UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
OFFICE OF ADMINISTRATIVE LAW JUDGES
WASHINGTON, D.C. 20424

VETERANS ADMINISTRATION,
WASHINGTON, D.C. and
VETERANS ADMINISTRATION
MEDICAL CENTER, LEAVENWORTH,
KANSAS

Respondents

and

AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES,
AFL-CIO, LOCAL 85

Charging Party

Case No. 7-CA-60247

Maurice Copp, Esq.
Paul Wingerter
For the Respondents

Matthew L. Jarvinen, Esq.
Joseph Swerdzewski, Esq.
For the General Counsel

Helen Wilber
For the Charging Party

Before: WILLIAM NAIMARK
Administrative Law Judge

DECISION

Statement of the Case

Pursuant to a Complaint and Notice of Hearing issued on April 6, 1987 by the Regional Director for the Federal Labor Relations Authority, Region VII, a hearing was held before the undersigned on June 11, 1987 at Leavenworth, Kansas.

This case arose under the Federal Service Labor-Management Relations Statute, 5 U.S.C. 7101, et seq., (herein called the Statute). It is based on an amended charge filed on April 3, 1987 by the American Federation of Government Employees, AFL-CIO, Local 85 (herein called the Union) against Veterans Administration, Washington, D.C. and Veterans Administration Medical Center, Leavenworth, Kansas (herein collectively called the Respondent).

The Complaint alleged, in substance, that (a) on or about March 4, 1986 Respondent misrepresented the status of its negotiations with the Union over asbestos environmental differential pay and improperly induced the Union's president to initial off on bargaining proposals; (b) on or about March 26, 1986 refused to bargain with the Union over asbestos environmental differential pay; (c) on or about April 14, 1986 implemented a revised version of MCPM 138-15, "Subject; Asbestos Operations" prior to completing negotiations over asbestos environmental differential pay - all in violation of Section 7116(a)(1) and (5) of the Statute.

Respondent's Answer, dated May 1, 1987, denied the foregoing allegations and the commission of unfair labor practices. It also alleged, as a defense, that bargaining over the policy was completed and agreed to by both parties; that the Union negotiators, without cause, refused to sign the final draft of said policy.

All parties were represented at the hearing. Each was afforded full opportunity to be heard, to adduce evidence, and to examine as well as cross-examine witnesses. Thereafter, briefs were filed with the undersigned which have been duly considered.1/

Upon the entire record, from my observation of the witnesses and their demeanor, and from all of the testimony and evidence adduced at the hearing, I make the following findings and conclusions:

Findings of Fact 2/

1. At all times material herein the American Federation of Government Employees, AFL-CIO, (AFGE) has been the

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1/ Subsequent to the hearing General Counsel filed a Motion to Correct the Transcript. No objections having been filed thereto, and it appearing that the proposed corrections are proper, the Motion is granted as requested.

2/ The record reflects that there is a conflict of testimonies as to what occurred, and the statements made, at each negotiating session between the parties. All findings in regard thereto are the credited versions adopted by the undersigned who has taken into consideration the extent to which each witness testified consistently and his ability to recall events, as well as the demeanor of each individual.

exclusive representative of a national consolidated unit which includes the employees at Respondent's facilities in Leavenworth, Kansas.

2. Since August 13, 1982 the Veterans Administration, Washington, D.C. and AFGE have been parties to a collective bargaining agreement which covers the employees at the Veterans Administration Medical Center (VAMC) in Leavenworth, Kansas.

3. At all times material herein the Union has been an affiliate of AFGE and an agent authorized to represent, and negotiate for, the Respondent's unit employees at the VAMC in Leavenworth, Kansas.

4. As a result of a Settlement Agreement approved on December 12, 1985 in Case No. 7-CA-50619 the Union and Respondent commenced negotiations in January, 1986 re the payment of environmental differential pay (EDP) to unit employees at VAMC for exposure to airborne asbestos fibers.3/

5. The initial negotiation meeting was held on January 16, 1986.4/ The Union was represented by Helen Wilber, President, and Tom Lewis, Safety Officer. Representing Respondent were David Drake, Personnel Officer, and Roger Porter, Chief Engineer. No ground rules were formulated, nor did the parties make any specific arrangements for the discussion of issues or how negotiations would be concluded. They did agree to include, as worded or written, the result of negotiations in the existent asbestos policy. This policy was entitled Medical Center Policy Memorandum, MCPM 138-15 - Subject: "Asbestos Operations", dated December 19, 1984. (G.C. Exhibit 3). This 1984 Policy did not provide for, or mention, the payment of EDP for exposure to asbestos.

