

92 BOMB WING FAIRCHILD AIR FORCE BASE SPOKANE, WASHINGTON Respondent	
and NATIONAL FEDERATION OF FEDERAL EMPLOYEES, LOCAL 11 Charging Party	Case No. SF-CA-31724

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 **DECEMBER 27, 1994**, and addressed to:

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

WILLIAM B. DEVANEY
Administrative Law Judge

Dated: November 25, 1994

Washington, DC

MEMORANDUM

DATE: November 25, 1994

TO: The Federal Labor Relations Authority

FROM: WILLIAM B. DEVANEY
Administrative Law Judge

SUBJECT: 92 BOMB WING
FAIRCHILD AIR FORCE BASE
SPOKANE, WASHINGTON

Respondent

and

Case No. SF-

CA-31724

NATIONAL FEDERATION OF FEDERAL
EMPLOYEES, LOCAL 11

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

92 BOMB WING FAIRCHILD AIR FORCE BASE SPOKANE, WASHINGTON Respondent	
and NATIONAL FEDERATION OF FEDERAL EMPLOYEES, LOCAL 11 Charging Party	Case No. SF-CA-31724

Major Joginder S. Dhillon
For the Respondent

Julia H. Burger, Esquire
For the General Counsel

Before: WILLIAM B. DEVANEY
Administrative Law Judge

DECISION

Statement of the Case

This proceeding, 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.¹, and the Rules and Regulations issued thereunder, 5 C.F.R. § et seq., concerns whether Respondent unilaterally implemented a sign-in-/sign-out procedure in the Information Management section of the Survival School in violation of §§ 16(a)(5) and (1). Respondent asserts that, because use of the sign-out procedure concerned a single civilian employee and changed

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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)".

no condition of her employment, the change was de minimis and, accordingly, it did not violate § 16(a)(1) or (5).

This case was initiated by a charge filed on September 30, 1993 (G.C. Exh. 1(a)), which alleged violations of §§ 16(a)(1), (5) and (8) of the Statute. The Complaint and Notice of Hearing issued on December 29, 1993; alleged violations of §§ 16(a)(1) and (5) only; and set the hearing for a date, time and location to be announced (G.C. Exh. 1(b)). By Order dated March 24, 1994 (G.C. Exh. 1(d)), this case was, pursuant to § 2429.2 of the Rules and Regulations, transferred to the Denver Region and, by Order dated June 28, 1994 (G.C. Exh. 1(e)) the hearing was scheduled for July 21, 1994, in Spokane, Washington, pursuant to which a hearing was duly held on July 21, 1994, in Spokane, Washington 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 Respondent exercised. At the conclusion of the hearing, August 22, 1994, was fixed as the date for mailing post-hearing briefs, which time was subsequently extended, on timely motion of Respondent, to which the other parties did not object, for good cause shown, to September 22, 1994. Respondent and General each timely mailed an excellent brief received on September 27, 1994, which have been carefully considered. Upon the basis of the entire record², I make the following findings and conclusions:

Findings

1. The National Federation of Federal Employees, Local 11 (hereinafter, "Union") is the certified exclusive representative of employees at the 92 Bomb Wing, Fairchild Air Force Base, including the United States Air Force Survival School which teaches air crew members survival and evasion tactics (G.C. Exh. 1(b); Tr. 17). The Survival School has a staff of about 375 (Tr. 38).

2. Ms. Mary Triplett, now retired, worked in the Survival School for approximately 2 1/2 years as the Assistant in Information Management and as Historian (Tr. 23-24). Because she had two distinct positions, she had two offices: the Historian's office was located on the, "first floor in the basement" (Tr. 24); and the Assistant in

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General Counsel's motion to correct the transcript on page 11, line 9 by substituting the word, "substantive" for the word, "such" is granted; and General Counsel's request to substitute a corrected page 14 to its Brief to delete footnote 2 is hereby granted.

Information Management office, the administrative office, was located on the second floor (Tr. 24).

