UNITED STATES CUSTOMS SERVICE SOUTHWEST REGION, EL PASO DISTRICT, EL PASO, TEXAS Respondent	
and NATIONAL TREASURY EMPLOYEES UNION Charging Party	Case No. DA-CA-21019

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. § 2423.26(b).

PLEASE BE ADVISED that the filing of exceptions to the attached Decision is governed by 5 C.F.R. §§ 2423.26(c) through 2423.29, 2429.21 through 2429.25 and 2429.27.

Any such exceptions must be filed on or before **JANUARY 17, 1995**, and addressed to:

Federal Labor Relations Authority
Office of Case Control
607 14th Street, NW, 4th Floor
Washington, DC 20424-0001

ELI NASH, JR.
Administrative Law Judge

Dated: December 16, 1994

Washington, DC

MEMORANDUM DATE: December 16, 1994

TO: The Federal Labor Relations Authority

FROM: ELI NASH, JR.
Administrative Law Judge

SUBJECT: UNITED STATES CUSTOMS SERVICE
SOUTHWEST REGION, EL PASO
DISTRICT, EL PASO, TEXAS

Respondent

and Case No. DA-CA-21019

NATIONAL TREASURY EMPLOYEES UNION

Charging Party

Pursuant to section 2423.26(b) of the Rules and Regulations, 5 C.F.R. § 2423.26(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
FEDERAL LABOR RELATIONS AUTHORITY
OFFICE OF ADMINISTRATIVE LAW JUDGES
WASHINGTON, D.C. 20424-0001

UNITED STATES CUSTOMS SERVICE SOUTHWEST REGION, EL PASO DISTRICT, EL PASO, TEXAS Respondent	
and NATIONAL TREASURY EMPLOYEES UNION Charging Party	Case No. DA-CA-21019

Christopher J. Ivits, Esq.
For the General Counsel

Dyann Medina
For the Respondent

Before: ELI NASH, JR.
Administrative Law Judge

DECISION

Statement of the Case

On January 25, 1993, the Regional Director of the Dallas Region of the Federal Labor Relations Authority (herein called the FLRA), issued a Complaint and Notice of Hearing which was duly served by certified mail upon the named Respondent. The Complaint alleged that Respondent violated section 7116(a)(1) and (5) of the Statute by unilaterally installing security cameras in its facilities without providing proper notice and an opportunity to negotiate the impact and implementation of the change with the Union.

A hearing was held in El Paso, Texas at which all parties were afforded full opportunity to adduce evidence, call, examine and cross-examine witnesses and argue orally. Briefs were filed by Respondent and the General Counsel and have been carefully considered.

Upon the entire record in this matter, my observation of the witnesses and their demeanor and from my evaluation of the evidence I make the following:

Findings of Fact

1. Customs Inspectors' primary duties involve the inspections of vehicles, cargo and people crossing the borders of the United States to assure compliance with a variety of laws. Customs Inspectors in El Paso work in two basic areas: the cargo facilities and bridge facilities. There are three major bridge facilities and two cargo lots in El Paso.

2. Sometime in 1990, Respondent installed three or four video cameras in its El Paso facilities.[1] One camera was installed in one primary lane on a bridge, another was installed at the pedestrian lane at the Paso Del Norte bridge (herein called the PDN bridge) and another was installed in the employee parking lot. The camera installed on the primary lane on the bridge was considered a test camera. At the time of its installation, Respondent indicated to Charles Giunta, National Treasury Employees Union (herein called the Union) Chief Steward and National Vice President, that this camera was only a test and when the results of the test were in, if management ever contemplated using cameras it would bargain with the Union. This camera was in operation for about two or three months. Another camera was permanently installed at the PDN bridge over the pedestrian lane, which only viewed pedestrians. The installation of this camera was negotiated by the Union with Mike Mack, Respondent's District Director, who indicated that if there was any further installation of the cameras he would negotiate on it. The third camera was installed at the Bridge of the Americas in the employees' parking lot. This camera only functioned for about six months and was never repaired.