6. At the January 16 meeting the parties agreed to two items. The first provided, in substance, there would be no

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3/ In early December, 1984 a hearing was held before an arbitrator regarding the payment of EDP for exposure to asbestos. Issues embraced within the arbitration included (a) whether employees were entitled to EDP, (b) the particular employees so entitled, and (c) the length of time for such entitlement.

4/ All dates hereinafter mentioned, unless otherwise indicated, occurred in 1986.

exposure to airborne friable asbestos if it is encapsulated. The second provided, in substance, there would be no exposure to asbestos if an employee enters a work area, finds asbestos, then walks back out to notify his supervisor, and does not reenter the area to perform work.

7. The parties met again on February 20. The Union was represented by Lewis and Rick Rogers, Chief Steward. Drake and Porter appeared for Respondent. During the meeting some question arose as to the authority of Lewis to initial proposals. A phone call was placed to Wilber who authorized Lewis to initial the proposals.5/

8. Various proposals were discussed by the parties at the February 20 meeting. Some of the items were initialed off by Lewis and Drake, and I find they were agreed to by the Union and Respondent. As to proposals not initialed, either some comment appears alongside the clause, or Lewis wrote "hold" beside it. The particular proposals discussed at this meeting during negotiations re EDP for exposure to asbestos were as follows:6/

PROPOSAL 1

Friable asbestos is dry asbestos unencapsulated which is readily crumbable and has the potential of becoming airborne.

5/ There is controversy re the effect of "initialing" clauses or proposals during negotiations. Wilber testified that to initial a proposal merely meant it had been considered, and this was done to keep track of the item. Union representative Rogers testified that the matter was discussed at the meeting; that it was understood if a proposal was initialed by both parties, it signified agreement. Moreover, Union representative Lewis testified that, except where he marked "hold" next to a proposal, they agreed to it where the same was initialed. I conclude and find that, apart from whatever effect results from any misleading inducement by one party to another to initial a proposal, the placement of initials by either party next to a proposal signified agreement therewith.

6/ The proposals have been numbered as set forth in General Counsel's brief in order to facilitate identification.

PROPOSAL 2

Friable asbestos which has the potential for causing injury or illness (i.e. is a health hazard) is airborne concentrations meeting the definition of DM&S +/or OSHA (whichever is the most strict) when monitored during a period of time when there is air movement occurring in the immediate work area. (Air movement will be done by mechanical means.)

PROPOSAL 3

Friable asbestos which has the potential for causing injury or illness in a non-monitored situation is defined as friable asbestos that may become airborne within seven feet of work being performed. The distance (7 feet) will be measured from the area the work is being/was performed; e.g. seven feet from valve replacement, seven feet around pipe replacement for the entire length of pipe, seven feet from a fellow worker who is performing work disturbing friable asbestos, etc.

PROPOSAL 4

EDP will be paid (in non-monitored areas) if the employee (in the course of performing work) cuts +/or otherwise removes asbestos insulation whether or not the employee is in respirator + protective clothing.

PROPOSAL 5

EDP will be paid (in monitored areas) when work is performed in friable asbestos environments + when monitoring results exceed that indicated in paragraph ____, above, + when the hazard has not been practically eliminated.

PROPOSAL 6

EDP will be paid in (non-monitored areas) if the employee is not in respirator + protective clothing + if the employee performs work within seven feet of friable asbestos that may become airborne (see paragraph ____, above).

PROPOSAL 7

EDP will be paid (in monitored areas) when work is performed in friable asbestos environments + when monitoring results exceed the limits of the NIOSH approved respirators. In this instance it is understood that the hazard can not be practically eliminated.

PROPOSAL 8

EDP will not be paid if the employee is in respirator + protective clothing + if the employee does not cut +/or otherwise remove asbestos insulation in the course of performing work.

PROPOSAL 9

Procedures for claiming EDP:

VAF-1098a must be submitted by the employee to his/her supervisor. The form may be printed (typing is not necessary) but may not be written in cursive form. The form must be turned in to the supervisor within 1 work day of the work completion + the supervisor must turn in the form to the Engineering Officer within 1 work day of his/her receipt. The Justification blank of the VAF-1098a must include: the work order number; the work area location; friable asbestos location + the nature of the work (e.g. plumbing, carpentry, electrical, etc). The supervisor will initial each line item of the VAF-1098a indicating his/her recommendation of approval + indicating that the criteria for EDP has been met as indicated in this agreement.

(Work day is defined as Mon. thru Fri. + does not include holidays.)

Exceptions to the 1 work day: employee/supervisor use of SL.

