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

MEMORANDUM DATE: December 22, 2004

TO: The Federal Labor Relations Authority

FROM: SUSAN E. JELEN
Administrative Law Judge

SUBJECT: U.S. DEPARTMENT OF THE AIR FORCE
325TH MISSION SUPPORT GROUP SQUADRON
TYNDALL AIR FORCE BASE, FLORIDA

Respondent

and Case No. AT-CA-04-0293

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 3240, AFL-CIO

Charging Party

Pursuant to section 2423.34(b) of the Rules and Regulations 5 C.F.R. § 2423.34(b), I am hereby transferring the above case to the Authority. Enclosed are copies of my Decision, the service sheet, and the transmittal form sent to the parties. Also enclosed are the transcript, exhibits and any briefs filed by the parties.

Enclosures

UNITED STATES OF AMERICA
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U.S. DEPARTMENT OF THE AIR FORCE 325TH MISSION SUPPORT GROUP SQUADRON TYNDALL AIR FORCE BASE, FLORIDA Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 3240, AFL-CIO Charging Party	Case No. AT-CA-04-0293

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 her 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. §§ 2423.40-41, 2429.12, 2429.21-2429.22, 2429.24-2429.25, and 2429.27.

Any such exceptions must be filed on or before **JANUARY 24, 2005**, and addressed to:

Office of Case Control
Federal Labor Relations Authority
1400 K Street, NW, 2nd Floor
Washington, DC 20005

SUSAN E. JELEN
Administrative Law Judge

Dated: December 22, 2004
Washington, DC

OALJ 05-11

FEDERAL LABOR RELATIONS AUTHORITY

Office of Administrative Law Judges
WASHINGTON, D.C.

U.S. DEPARTMENT OF THE AIR FORCE 325TH MISSION SUPPORT GROUP SQUADRON TYNDALL AIR FORCE BASE, FLORIDA Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 3240, AFL-CIO Charging Party	Case No. AT-CA-04-0293

Brad A. Stuhler, Esquire
For the General Counsel

Major Robert N. Rushakoff
Major Lawrence Lynch, Esquire
For the Respondent

George White
For the Charging Party

Before: SUSAN E. JELEN
Administrative Law Judge

DECISION

Statement of the Case

This case arose 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.* (the Statute), and the Rules and Regulations of the Federal Labor Relations Authority (hereinafter FLRA/Authority), 5 C.F.R. § 2411 *et seq.*

Based upon an unfair labor practice charge filed by the American Federation of Government Employees, Local 3240, AFL-CIO (Union or Charging Party), a complaint and notice of hearing was issued by the Regional Director of the Atlanta Regional Office of the Authority. The complaint alleges

that the U.S. Department of The Air Force, 325th Mission Support Group Squadron, Tyndall Air Force Base, Florida (Respondent), violated section 7116(a)(1) and (5) of the Statute when it stopped supplying bargaining unit employees with cleaning products Power Green and Tilex Mildew Remover (Tilex), which were utilized in the course of employees' job duties, without giving the Union notice and the opportunity to negotiate to the extent required by the Statute. Respondent timely filed an Answer, in which it admitted that it stopped using Power Green and Tilex and denied that this conduct violated the Statute. (G.C. Exs. 1(c) and 1(h)).

A hearing was held in Panama City, Florida, on July 29, 2004, at which time all parties were afforded a full opportunity to be represented, to be heard, to examine and cross-examine witnesses, to introduce evidence and to argue orally. Both the General Counsel and the Respondent filed timely post-hearing briefs which have been fully considered.[1]

Based upon the entire record, including my observation of the witnesses and their demeanor, I make the following findings of fact, conclusions and recommendations.