3. On July 24, 1990, the Union, through Giunta, was informed by the Respondent that there was a possibility that security cameras would be installed in these facilities. During a Capital Improvement Projects meeting held between management and the Union, Giunta was informed by management that it was looking into a security system which would include bulletproof glass and security cameras, but that it was a GSA project and Respondent did not have any information to give the Union, other than the fact that use of the camera system was being contemplated. Giunta said that the Union wanted the specifics in order to bargain on

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[1] There may have been some cameras in El Paso even earlier than 1990.

the cameras. Among other things, he stated that the Union would need information as to where the cameras would be located, how they would be utilized, and who was going to view them. He also indicated that he needed this information in order to formulate proposals for negotiations on the camera system.

4. Another Capital Improvement Projects meeting that involved the Union was held on September 10, 1990. The cameras were not discussed at the meeting. However, other issues concerning the renovation and construction of new facilities were discussed. While the minutes of the meeting reflect that Giunta was given the latest blueprints of the construction plans, Respondent did not provide copies of the blueprints to Giunta until several months after this meeting. In addition, Respondent never gave copies of the blueprints of the facilities to the Union, but merely made them available for review to the Union. Upon review of these blueprints Giunta says that he saw nothing regarding the inclusion of any security camera system. The set of blueprints that were made available for Giunta's review were drawn up in 1989. Blueprints which included the security system were drawn up on a separate blueprint plan and thus could not have been drawn up until late 1990, since such plans were not even formulated by July 1990.

5. Nothing more was discussed concerning cameras and security systems between the Union and Respondent until July 1, 1992. On that date Giunta discovered through an article in the El Paso Times that Respondent was in the process of installing security cameras in its facilities on the bridges. Many of the approximately 50 cameras are integrated with both motion detector and panic alarm systems. Cameras were installed in each primary lane of the bridges and within the head house building on each bridge. Cameras were also installed in the cargo lots over the terminal lanes. The cameras in the cargo lots are also hooked up to the central viewing monitors on the bridges. A cashier who works in the head house has control over the cameras, being able to turn them off and on, zoom in, zoom out, pan the cameras and control the taping mechanism for the cameras. The inspectors who work in the areas viewed by the cameras have no control over the cameras, except that they can push a panic alarm which causes the cameras to pan. There is a taping system which was associated with the cameras.

6. After reading the newspaper article, on July 1, 1992, Giunta wrote a letter to Jim Twombly, Respondent's Labor Management Relations Specialist, complaining of the Respondent's failure to provide notice to the Union of the installation of the cameras and failing to provide the Union

with an opportunity to negotiate. Giunta also specifically requested that the Respondent desist from using the cameras until bargaining was completed and requested negotiations. The Union desired negotiation on the operation of the cameras, training, impact to employee performance appraisals, the employees' responsibility in handling the cameras and monitors, responding to alarms, taping and maintenance of video tapes, Union access to such tapes and their use in disciplinary proceedings.

7. A few days later after submitting the request to negotiate in a meeting on another matter with Twombly, Giunta asked him if he received the Union's July 1, 1992 letter and what they were going to do about the issue. Twombly responded that the Agency's position was that the security cameras involved internal security and they did not have to bargain on the issue.

8. The installation of the camera system affects all bargaining unit employees, approximately 250 employees. All bargaining unit employees work in areas monitored by the cameras and all bargaining unit employees rotate into the cashier's positions whose duty it is to view the monitors in the central view area. Potentially, tapes made with the security camera system could be used as evidence against or for employees in disciplinary proceedings, either establishing employee misconduct or refuting such conduct. The security camera system could also be used by supervision to monitor an employee's performance or second guess performance, thus impacting employees' performance appraisals. Adding the responsibility of viewing the monitors and responding to panic alarms adds additional and seemingly significant duty to the cashier's position. Further, employees could be disciplined for misuse of the cameras, improper taping or failing to tape. And finally, training for employees who had not been given standard operating procedures for the use of the camera system or training on the use of the cameras left employees unsure of exactly how to deal with and respond to the security camera system and, hence to effectively perform assigned duties.