3. The Information Management section serves as the administrative nerve center for the School and is responsible for the acquisition and distribution of official documents; for the publication and distribution of regulations and technical orders and documents written by the School staff; processing of all TDY orders for military and civilian personnel; maintaining a close liaison with Headquarters at Randolph Air Force Base; etc. (Tr. 24, 38). For the 2 1/2 years that she was employed at the School, Ms. Triplett was supervised by: Senior Master Sergeant Hennafen, from July, 1991, to May, 1993, when he retired; Senior Master Sergeant Stickler, from May, 1993, until August, 1993; and Senior Master Sergeant Kemper, from August 1993 until her (Triplett's) retirement in January, 1994 (Tr. 24, 25). There were five other civilian employees in the Headquarters building with Ms. Triplett (Tr. 24); but the record does not show whether they were in Information Management.

4. Throughout her employment at the School; i.e., from July 1991, until the summer of 1993, Ms. Triplett had always told her supervisor, the Superintendent of the Mission Support Flight, which includes: (1) Information Management; (2) Survival Fitness Center; (3) Personnel; (4) Orderly Room; and (5) Group Training i.e., Sgt. Hennafen until May 1993, and then Sgt. Stickler, or in the absence of the supervisor, Staff Sergeant Gicker (Tr. 25, 31, 40), when she was leaving her office (the administrative office on the second floor) for any reason and the approximate time she expected to return (Tr. 25, 31, 40). Ms. Triplett emphasized that,

"I always went to my supervisor and told him and the approximate time I expected to return. If he was not at his desk, I told Sergeant Geiker (sic)." (Tr. 25).

5. Sgt. Hennafen's office had been next door to Ms. Triplett's office on the second floor (Tr. 32), and, presumably, Sgt. Gicker was located in the same office as she stated, ". . . If he was not at his desk, I told Sergeant Geiker (sic)" (Tr. 25); but Sgt. Stickler's office (Sgt. Gicker remained on the second floor) is located in the basement (Tr. 27, 32) and to reach his office, as she stated she did on numerous occasions to tell him when she was leaving her office and the approximate time of her return, she then had to walk downstairs, walk through the Historian's office and then in to Sgt. Stickler's office (Tr. 32, 40). Never- the less, Sgt. Stickler stated,

". . . Mrs. Triplett was always extremely conscientious about letting me know . . .", that she told him, "In person." (Tr. 40).³

6. Although Ms. Triplett kept Sgt. Stickler informed of her whereabouts, Sgt. Stickler stated that the people they served, i.e., people who needed travel orders, etc. (Tr. 39), had no idea when she would be back and several had come to him to find out (Tr. 27, 38-39). For this reason, he decided, as a courtesy to the customers, to put up a sign-out board so they would know whether to wait a few minutes or come back at a later time (Tr. 39, 49). The sign-out board consisted of a single sheet (about 8 1/2 x 11 (Tr. 44)), with three names (Ms. Triplett's (Tr. 26, 35); and, presumably, Sgts. Stickler's and Gicker), with three blocks for: "Depart", "Return" and "Destination" (Tr. 44) (cf. Res. Exh. 1 [this is the same "Board" after the departure of Ms. Triplett and Sgt. Stickler; i.e., the three names were then: Senior Master Sergeant Kemper; Staff Sergeant Gicker; and Ms. Tolliver]). This typed sheet was then placed in a picture frame, with glass, or plexi-glass, over the sheet and entries were written on the glass, or plexi-glass, with a grease pencil attached to the frame by a string (Tr. 45). When Ms. Triplett, for example, returned, the entries were erased (Tr. 27, 34). There was no permanent record (Tr. 34, 44).

7. Sgt. Stickler instituted his "Sign-Out Board" about July 15, 1993 (Tr. 41) and the Information Management board was placed in Sgt. Gicker's office (Tr. 42, 48), about fifteen feet from Ms. Triplett's desk (Tr. 43). The Union was given no notice either of the intention to use or of the implementation of the Sign-Out board. Indeed, Ms. Triplett was not even told in advance (Tr. 26) and Sergeant Stickler stated that she was not in her office when the board was put up (Tr. 42); and she learned that there was such a thing only when people came into her office and asked, ". . . Marge, when are you going to start signing out?"; and then another person came in and said, "Marge, he's watching you. When are you going to start signing out"; that she said, "What are you talking about?"; her visitor had said, "Follow me; I will show you"; and, sure enough, in Sgt. Gicker's

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It seems improbable that if Ms. Triplett went to Sgt. Stickler's office in the basement and he wasn't at his desk that she then would have walked back upstairs to Sgt. Gicker's office to tell him, as she testified (Tr. 25). For the short period involved (about two months) Sgt. Stickler may always have been at his desk or she may have met him walking by her office (Tr. 40) or she may have told someone else in Sgt. Stickler's office.

office was a board with her (Triplett's) name on it (Tr. 26).