Findings of Fact

The U.S. Department of the Air Force is an agency under 5 U.S.C. § 7103(a)(3). Tyndall Air Force Base, 325th Mission Support Group Squadron is an activity of the U.S. Department of the Air Force. (G.C. Exs. 1(c) and 1(h))

The American Federation of Government Employees, Local 3240, AFL-CIO is a labor organization under 5 U.S.C. § 7103(a)(4) and is the exclusive representative of a unit of non-appropriated fund employees appropriate for collective bargaining. Housekeepers are included in the bargaining unit represented by the Union. George White is President of Local 3240 and has held this position for approximately 18 years. (G.C. Exs. 1(c) and 1(h); Tr. 11)

[1] While the complaint referenced both Tilex and Power Green, there was no evidence presented with regard to the usage or non-usage of Power Green and the Counsel for the General Counsel did not argue in his brief regarding the removal of Power Green. Therefore, it appears that the allegations of the complaint only deal specifically with the removal of Tilex.

The Respondent employs a number of housekeepers whose purpose is to perform a variety of simple cleaning tasks in the Lodging operation. (R. Ex. 3) Housekeepers are supplied various cleaning products in order to perform their duties. For several years, housekeepers had been provided Tilex and used it to clean bathrooms, primarily to remove mold and mildew. On March 15, 2004, Alan Tremaine, the Lodging Manager for the Respondent, discontinued the use of Tilex as a cleaning solution in the base temporary quarters (the Sand Dollar Inn). Thus, Tilex was no longer issued to the housekeepers. In place of Tilex, housekeepers were issued other cleansers such as Baccide or "Back Side" and Simple Green. While Tilex is a chlorine bleach based cleaner, Back Side and Simple Green are general degreasers that do not include a bleaching agent. Additionally, the Respondent has other cleaning supplies, such as scrubbing powders, available for use by the housekeepers. (Tr. 25, 30, 51-53) Tremaine testified that Tilex had been removed because some of the housekeepers had been careless in its usage, and carpets had been stained and ruined by the bleaching agent in Tilex. (Tr. 51)

White first learned that the Respondent had removed Tilex and replaced it with Power Green on March 15, 2004, when several employees came to him with their concerns about this matter. White estimated ten to fifteen employees expressed concerns to him. He called Alex Biehl, Deputy Commander of the 325th Services Squadron, and explained that he had received concerns from several housekeepers about the removal of Tilex. There is no evidence that White raised any alleged health concerns in this telephone conversation with Biehl. On March 22, 2004, Biehl sent a memorandum to White regarding three issues that had been raised in Lodging. With regard to the Tilex issue, the memorandum stated: "Management will continue to purchase a cleaning agent that controls mildew which may be Tilex or another like item." (G.C. Ex. 2; Tr. 12)

The Union filed the unfair labor practice (ULP) charge in this case on March 26, 2004. (G.C. Ex. 1(a))

Lolita Stevens, a housekeeper at the Sand Dollar Inn, had used Tilex for 2 to 4 years to clean the bathrooms and found it effective for removing mildew. After the Tilex was removed and she started using the other products, she had

physical reactions such as burning in the throat. She did not tell her leader or supervisor, but just shared this information with other housekeepers. (Tr. 23-25, 31) Although she has been issued a mask, she still experiences her symptoms. (Tr. 26, 37)

Mary Bryant, another housekeeper at the Sand Dollar Inn, asserted that no other product removes stains and mildew as well as Tilex. She is now using Simple Green, which makes her cough and sniff and hurts her nose and lungs. (Tr. 39-40) She never told her supervisor that she was having any problems with the new cleaners and has not been to the doctor about her symptoms. (Tr. 43-44) It takes her about five minutes longer to clean a bathroom since she uses something other than Tilex. (Tr. 41, 44)

Neither Tremaine nor any of his supervisors had any reports of medical problems such as sneezing, coughing or sore throats, as a result of the cleaning products. (Tr. 54, 75, 87) Housekeepers have not had any changes in hours of work or break times, as a result of the elimination of Tilex. (Tr. 58) With regard to the effectiveness of Tilex over other products, Tremaine indicated that employees would not be held responsible for failing to do their work, if they were not given the proper tools. (Tr. 58) No employees have been penalized because Tilex is no longer available. (Tr. 62, 84, 91)

ISSUE

Whether or not the Respondent violated section 7116(a)(1) and (5) of the Statute by removing Tilex as a cleaning supply furnished to bargaining unit employees without providing the Union with notice and the opportunity to bargain to the extent required by the Statute.