Conclusions

The General Counsel contends that Respondent failed and refused to provide proper prior notice to the Union of the implementation and installation of the security camera system. Thus, it is argued that the Union received no specifics regarding installation of the security cameras and learned of the installation only through an article in a local newspaper.
The General Counsel sees this simply as a case where the Respondent failed to meet a mid-term bargaining obligation

to negotiate the impact and implementation with respect to the installation of the security cameras at the El Paso locations where the new security camera system was placed.[2]

The obligation to negotiate in this case is bottomed on Respondent's having a mid-term bargaining obligation to negotiate with the Union over the change. Federal agencies have a duty to negotiate with a union over its mid-term proposals under the Statute. Internal Revenue Service, 29 FLRA 162 (1987). While negotiations did take place, at least once, when the 1990 camera system was introduced, Respondent appears to have failed to give notice or to negotiate over the July 1992 change in the system. Accordingly, it is found that Respondent had an obligation to engage in mid-term negotiations concerning the impact and implementation of the 1992 security cameras, particularly since the Union requested mid-term negotiations over the matter.

The main disagreement raised by Respondent's is that the 1992 security camera system involved the internal security practices of the agency and therefore, was not negotiable. While this position would be a defense if it had been alleged that the substance of the change was negotiable, the General Counsel was careful to allege only that the impact and implementation of the change was negotiable. Where impact and implementation is at issue, it is necessary that an agency do more than simply contend that its internal security practices are involved thereby relieving it of any obligation to negotiate over a change. Since the Union in this case was never allowed to present a proposal, Respondent had no way of knowing whether the Union's proposals interfered with its ability to determine its internal security practices or not. In the circumstances, it is inappropriate for Respondent to now claim that it is immune from negotiations, on the basis of internal security practices, when it has no idea what proposals might be offered or whether the proposals offered would interfere with its internal security practices. Moreover, it has also been held that while proposals which are deemed to interfere with the internal security practices of an agency may not be negotiable, they may be appropriate arrangements which are negotiable. See American Federation of Government Employees, Local 3302 Social Security Administration, Dunbar Branch Office, 37 FLRA 350 (1990) and NFFE Local 2058 and Aberdeen Proving Ground Support

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[2] There is no contention that the Union's request was inappropriate or improper under the parties' agreement. Nor is there any suggestion that the Union waived its right to request impact and implementation negotiations on the 1992 camera security system.

Activity, 38 FLRA 1389 (1991). Certainly, it would appear incumbent on an agency to at least look at the union's proposals before declaring that they infringe on its internal security practices. Accordingly, it is found that while Respondent might be correct in its suggestion that its internal security practices were involved in the installation of this new camera security system it still had an obligation to notify the Union and give it the opportunity to bargain over the impact and implementation of the system.

In this case, it appears that the Union did have some notice of a change in the camera security system, however the question is whether that notice was sufficient to allow it to fulfill its bargaining obligation. That an activity may not change personnel policies, practices or working conditions without first providing the union with advance notice of a proposed change is abundantly clear. See Social Security Administration, Baltimore, Maryland, 33 FLRA 454 (1988). Such notice must be sufficiently specific and definite regarding the actual change contemplated so as to adequately provide a union with a reasonable opportunity to request bargaining. Internal Revenue Service, 10 FLRA 326 (1982). In Internal Revenue Service, supra, it was also found that in order for notice to be adequate management should inform the union as to when the change will occur or state the conditions that will cause the change and state the date that the change will occur. Likewise, the Authority held in Lackland Air Force Base, 24 FLRA 334 (1986), that if a Union requests further information or specifics regarding a change, the agency or activity has an obligation to provide that information.