8. Ms. Triplett was incensed, because she viewed it as discriminatory towards her because she was the only civilian employee in the School who was required to sign out on a board (Tr. 27), and immediately went to see Chief Master Sergeant House, Superintendent of the School (Tr. 26), who told her that, ". . . Eventually everyone in survival school would have to sign out on a board." (Tr. 26). She then went to see Sgt. Stickler who, she said, told her he was, ". . . sick and tired of people asking were I was. . . ." (Tr. 27); that when she asked him if he had, "negotiated this board" he had replied, ". . . no, that he didn't have to"; and as to her assertion of discrimination, because she was the only civilian employee in the School who had to sign out, he had responded, ". . . I do not have to negotiate; you will sign in and out; the issue is closed." (Tr. 27).

9. The Sign-Out board was not implemented for disciplinary purposes (Tr. 48); did not affect Ms. Triplett's pay, hours, benefits and was not used as a time keeping device (Tr. 33, 42, 43) or as means of monitoring her performance (Tr. 43). Indeed, the sole purpose of the Sign-Out board was to inform "customers" of Ms. Triplett's whereabouts (Tr. 44, 48). Nevertheless, Ms. Triplett professed to be fearful that the Sign-Out board had been implemented to support some possible disciplinary action against her. Ms. Triplett said that after her discussion with Sgt. Stickler in which he said the issue was closed, as noted above, she immediately began signing in and out on the board (Tr. 27). She further testified,

"A. When I would forget to sign out, he [Sgt. Stickler] would make it a point to leave his office downstairs and walk up to my office to sign me out. Then when I returned, I would see that he had signed me out.

"So I asked him, on a few occasions, why he did that.

"He said, in a very demeaning manner and sometimes in front of other people, Well, you failed to sign out; someone has to do it for you."
(Tr. 27-28)

She said she was never disciplined for not signing out

(Tr. 28), but said she feared she would be because he [Sgt. Stickler] had made,

". . . it a point to post a board in another office . . . and he made it a point to come up and sign me out after I departed the building when I forgot, I felt that there was reason for concern." (Tr. 28).

Sergeant Stickler was not asked whether he had ever signed Ms. Triplett out but his testimony was significantly different. When asked what Ms. Triplett's reaction was when the Sign-Out board was put up, he stated,

"A. Well, I went upstairs and --I don't remember whether I put it up or had Sergeant Geiker (sic), who was the assistant -- he was the other person, the other military person who worked in Information Management -- he probably put it up.

"Mrs. Triplett was not there at the time; and, according to Sergeant Geiker (sic), she became extremely agitated when she saw it. She said there was no way that she was going to use it, and she indicated that she felt that she was being singled out because there were no other sign-out boards up at that time.

"So when I found that out, I told her, Okay, you do not have to use the sign-out board, since you feel singled out, until I have them up in all other duty sections.

"And, in fact, that was what happened then.

"Q. Do you recall approximately how much later it was . . . that you finally got the frames for the --

"A. It could have been as much as two weeks. I don't remember for sure." (Tr. 42).

Nevertheless, Ms. Triplett testified that after she had filed the charge in this case, on September 30, 1993, about a month after she stated he had been succeeded by Senior Master Sergeant Kemper⁴ (Tr. 25), that the Squadron Commander and

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Sergeant Stickler stated that he retired effective May 1, 1994 (Tr. 37), but, ". . . for the last few months I was in charge of doing special projects . . . I was an overage in the squadron, so I didn't have a real job." (Tr. 37).

Sergeant Stickler came into the Historian's office to see her as to why she had filed a complaint over the board. She testified, in part, as follows,

"I said, Yes, I object to the board; I feel it is very discriminatory to me, being signed out as the only civilian in survival school, having to sign out on this board.

"They -- I asked them -- they wanted to know what they should do.

"I said, Remove the board.