POSITIONS OF THE PARTIES

GENERAL COUNSEL

The General Counsel asserts that the Respondent had an obligation to notify and negotiate with the exclusive representative over the change in cleaning agents since the impact on the bargaining unit employees was more than *de minimis*. *Olam Southwest Air Defense Sector (TAC), Point Arena Air Force Station, Point Arena, California*, 51 FLRA 797 (1996); *U.S. Department of the Treasury, Internal Revenue Service*, 56 FLRA 906 (2000); *Social Security Administration, Office of Hearings and Appeals, Nashville, Tennessee*, 58 FLRA 363 (2003).

The General Counsel asserts that housekeepers have suffered adverse physical reactions from the change in cleaning agents, such as coughing, sneezing and burning in their throats and lungs. The General Counsel further asserts that it was reasonably foreseeable that employees could suffer adverse performance appraisals or discipline. *Pension Benefit Guaranty Corporation,* 59 FLRA 48, 51 (2003) (*PBGC*). In that regard, the General Counsel argues that the Respondent deprived housekeepers of an essential piece of equipment (*i.e.* Tilex which contained a bleaching agent) necessary to adequately perform their required duties. Therefore, Respondent should have known that a reasonably foreseeable effect of depriving housekeepers of a necessary chemical was a potential decline in performance, which in turn, subjects housekeepers to an increased likelihood of receiving negative performance appraisals. Further this change increases the potential for discipline, making its impact more than *de minimis* in nature.

Therefore, the General Counsel asserts that the Respondent violated section 7116(a)(1) and (5) of the Statute when it failed to provide the Union with advance notice of, and the opportunity to bargain as required, the change in the cleaning agent. As a remedy, the General Counsel requests a *status quo ante* remedy. *Federal Correctional Institution*, 8 FLRA 604, 606 (1982); *Social Security Administration, Gilroy Branch Office, Gilroy, California*, 53 FLRA 1358, 1370 (1998).

RESPONDENT

The Respondent asserts that the General Counsel failed to prove that the Respondent had violated the Statute. The Respondent first argues that the exercise of its managerial right to change cleaning supplies was not a change in the conditions of employment of bargaining unit employees and did not require implementation and impact bargaining. The housekeepers are still required to clean their assigned rooms and they are provided a variety of cleaners to choose from to complete their duties. These conditions of employment have not changed as a result of a new cleaner. *Veterans Administration Medical Center, Leavenworth, Kansas*, 40 FLRA 592 (1991); *U.S. Immigration and Naturalization Service, New York, New York*, 52 FLRA 582 (1996) (*INS NY*). Further, even if the change in cleaning supplies was to be considered a change to a working condition, it still did not require bargaining. Citing FLRA Chairman Dale Cabaniss' concurring opinion in *United States Department of Labor, Occupational Safety and Health Administration, Region 1, Boston, Massachusetts*, 58 FLRA 213, 216-17 (2002) (*DOL OSHA*).

In the alternative, the Respondent argues that the effects of the change from Tilex to other cleaning supplies, even if it effected a condition of employment, was not more than *de minimis* in nature under section 7116(a)(1) and (5) of the Statute and did not require bargaining. In order for the effects of a change to reach a level that required bargaining, the effects must have "materially affected and have a substantial impact on conditions of employment." *Social Security Administration, Office of Hearings and Appeals, Charleston, South Carolina*, 59 FLRA 646 (2004). The Respondent argues that the alleged medical effects in this case were not substantial since not one of the housekeepers allegedly suffering a medical problem required any medical treatment, lost work time, or considered the effects severe enough to notify management so they could take corrective action. Respondent argues that the evidence fails to support the alleged medical effects of the change in cleaning supplies. Further the evidence fails to support that the housekeepers' alleged fear of being disciplined was justified or that there was in fact a possibility that the housekeepers were going to be disciplined as a result of the removal of Tilex. The only result of stubborn mildew would be the need to redo the cleaning. Additionally, the

evidence established that the current cleaners available to the housekeepers were sufficient to clean mildew when used properly. Respondent therefore argues that the evidence fails to establish any impact on bargaining unit employees from the change in cleaning supplies and that the Respondent was under no obligation to give the Union notice and the opportunity to bargain over the impact and implementation of the change.

