred to Bartlesville in April 2006, the Local was not notified of the transfer until it received Hutcherson's SF-1187 for dues withholding in December 2006. Article 6, § 3 states that "[w]ithin five working days, Management at the employee's new work location will inform the appropriate Union Local President that a bargaining unit employee has changed duty stations and the location of the employee's prior duty station." SSA did not provide that notice to Local 2505.

Not only has the Agency failed or refused to provide the 5-day notice, it violated Article 11, § 13 by holding orientation sessions with new employees and/or a transferred employee without notifying the Union in advance and according it an opportunity to address the employees and be introduced to the Union representative. This omission of notice constitutes an unfair labor practice under the Statute. By violating the Statute, the Agency did not administer the National Agreement in accordance with existing law and acted without "due regard for the obligations imposed by 5 U.S.C. 71 and this agreement." Thus, SSA violated Article 1 and Article 2 in addition to its violations of Article 6 and Article 11.

The jurisdiction of Local 2505 covers a large geographic area in Oklahoma. A Union official would not have access to information showing when a new employee or transfer arrives in the district. This information is readily available to the Agency. To ensure that SSA does not continue to fail or refuse to provide the Union with notice and an opportunity to meet with new employees and to facilitate the Union's ability to have dues credited to its account when a reassigned employee transfers to the district, an FLRA-style posting is warranted. It will serve to remedy these violations of the National Agreement and Statute.

The Union requests the arbitrator to retain jurisdiction over this grievance in case the parties encounter any issue in the calculation of money payable to Local 2505.

Summary of the Agency's Position

In response to the motion articulated by the Union at the outset of the hearing, the Agency states that it is not required under the National Agreement to provide advance notice of its witnesses or evidence to the Union and the rationale for denying the grievance is contained in the second paragraph of the grievance decision. The motion should be denied.

This grievance involves approximately \$175.00 in dues withholding for a bargaining-unit employee who transferred from the SSA office in Houston which is under the jurisdiction of Local 3184 to the SSA office in Bartlesville which is under the jurisdiction of Local 2505.

SSA does not owe Local 2505 any money because dues were withheld from the employee and forwarded to a local. That is the Agency's responsibility under Article 6, § 3 -- continue the dues withholding -- and at all times relevant to this grievance either Local 2505 or Local 3184 received dues.

SSA did not commit any procedural or administrative error by continuing to deduct dues. The Agency is not responsible for ensuring that the dues are credited or deposited to the appropriate

local. Agency officials at the local level have no authority or responsibility under Article 6, § 3 over payroll matters such as dues withholding. A union official from Local 3184 offered to pay the dues claimed by Local 2505.

Under Article 6 at § 2 the Union is responsible for notifying the Regional Personnel Office about changes in dues withholding such as in this situation where the employee changes duty stations which places them under the jurisdiction of a different local. Testimony from a union official demonstrates that the locals view this notification as a low priority. The testimony also shows that the locals intentionally do not notify the Agency because they prefer to retain the dues rather than forego the money to another local. In this regard, Local 2505 continues to receive dues from employees who are no longer within that Local's jurisdiction.

The Agency's responsibilities under successive collective bargaining agreements have been substantially and materially the same for over 20 years. [Ag. Exhs. 1, 2, 3] The current agreement added the provision that management will notify the local union of a new employee's change in duty station within 5 days of the employee's arrival. SSA notes that managers may have overlooked this new notice requirement or have been less cognizant of it compared to other provisions in the National Agreement. Evidence and testimony showed, however, that the Union has received the 5-day notice and been afforded an opportunity to meet with employees since this matter was brought to the Agency's attention. [Un. Exhs. 3, 4, 5]

In sum, the dues may be readily attained by Local 2505 from Local 3184 and an FLRA-style posting is not warranted. The grievance should be denied.

Findings and Conclusions

The Union's motion to sanction the Agency is denied. Although the Agency did not submit a timely response to the grievance, the National Agreement provides that either party may move its grievance to arbitration 45 calendar days after the grievance was filed. The Union filed its grievance on December 28, 2006, and invoked arbitration on February 16, 2007, which is 50 calendar days after the grievance was filed. The Agency's untimely response to the grievance did not hamper the Union in its access to arbitration.

There is no contractual requirement for the Agency to disclose its witness list and evidence prior to the hearing. With respect to the rationale in the grievance decision, the Agency presented testimony addressing the matters specified in the second paragraph of that decision. There is no indication, based on the testimony presented at the hearing and the evidence adduced, that the Union has been prejudiced in the presentation of its case.

Turning to the merits of the dispute, the Union's responsibilities under Article 6 are set forth in § 2, with particular reference to ¶ D:

The Union agrees to inform the servicing personnel office of changes in the following:

4. The name of any employee on dues withholding who transfers from one local to another within the bargaining unit, any change in the local to receive dues deduction and any changes in the amount to be deducted based on the transfer to a new local.

Local 3184 did not notify the servicing personnel office because this matter was a low priority for that Local and it also preferred to retain the dues. Local 3184 offered to pay the dues once it receives a written request from Local 2505.

Notwithstanding the difficulty that the Union encounters in covering the large geographic area in Oklahoma under its jurisdiction, the National Agreement unmistakably states that "the Union agrees" to be the moving party in notifying the servicing personnel office in the situation presented by this grievance. There is no violation by SSA in continuing to withhold dues and remit the money to Local 3184 rather than Local 2025 in the absence of proper notification and paperwork authorizing a change in remittance to Local 2505.

Article 6, § 3, Management Responsibilities, states that SSA will ensure that employees who transfer or are reassigned to a different duty station remain on dues withholding. Dues withholding from Hutcherson continued without interruption during the time that she left the jurisdiction of Local 3184 and transferred to the jurisdiction of Local 2025. The Agency complied with § 3.

Finally, § 3 states that "within five working days, Management at an employee's new work location will inform the appropriate Union Local President that a bargaining-unit employee has changed duty stations[.]" Recently SSA has complied in good faith with this notice and prior failure to do so was not designed to bypass the exclusive representative or otherwise undermine its status. Continued adherence by SSA to the 5-day notification should enhance the ability of the Local to know about the arrival of newcomers into the district and monitor dues withholding.

By meeting with employees as the Agency did prior to this grievance, SSA engaged in activity that violated Article 11 and resulted in derivative violations of Article 1 and Article 2. The effect of this conduct is *de minimus* and does not warrant an FLRA-style posting because the testimony of the district manager and the documentary evidence persuasively show that the Agency has acted in a manner to comply with its responsibilities on this matter under the National Agreement and in accordance with the Statute.

All arguments, testimony, documentary evidence and issues not specifically mentioned in the preceding paragraphs have been considered in rendering these findings and conclusions which are summarized in the award below.

Award

The grievance is denied.



Patrick Halter
Arbitrator

July 1, 2008

SSA/AFGE ARBITRATOR PANELS
BILL SUMMARY FORM

Date: 7.1.08
P.O. No.: SS 92-08-30066

SOCIAL SECURITY ADMINISTRATION

And

AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES

FOR PROFESSIONAL SERVICES RENDERED

For serving as arbitrator
in Case DF-2007-R-0005 s 2,100.00

Total expenses s 877.36

TOTAL s 2,977.36

Employer share s 1,488.68

Union share s 1,488.68

PLEASE MAKE CHECK PAYABLE TO: PATRICK HALTER

Mail To: 4209 Chinlee Ave NE
Albuquerque, NM 87110-5711

Signature: Patrick Halter 7.1.08



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