

Office of Administrative Law Judges

WASHINGTON, D.C.

DEPARTMENT OF JUSTICE IMMIGRATION AND NATURALIZATION  
SERVICE U.S. BORDER PATROL AREDO, TEXAS  
Respondent and AMERICAN FEDERATION OF GOVERNMENT  
EMPLOYEES, LOCAL 2455, AFL-CIO Charging Party

Case No.  
DA-CA-00877

Tiffany A. Former For the General Counsel Before: GARVIN LEE OLIVER Administrative Law  
Judge

**DECISION ON MOTION FOR SUMMARY JUDGMENT**

On November 30, 2000, the Regional Director of the Dallas Region of the Federal Labor Relations Authority issued a Complaint and Notice of Hearing which was duly served by certified mail on a designated representative of the Respondent. The Complaint alleged that the Respondent violated section 7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute (the Statute), 5 U.S.C. § 7116(a)(1) and (5), by converting the employee break room into an office and storage space without providing the Charging Party (the Union), with notice and an opportunity to negotiate over the change to the extent required by the Statute. A hearing was scheduled for February 9, 2001.

The Complaint specifically advised the Respondent that an answer must be filed with this office by December 26, 2000 and that "[i]f Respondent does not file an answer, the Authority will find that Respondent has admitted each allegation. See 5 C.F.R. § 2423.60(b)." The Respondent did not file an answer, either in person or by mail, within the required period or at any time thereafter. Accordingly, the Respondent has admitted all allegations of the complaint. *Department of Veterans Affairs Medical Center, Asheville, North Carolina*, 51 FLRA 1572, 1594 (1996).

On January 5, 2001 Counsel for the General Counsel filed a Motion for Summary Judgment and requested a remedy requiring the Respondent to return to the *status quo*. Respondent failed to file a response to the motion for summary judgement within the time period provided for in the Regulations, 5 C.F.R. § 2423.27(b) and 2429.22, or at any time to date.

Based on the allegations of the Complaint, the admissions by operation of section 2423.20(b) of the Authority's Rules and Regulations, and all the

pleadings, it appears that there are no genuine issues of material fact and that the General Counsel is entitled to Summary Judgment as a matter of law. Accordingly, I make the following findings of fact, conclusions of law, and recommendations.

### **Findings of Fact**

The Respondent, Department of Justice, Immigration and Naturalization Service, U.S. Border Patrol, Laredo, Texas, is an agency under 5 U.S.C. § 7103(a) (3).

The American Federation of Government Employees, AFL-CIO (AFGE), is a labor organization under 5 U.S.C. § 7103(a) (4) and is the exclusive representative of a unit of employees appropriate for collective bargaining at the U.S. Border Patrol. The American Federation of Government Employees, Local 2455 (the Union), is an agent of AFGE for the purpose of representing employees of Respondent within the unit.

On or about August 2000 the Respondent, through John Montoya, Chief Patrol Agent, a supervisor or management official under 5 U.S.C. § 7103(a) (10) and (11), converted the break room in the Laredo Border Patrol Sector Headquarters into an office and storage room, preventing bargaining unit employees from utilizing the break room for four-five weeks, and permanently reducing the size of the break room.

The Respondent implemented the change without providing the Union with notice and an opportunity to negotiate over the change to the extent required by the Statute.

### **Discussion and Conclusions**

Before implementing a change in conditions of employment affecting bargaining unit employees, an agency is required to provide the exclusive representative with notice of, and an opportunity to bargain over, those aspects of the change that are within the duty to bargain. *See Federal Bureau of Prisons, Federal Correctional Institution, Bastrop, Texas,*

*55 FLRA 848, 852 (1999)(FCI, Bastrop); U.S. Army Corps of Engineers, Memphis District, Memphis, Tennessee, 53 FLRA 79, 81 (1997).* Absent a waiver of bargaining rights, the mutual obligation to bargain must be satisfied before changes in conditions of employment are implemented. *Id.*; *National Weather Service Employees Organization and U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Weather Service, 37 FLRA 392, 395 (1990).*