Analysis and Conclusion

The issue in this matter is whether or not the Respondent violated section 7116(a)(1) and (5) of the Statute when it stopped supplying housekeeping employees in the Lodging operation a specific cleaning agent, without giving the Union notice and the opportunity to bargain. Specifically it must be determined whether the Respondent's actions (1) constituted a change in conditions of employment of bargaining unit employees that (2) was greater than *de minimis* in nature.

In order to determine whether the Respondent's action violated the Statute, there must first be a finding that the Respondent changed unit employees' conditions of employment. *See, e.g., DOL, OSHA*, 58 FLRA at 215; *INS NY*, 52 FLRA at 585; and *U.S. Immigration and Naturalization Service, Houston District, Houston, Texas*, 50 FLRA 140, 143 (1995) (*INS Houston*). The determination of whether a change in condition of employment has occurred involves a case-by-case analysis and an inquiry into the facts and circumstances regarding the Respondent's conduct and the employees' conditions of employment. *See, 92 Bomb Wing, Fairchild Air Force Base, Spokane, Washington*, 50 FLRA 701, 704 (1995) (*Fairchild AFB); INS Houston*, 50 FLRA at 144.

In *United States Department of Homeland Security, Border and Transportation Security Directorate, U.S. Customs and Border Protection, Border Patrol, Tucson Sector, Tucson, Arizona*, 60 FLRA 169, 173-174 (2004) (*Border Patrol, Tucson Sector*), the Authority found that the transport of some aliens to the Tucson Station for processing did not change conditions of employment of bargaining unit employees. The Authority stated: "It is undisputed that processing is one of the tasks that Tucson Station agents perform as a part of their normal, rotational duties. It is also undisputed that the procedure for processing aliens is the same at each of

the various stations within Tucson Sector. Although the record demonstrates that the number of aliens processed at Tucson Station further increased in March, as a result of the transport of some of the Casa Grande apprehensions, there was no change to the type of duties that the Tucson Station agents were required to perform. That is, the Tucson Station agents continued to perform the same processing procedures when processing aliens apprehended by Casa Grande Station that they performed when processing aliens that were apprehended by Tucson Station. In addition, the Judge made no finding, and there is no evidence in the record, to show that Tucson Station agents were required to process apprehensions more expeditiously, with greater frequency, or, as noted above, in any changed manner." *See, also, United States Department of Veterans Affairs Medical Center, Sheridan, Wyoming*, 59 FLRA 93 (2003) (Chairman Cabaniss concurring), in which a particular unit of the respondent's medical facility increased the number and type of patients being treated. The Authority found that although the respondent had more admissions for the type of patients it had historically admitted, it did not establish that there was a change in the respondent's admissions policy, practice, or standards concerning the acuity of patients admitted to the unit.

Respondent argues that the bargaining unit employees' conditions of employment were not changed by the removal of one of the many cleaning products available for their use.[2] Their responsibilities with regard to cleaning have not changed in any way, and there have been no changes with regard to supervision or hours of work. The General Counsel did not specifically address this defense, although he plainly considers this change to concern bargaining unit employees' conditions of employment.

The evidence reflects that the housekeeping staff were not assigned new duties and were not required to perform any

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[2] As noted above, the Respondent cited to the concurring opinion of Chairman Cabaniss in *DOL OSHA*, 58 FLRA at 216-17 (2002), in which she draws a distinction between "conditions of employment" established by rules, regulations, policies and practices for the entire bargaining unit and "working conditions" which apply only to individual employees. *See also* her concurring opinion in *Border Patrol, Tucson Sector*, 60 FLRA at 176. The Authority has not applied this distinction.

duties not previously required of them. They continue to be responsible for the cleaning of bathrooms, using the various cleaning supplies that are furnished to them by the Respondent. There is no evidence of any changes in the number of rooms assigned for cleaning, hours of work, breaks, supervision, or inspection. There is no evidence that there has been any change in the Respondent's cleaning standards. Under these circumstances, I find that the Respondent's removal of one of the many cleaning agents supplied to its housekeeping employees did not change conditions of employment for bargaining unit employees and did not give rise to an obligation to bargain. *United States Department of the Air Force, Headquarters, 96th Air Base Wing, Eglin Air Force Base, Florida*, 58 FLRA 626 (2003) (Instruction did not change the nature of the employees' assignments, but was merely a variation of existing assignment practices).