At the end of a pay period, all claims for EDP (Form VAF-1098a) must be submitted to the supervisor by 4:00 pm of the last work day. Supervisors will review the claims and turn in the form to the Engineering Office by 4:30 pm of the last work day of each pay period. This does not alleviate the requirement to submit on review EDP claims within 1 work day at other times.

PROPOSAL 10

Unprotected employees (e.g. not in respirator and protective clothing): When an employee enters a work area + performs work + discovers encapsulated asbestos, he/she will cease the work, report to his/her supervisor, + submit claim for EDP. The supervisor will, following review + action on the EDP claim: (1) immediately notify the insulator supervisor for encapsulation purposes; (2) notify the Safety Technician for action to post the area with the asbestos sticker; + (3) determine whether or not the work to be accomplished can or cannot wait for encapsulation action. If the work to be accomplished cannot wait for encapsulation action, the supervisor will direct the employee back to the work area with respirator + protective clothing for work completion. Failure of an unprotected employee to make the above report to the supervisor will result in disapproval of any claim for EDP for the work accomplished.

Employees who do not claim EDP or who refuse to use the protective devices/safety measures provided will not be paid EDP under any circumstances.

9. The following action was taken on February 20 with respect to the foregoing proposals:

(a) Proposal 1 was agreed to and initialed by Drake and Lewis.

(b) Proposal 2 was not agreed to by Lewis who wrote "hold" alongside of it. Management wanted to use the standard of either the Department of Medicine and Surgery of the VA or OSHA to determine if asbestos levels caused illness. Lewis opted for levels accepted by a certified industrial hygenist.

(c) Proposal 3 was agreed to and initialed by the parties who consented that asbestos, which would be deemed airborne within 7 feet of work being proposed, has the potential for causing injury or illness.

(d) Proposal 4 was agreed to and initialed by Drake and Lewis.

(e) Proposal 5 was not agreed to by Lewis. The Union representative would not agree to the proposal since it fore-

closed EDP unless asbestos amounts exceeded a certain level. Further, he objected to the term "practically eliminated" in the proposal. It was not initialed or marked "hold".

(f) Proposal 6 was initialed by Drake and Lewis and in agreement as to its terms.

(g) Proposal 7, which dealt with EDP when asbestos levels exceeded limits of NIOSH approved respirators, was not agreed to by Lewis. The latter objected to the words "practically eliminated" and he marked "hold" on the proposal.

(h) Proposal 8 concerned the nonpayment of EDP if an employee is in a respirator and wears protective clothing and does not cut or remove asbestos. Lewis objected since the clothing might fail. He wrote alongside, "if disturbed in any way, EDP will be paid" and initialed it.

(i) Proposal 9 dealt with the forms which employees would use when claiming EDP. Although the proposal was discussed on February 20, it was not agreed to at that time.

(j) Proposal 10, which concerned the responsibility of a supervisor and instances where an employee does not claim EDP or refuses protective devices, was discussed on February 20. However, no action was taken and Lewis testified he thought it would be placed on "hold" with others so designated.

10. The next meeting between the parties was held on March 4.7/ Lewis did not attend since he was on sick leave. Wilber arrived at 8:00 a.m. She requested that

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7/ Contrary to the Union representatives, management officials Drake and Porter testified the next meeting was held on February 27. Both Lewis and Union steward Rick Rogers, whom Drake and Porter state were present, insist that no meeting was held on that date. Record facts show that the official time form for Lewis reflect he used such time on February 27 from 8:00 a.m. to 9:15 a.m., and Rogers' form indicates he was on official time from 2:00 p.m. to 3:30 p.m. on that date. None of the exhibits listing the proposals that were discussed between the parties is dated February 27. These factors, along with Porter's testimony that he is "fuzzy" on dates, impels me to conclude no meeting or negotiation session was held on February 27.

Rogers be present, and the latter arrived several hours later. While waiting for the Union steward, Drake gave Wilber Proposals 2, 5, 7, 8, 9 and 10 which he stated had been agreed to by Lewis but the latter did not have time to "initial off". Proposal 2, beside which Lewis had marked "Hold", was submitted to Wilber with a line striking out that marking.8/ Wilber initialed all of the six proposals given her by Drake. At this meeting on March 4 Wilber brought up the matter of beards during the use of respirators. Management refused to discuss the issue at that time or put it in the Policy. Wilber also proposed that a clause be put in the Policy reciting that if a conflict arose between the forthcoming arbitration award and the Policy, the award would govern. The management representatives declined to adopt such a proposal. Porter had no recollection of such a discussion.9/

Both Porter and Drake testified that the parties finished negotiations on March 4; that they agreed to meet on March 18 just to sign the agreement which would be incorporated into the existing Policy. Wilber testified that she stated to Porter and Drake there were more proposals which Lewis wanted to make; that the said Union representative wanted to change the verbiage in some of the proposals. Further, that management went along with this idea and the parties would discuss them at the next meeting.10/

8/ Drake testified Wilber asked why "Hold" was marked next to a proposal. Further, that he stated Lewis agreed to the intent, but wanted Wilber to look at it. Wilber's testimony, which I credit, reflects she didn't question Proposal 2 since the word "Hold" had been crossed out and she took Drake's word that they had agreed on the clause.