"Master Sergeant Stickler said, That will not happen; as your supervisor, I can require whatever I wish out of my people; I will not negotiate with the union; the issue is closed." (Tr. 30).

10. Mr. Michael Sveska, at the time of the hearing a shop steward but for 1993 was President of Local 11 (Tr. 16), testified that he had met with Colonel Brown, Deputy Commander of the Survival School, and that the following occurred,

". . . we proposed a hypothetical situation in reference to a disciplinary action: If an employee was signed out to go somewhere and they were actually someplace else, would disciplinary action be applicable.

"Colonel Brown said, Yes, it would be." (Tr. 19).

Mr. Sveska stated that the Union did not request bargaining over the board because Colonel Brown's, ". . . attitude towards it was that it was it wasn't negotiable. . . ." (Tr. 20).

Conclusions

General Counsel and Respondent each left many loose ends. For example, the record shows that there were five civilian employees other than Ms. Triplett in the Headquarters building of the Survival School, but does not show whether the Information Management section had any civilian employee other than Ms. Triplett. (There are five sections under the supervision of the Superintendent of the Mission Support Flight: Information Management; Survival Fitness Center; Personnel; Orderly Room; and Group Training). Indeed, the clear interference is that Ms. Triplett was the only civilian employee in Information

Management, as Respondent asserts, "The gravamen of the complaint is the . . . implementation of a sign-out board affecting one bargaining unit employee" (Respondent's Brief, p.1). If bargaining unit employees were in other sections, General Counsel and Respondent nevertheless have, despite apparent implementation of sign out boards elsewhere, treated this case as concerning only the Information Management section (e.g., General Counsel's Brief, p.7; Proposed Notice, id, Attachment; Respondent's Brief, pp. 1, 6 (pages unnumbered)). But the loose ends do not matter as it is clear that Respondent, on, or about, July 15, 1993, unilaterally implemented a "Sign-Out" board in its Information Management section. The record shows (Tr. 41), and Respondent concedes (Respondent's Brief, p.4 (unnumbered)), that the Union was not notified or involved in the decision to implement a "Sign-Out" board. The record further shows that Respondent intended to extend this procedure to all employees in the School, as it apparently did. Before the July 15, 1993, implementation there had been no sign-out procedure. The Authority has consistently held that whether to have a sign in\sign out procedure is negotiable. For example, in American Federation of Government Employees, AFL-CIO, Local 1760, 8 FLRA 202 (1982) (hereinafter, AFGE, Local 1760"), the union's proposal to have a sign-in/sign-out register was held to be negotiable; in Overseas Education Association, Inc., 29 FLRA 734, 757-760 (Proposal 15) (1987) (hereinafter, OEA, Inc."), the Union's proposal that employees not be required to sign-in and/or sign-out was held to be negotiable; and in United States Department of Health and Human Services, Region II, New York, New York, 26 FLRA 814 (1987) (hereinafter, HHS, Region II"), the Authority adopted the Judge's decision that the agency violated §§ 16(a)(1) and (5) of the Statute by its failure and refusal to negotiate the reinstatement of a central sign-in/sign-out register (see, also, Planners, Estimators and Progressmen Association, Local 8, 13 FLRA 455 (1983) (hereinafter PEPA, Local 8") and American Federation of Government Employees, AFL-CIO, Local 1603, 16 FLRA 96 (1984) (hereinafter, AFGE, Local 1603" cited by Judge Arrigo in HSS, Regional II, supra). It is true, of course, that each of these cases involved a written record; that in OEA, Inc., supra, the agency asserted it needed the procedure to insure that classroom teachers are present so that school children are not left unsupervised; nevertheless, a written record for pay purposes; and that in AFGE, Local 1760, supra, and HHS, Region II, supra, the records plainly were for pay purposes. Here, of course, there was no permanent, written record and the "Sign-Out" board was not intended or used for pay or as an attendance record. Nevertheless, transitory though it was, the "Sign Out" board constituted a written record of an employee's whereabouts, falsification or