In this case, the Union felt that Respondent did not provide it with sufficient information concerning the planned installation of the 1992 security camera system. General unspecific notice was provided to the Union in July 1990, when during a meeting on the building of the new facilities Respondent informed the Union that it planned such a security camera system. No specifics were ever given regarding the implementation date, the system to be used, the number of cameras, or how the system would work. The Union specifically noted the deficiency and requested further information on the subject during the meeting. Giunta's testimony that he requested specific information as to where the cameras would be located, how they would be utilized, and who was going to view them is uncontradicted. Although Respondent contends that it provided further information, the information it did give the Union was shown to be a set of 1989 blueprints which did not include a separate set of blueprints involving the newer security camera system. As noted in Respondent's minutes of its July

1990 Capital Improvement Projects meeting, such plans had not been completed or done in July 1990, and it thus is unlikely that any such plans were given to the Union.

Even assuming that the Union saw the blueprints containing the newer security camera system, such information would not have answered the Union's specific questions on how the cameras would be utilized and who was to view the cameras.

Rather than providing specifics Respondent merely informed the Union in July 1990, some two years before the security camera system was actually installed, that it was going to install some sort of camera security system. In view of the unspecific nature of this notice and the Union's specific request for further information and its declaration of its intent that it wished to negotiate on the matter, the information which Respondent did provide could not be considered proper, adequate or specific notice to the Union in this instance. Without question, Respondent was well aware that the Union wanted more specific information on the system, since it requested more specific information on the system and, furthermore Respondent promised to provide such information. Finally, the record shows that Respondent was aware that the Union wanted to negotiate on the new security camera system. In view of all the above, Respondent can hardly claim that it provided adequate and specific notice of the installation of the security camera system to the Union.

Accordingly, it is found that the notice alleged to have been provided by Respondent was neither adequate nor specific as required.

There also seemed to be some concern on Respondent's part that there was no change since, in its opinion, the previous installation of three cameras some two years prior to its installing the 1992 camera security system negated any change the new system might have caused. It is worthy of note, that although three cameras were installed in 1990, this was done only after bargaining with the Union. The security camera situation of 1992 was a vastly different matter in many respects. Thus, it appears from the record that the new camera system could have some effect on employees' working conditions and the technology with which they worked. As will be discussed later, the 1990 cameras had virtually no impact on the working conditions of bargaining unit employees.

Certainly an activity may not unilaterally implement changes in conditions of employment without first providing the exclusive representative an opportunity to negotiate the change to the extent required by law. See Scott Air Force

Base, Illinois, 5 FLRA 9 (1981). If a change in the 1992 security camera system had a reasonably foreseeable impact which was more than de minimis under the Statute, then an obligation to bargain over the impact and implementation existed notwithstanding Respondent's right to make the change. There is ample record evidence to make a finding regarding the question of whether the impact herein had more than a de minimis impact. Following the installation of the camera system, employees' work could now be viewed and taped by supervision. These tapes could be used to either establish or refute allegations of employee misconduct. The installation of the system with its central viewing monitor affected all 250 bargaining unit employees by adding new significant duties to the position of the Cashier, which all inspectors rotate through. The installation of the new camera system also added new obligations and duties for employees as it provided them with a new piece of technology which they could be disciplined for improperly operating, responding to, or misusing. Consequently, it is found and concluded that the impact on the working conditions of bargaining unit employees was more than de minimis.

There is also little question that even if a subject matter of the change is outside the duty to bargain, an agency must provide the exclusive representative with notice and an opportunity to bargain over those aspects of the change that are negotiable. Accordingly, even where the subject matter of the change is outside the duty to bargain, there remains a responsibility to bargain over the impact and implementation of the change in conditions of employment that have more than a de minimis impact on unit employees. 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, 1317 (1991). More specifically, the obligation exists, even where management, as here, is exercising what it considers a section 7106 right. See, for example, U.S. Department of Justice, Immigration and Naturalization Service, United States Border Patrol, San Diego Sector, San Diego, California, 35 FLRA 1039, 1047 (1990).

The installation of the 1992 security camera system in this case can clearly be seen as constituting a change in working conditions. The gist of Respondent's argument is that security cameras were already in place at its facilities and this somehow relieved it of any obligation to bargain over the new security system. In this regard, the three already existing cameras did not view employees while performing work and thus affected a minimum of employees; the three cameras were installed after approval or agreement

of the Union; at least one of the three was a test camera; and finally, the three cameras only functioned for a short period of time. In sum, it appears that these three cameras had very little impact on bargaining unit employees.