Assuming, however, that the change in cleaning supplies did concern a condition of employment, the question of whether there has been a greater than *de minimis* result must be addressed. Where a change in conditions of employment involves the exercise of a management right under § 7106 of the Statute, an agency is obligated to bargain over the impact and implementation of the change only where that change has more than a *de minimis* effect on conditions of employment. *See e.g.*, *PBGC*, 59 FLRA at 50; *Fairchild AFB*, 50 FLRA at 704. In assessing whether the effect of a change in conditions of employment is more than *de minimis*, the Authority looks to the nature and extent of either the effect, or the reasonably foreseeable effect, of the change. *PBGC*, 59 FLRA at 51.

The General Counsel asserts that the removal of Tilex has effectively deprived unit employees of a piece of equipment that is essential to performing their duties. Therefore, the likelihood of performance appraisals being negatively impacted and the potential of future discipline is reasonably foreseeable and clearly more than *de minimis*. The General Counsel also asserts that the medical problems of the affected employees further adds to the substantial impact of the change.

A review of the record evidence, however, does not support the General Counsel's assertion that the removal of Tilex has materially affected or even had a reasonably

foreseeable effect on conditions of employment. The record evidence regarding the medical problems associated with the use of the replacement cleaning products did not establish any significant impact on bargaining unit employees. Their descriptions of mild symptoms, with no details of duration or continuance, were not indicative of actual medical problems. The evidence further reflected that none of the employees identified any medical problems to their supervisors or even their leaders, who were also bargaining unit employees. Although they were trained with regard to the safety issues, and had even signed Employee Safety and Health Records (R. Exs. 1 and 2), none felt the need to actually file any type of health or safety complaint. White's testimony regarding complaints he had received from unit employees was not specific with regard to the actual employees, dates of such complaints or the overall nature of such complaints. Under these circumstances, the evidence fails to reflect any actual, or reasonably foreseeable, medical problems as a result of the cleaning agents used in lieu of Tilex.

The evidence of employee concerns regarding possible discipline and/or lowered performance appraisals was also speculative and did not present a reasonable response to the change in cleaning supplies. While Tilex was the only cleaning agent that contained bleach (which was the primary reason it was no longer being used since there had been damage to carpets as a result of carelessness), other available cleaning agents were clearly capable of controlling the mildew. Further there was no evidence that any employees were ever disciplined as a result of cleaning problems, but that they were required to redo the cleaning, such cleaning being the housekeepers' primary responsibility. Tremaine and the first line supervisors credibly testified that employees would not be disciplined for trying, but failing, to remove mildew due to the cleaning agent supplied to them.

Therefore, I find that the elimination of Tilex as a cleaning agent did not have any impact, actual or foreseeable, that was more than *de minimis* in nature. *See Border Patrol, Tucson Sector*, 60 FLRA 169, 175 (agents were not assigned new duties nor were they required to perform any duties not previously required of them). Therefore, the Respondent was under no obligation to give the Union notice and the opportunity to bargain.

Having found that the evidence does not support the allegation that the Respondent violated the Statute, it is therefore recommended that the Authority adopt the following Order:

ORDER

It is ordered that the complaint be, and hereby, is dismissed.

Issued, Washington, DC, December 22, 2004.

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SUSAN E. JELEN
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the **DECISION** issued by SUSAN E. JELEN, Administrative Law Judge, in Case No. AT-CA-04-0293, were sent to the following parties:

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

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DATED: December 22, 2004
Washington, DC