misrepresentation of which could result in discipline. Indeed, the differences are without distinction as the controlling and like element, here and in each case noted above, is a change, or proposed change, in a method of reporting employee activity: here, Ms. Triplett previously had told her supervisor when she was leaving her office and Respondent changed this to requiring her to write it on a "Sign-Out" board; in AFGE, Local 1760, supra, the union wanted a sign-in/sign-out register; in OEA, Inc., supra, the union proposed not to have a sign-in/sign-out register; in HHS, Region II, supra, Respondent reinstated a central sign out register rather than each employee keeping a personal attendance record; and in PEPA, Local 8, supra and AFGE, Local 1603, supra, the unions proposed alternatives to time clocks. Accordingly, Respondent's intended change of policy regarding Ms. Triplett's reporting absence from her office was a change of condition of employment, the substance of which was negotiable and Respondent violated §§ 16(a)(5) and (1) of the Statute by failing to give the Union notice of its intention to institute a "Sign Out" board in its Information Management section.

Where, as here, the decision to make a change was negotiable, the question is whether the statutory obligation to notify and negotiate was fulfilled, not the extent of impact. Department of Defense Dependents Schools, Mediterranean Region (Madrid, Spain); and Zaragoza High School (Zaragoza, Spain), 19 FLRA 395, 396-397 (1985); HHS, Region II, supra, 26 FLRA at 826-827; Department of Health Human Services and Social Security Administration, 30 FLRA 922, 926, (1988). If Respondent had been required to negotiate only procedures and appropriate arrangements pursuant to § 6(b)(2) and (3), I would agree with Respondent that the change as to Ms. Triplett was de minimis as she already was required to report her absence from her office to her supervisor; but this is not a case where negotiations were required only under § 6(b)(2) and (3).

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 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 92 Bomb Wing, Fairchild Air Force Base, Spokane, Washington, shall:

1. Cease and desist from:

(a) Failing and refusing to provide the National Federation of Federal Employees, Local 11 (hereinafter, "Local 11"), the exclusive representative of certain of its employees, with prior notice of intended changes in the conditions of employment of employees in the bargaining unit represented by Local 11 and, specifically, any intention to change policy regarding the recordation of employee absence from their office.

(b) Refusing to bargain with Local 11 concerning implementation of a "Sign Out" board in the Information Management section of the Survival School.

(c) 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) Rescind the implementation of the "Sign Out" board in the Information Management Section of the Survival School and reinstate the practice that was in place prior to its unlawful unilateral implementation of a "Sign Out" board on, or about, July 15, 1993.

(b) Give Local 11 notice of any intention to implement a "Sign Out" procedure in the Information Management section of the Survival School and, upon request, bargain in good faith with Local 11.

(c) Post at its facilities at its Survival School, 92 Bomb Wing, Fairchild Air Force Base, Spokane, Washington, 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 Commanding Officer of the 92 Bomb Wing, 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.

(d) Pursuant to § 2423.30 of the Regulations, 5 C.F.R. § 2423.30. notify the Regional Director, Denver Region, Federal Labor Relations Authority, 1244 Speer Boulevard, Suite 100, Denver, Colorado 80204, in writing,

within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

WILLIAM B. DEVANEY
Administrative Law Judge

Dated: November 25, 1994
Washington, DC

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 give the National Federation of Federal Employees, Local 11 (hereinafter, "Local 11"), the exclusive representative of our employees, prior notice of intended changes in the conditions of employment of employees in the bargaining unit represented by Local 11, including, specifically, any intent to change policy regarding the recordation of employee absence from their office.

WE WILL RESCIND the implementation of the "Sign Out" board in the Information Management section of the Survival School and WE WILL REINSTATE the practice that was in place prior to our unlawful unilateral implementation of a "Sign Out" board on, or about, July 15, 1993.

WE WILL GIVE Local 11 notice of any intention to implement a "Sign Out" procedure in the Information Management section of the Survival School and, upon request, WE WILL bargain in good faith with Local 11 before implementing any "Sign Out" procedure.

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.

(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, Denver Region, whose address is: 1244
Speer Boulevard, Suite 100, Denver, Colorado 80204, and
whose telephone number is: (303) 844-5224.

CERTIFICATE OF SERVICE

I hereby certify that copies of this DECISION issued by WILLIAM B. DEVANEY, Administrative Law Judge, in Case No. SF-CA-31724, were sent to the following parties in the manner indicated:

CERTIFIED MAIL:

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Dated: November 25, 1994
Washington, DC