In marked contrast, the 1992 installation of the security camera system seemed to present a reasonably foreseeable effect on employee working conditions. These new cameras were a part of a security system of around 50 cameras. The new cameras had a central viewing monitor which added duties to the position of those employees who rotated through the Cashier's position. Additionally, the 1992 security camera system, unlike the three existing cameras, viewed all inspectors while performing their inspection duties. The new system also differed from the three cameras by using a taping system which recorded employee activity. The existence of three cameras which did not work and did not view employees cannot be compared to a security camera system which could record and view all employees while performing their work. This new system with considerably more cameras, cameras having the capacity to do things unthought of with the three camera system constituted a significant change in the type of equipment and the affect of that equipment and technology upon employees and again appears to be negotiable as to its impact and implementation. Tinker Air Force Base, Oklahoma, 25 FLRA 914 (1987).

In all the circumstances, it is found that Respondent had a duty to negotiate the impact and implementation of this change in equipment and technology with the Union on its
mid-term bargaining request.

Based on all the foregoing, it is found that Respondent violated section 7116(a)(1) and (5) of the Statute, as alleged. Therefore, it is recommended that the Authority adopt the following:

ORDER

Pursuant to section 2423.29 of the Federal Labor Relations Authority's Rules and Regulations and section 7118 of the Statute, it is hereby ordered that the United States Customs Service, Southwest Region, El Paso District, El Paso, Texas, shall:

1. Cease and desist from:

(a) Failing and refusing to negotiate in good faith with the National Treasury Employees Union, by unilaterally installing security cameras in our facilities without providing to the Union adequate and specific notice and providing an opportunity to negotiate the impact and implementation of the installation of such cameras.

(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 negotiate in good faith with the National Treasury Employees Union by providing proper notice and an opportunity to negotiate on impact and implementation issues surrounding the installation of security cameras in our facilities.

(b) Post at its facilities in El Paso, Texas, 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 Director, 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 insure that such Notices are not altered, defaced, or covered by any other material.

(c) Pursuant to section 2423.30 of the Authority's Rules and Regulations, notify the Regional Director of the Dallas Region, 525 Griffin Street, Suite 926, LB 107, Dallas, TX 75202-1906, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

Issued, Washington, DC, December 16, 1994

ELI NASH, JR.
Administrative Law Judge

NOTICE TO ALL EMPLOYEES

AS ORDERED BY THE FEDERAL LABOR RELATIONS AUTHORITY

AND TO EFFECTUATE THE POLICIES OF THE

FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS STATUTE

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT fail or refuse to negotiate in good faith with the National Treasury Employees Union, by unilaterally installing security cameras in our facilities without providing to the Union adequate and specific notice and providing an opportunity to negotiate the impact and implementation of the installation of such cameras.

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 negotiate in good faith with National Treasury Employees Union by providing proper notice and an opportunity to negotiate on impact and implementation issues surrounding the installation of security cameras in our facilities.

(Activity)

Date: 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 of the Federal Labor Relations Authority, Dallas Region, 525 Griffin Street, Suite 926, LB 107, Dallas, TX 75202-1906, and whose telephone number is: (214) 767-4996.

CERTIFICATE OF SERVICE

I hereby certify that copies of this DECISION issued by ELI NASH, JR., Administrative Law Judge, in Case No. DA-CA-21019, were sent to the following parties in the manner indicated:

CERTIFIED MAIL:

Christopher J. Ivits, Esq.
Federal Labor Relations Authority
525 Griffin St., Suite 926, LB 107
Dallas, TX 75202-1906

Ms. Dyann E. Medina
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Robert Holler, District Director
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El Paso, TX 79985

National President
National Treasury Employees Union
901 E Street, NW, Suite 600
Washington, DC 20004

Dated: December 16, 1994
Washington, DC