The nature of the change in conditions of employment that management proposes to make dictates the extent of its duty to bargain. If the change is substantively negotiable, a union may bargain over the actual decision whether the change should be made. *See, e.g., Department of the Navy, Puget Sound Naval Shipyard, Bremerton, Washington, 35 FLRA 153, 155 (1990).* If the decision to change a condition of employment constitutes the exercise of a management right under section 7106 of the Statute, the substance of the decision to make the change is not negotiable, but the agency is nonetheless obligated to bargain over the impact and

implementation of that decision if the resulting change will have more than a *de minimis* effect on conditions of employment. See *Department of Health and Human Services, Social Security Administration*, 24 FLRA 403, 407-08 (1986). In such circumstances, an agency which fails to provide adequate prior notice of the change to the affected employees' exclusive representative or rejects the union's timely request for negotiations pursuant to section 7106(b)(2) and (3) of the Statute will be found to have violated section 7116(a)(1) and (5) of the Statute. See *FCI, Bastrop*, 55 FLRA at 852, and cases cited.

Based on the admitted material facts by operation of section 2423.20(b) of the Authority's Rules and Regulations, it is concluded that the Respondent violated section 7116(a)(1) and (5) of the Statute, as alleged, by converting the employee break room into office and storage space without providing the Union with notice and an opportunity to negotiate over the change to the extent required by the Statute. Consistent with established precedent and in the absence of any specific evidence that a *status quo ante* remedy would be disruptive to the efficiency and effectiveness of the Respondent's operations, a *status quo ante* remedy is deemed appropriate. See *U.S. Department of Justice, Immigration and Naturalization Service, Washington, DC*, 56 FLRA 353, 358-60 (2000).

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

#### ORDER

Pursuant to section 2423.41(c) of the Authority's Rules and Regulations and section 7118 of the Federal Service Labor-Management Relations Statute, it is hereby ordered that the Department of Justice, Immigration and Naturalization Service, U.S. Border Patrol, Laredo, Texas, shall:

1. Cease and desist from:

(a) Converting the employee break room in the Laredo Border Patrol Sector Headquarters into an office and storage room without first notifying the American Federation of Government Employees, Local 2455, AFL-CIO, the agent of the exclusive representative of its employees, and affording the Union an opportunity to negotiate to the extent required by the Federal Service Labor-Management Relations Statute.

(b) In any like or related manner, interfering with, restraining, or coercing its 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 Relations Statute:

(a) Upon request of the American Federation of Government Employees, Local 2455, AFL-CIO, return the break room to its condition prior to the change.

(b) Notify the American Federation of Government Employees, Local 2455, AFL-CIO, of any proposed change in the break room or in any other condition of employment and afford the Union an opportunity to bargain to the extent required by the Federal Service Labor-Management Relations Statute.

(c) Post at its facilities in the Laredo, Texas Sector, where bargaining unit employees represented by the American Federation of Government Employees, Local 2455, AFL-CIO, 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 Chief Border Patrol Agent, 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 section 2423.41(e) of the Authority's Rules and Regulations, notify te Regional Director, Dallas Regional Office, Federal Labor Relations Authority, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

Issued, Washington, DC, January 25, 2001.

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GARVIN LEE OLIVER

Administrative Law Judge

**NOTICE TO ALL EMPLOYEES**  
**POSTED BY ORDER OF THE**  
**FEDERAL LABOR RELATIONS AUTHORITY**

The Federal Labor Relations Authority has found that the Department of Justice, Immigration and Naturalization Service, U.S. Border Patrol, Laredo, Texas, 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 convert the employee break room in the Laredo Border Patrol Sector Headquarters into an office and storage room without first notifying the American Federation of Government Employees, Local 2455, AFL-CIO, the agent of the exclusive representative of our employees, and affording the Union an opportunity to negotiate to the extent required by the Federal Service Labor-Management Relations Statute.

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

WE WILL, upon request, of the American Federation of Government Employees, Local 2455, AFL-CIO, return the break room to its condition prior to our change.

WE WILL, notify the American Federation of Government Employees, Local 2455, AFL-CIO, of any proposed change in the break room or in any other condition of employment and afford the Union an opportunity to bargain to the extent required by the Federal Service Labor-Management Relations Statute.

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(Respondent/Activity)

Dated: \_\_\_\_\_ By: \_\_\_\_\_

(Signature) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

If employees have any questions concerning this Notice or compliance with any of its provisions, they may communicate directly with the Regional Director, Dallas Regional Office, Federal Labor Relations Authority, whose address is:

525 Griffin Street, Suite 926, Dallas, TX 75202 and whose telephone number is:  
(214) 767-4996.

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CATHERINE L. TURNER, LEGAL TECHNICIAN

DATED: JANUARY 25, 2001

WASHINGTON, DC