9/ I credit Wilber's version of the discussion concerning the problem of beards when using respirators as well as her proposal that the arbitration award govern if it conflicted with the Policy.

10/ While management may have concluded that the negotiations were finished and the parties had agreed to all proposals, I find that the Union representatives contemplated further discussions re the proposals rejected by management as well as other proposals at the meeting on March 18. Of particular note is the fact that Drake conceded the wording of items might change, which would call for further negotiation.

11. The arbitration award, which involved a grievance over asbestos EDP, was issued by William Eisler on March 4. It was received by the Union on March 7. Wilber did not read the award but gave it to Lewis to do so. Porter testified he read it on about March 20 or 21.11/

12. A meeting was held on March 18. Both Wilber and Lewis attended for the Union, while Drake and Porter were present for Respondent. Drake handed Wilber a copy of the Revised Asbestos Policy 12/ (G.C. 5) and asked her to sign the revised Policy. Wilber refused to sign, stating that would signify the Union agreed to everything. She told Drake the parties were not finished with negotiations and she could not sign a concurrence. Drake replied that the signatures would just show the front office that negotiations were taking place - it was not indicating that negotiations were finished.

Lewis, who had been talking to Porter during the aforesaid conversations, said he had some proposals to discuss. Management advised Lewis that he had already initialed off the proposals, and Lewis stated they had been put on "Hold". When Porter confronted Lewis with initialed proposals, it was seen that the initials were those of Helen Wilber.13/ Lewis testified he wanted to propose that an employee and his training instructor go to the same training session to eliminate any conflict in training when each goes to a separate instruction session. Further, he wished to discuss the usage of the term "practically eliminated" which appeared in several proposals. Lewis mentioned at the meeting that

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11/ The award, which was made applicable to the entire bargaining unit (about 300 employees) and not just the VMAC's Engineering Service (about 30 employees) also directed VMAC to pay each wage system employee in the unit EDP from and after April 9, 1984. This was to continue until they no longer worked in exposed areas or the potential for illness was practically eliminated.

12/ The term "Policy", as used herein and which was the subject of negotiations, refers to the Revised MCPM 138-15 covering payment of EDP to asbestos workers.

13/ During a private discussion between them, Wilber advised Lewis she signed the proposals because Drake said Lewis agreed to them and she saw no problem.

he had researched the said term and wanted to read it to management. However, Respondent's representatives refused his request and said it was already covered in the Policy. Wilber also asked to include her proposal that the arbitrator's award should prevail if it conflicted with the terms of the Policy. Drake stated that another meeting would be arranged to give Wilber time to read the award; that if the Revised Policy needed to be changed, there would be no problem. A date was set for March 26.

13. As scheduled, the parties met again on March 26, Richard Martinez, national representative of AFGE, attended in place of Wilber along with Lewis. Drake and Porter were also present. Drake asked Martinez to sign the Revised Policy Agreement, but the Union representative refused. The latter made mention of the fact that some proposals initialed by Wilber were not valid since Drake led her to believe they had been approved by Lewis. Although Martinez wanted to continue negotiations, management refused and Drake stated they were done with the Policy.14/ The management representative then accused the Union of negotiating in bad faith and left the meeting.

14. In a memorandum dated April 10, Drake advised Wilber that the revised MCPM 138-15, Subject: Asbestos Operations, which management felt was the result of negotiations agreed to by the parties, would be implemented on April 14.

15. The revised Asbestos Policy was implemented by Respondent at VAMC on April 14. (G.C. 12).

16. Wilber replied by letter dated April 15 and stated she saw no reason to implement the Policy since the Union neither concurred in, nor finished negotiating, its terms. Further, she remarked that management's refusal to entertain her last proposal did not automatically end negotiations.

14/ The record reflects some comments made by Martinez regarding the mootness of the negotiations since the arbitrator's award preceded final negotiations. I do not conclude that Martinez refused to continue negotiating the Policy, but the purport of his remarks indicated the Union did not want to lose any benefits bestowed upon it via the award.

Conclusions

The ultimate issue for determination is whether, despite the negotiating sessions held between the parties, Respondent failed and refused to bargain in good faith with the Union herein.

In alleging a violation of Section 7116(a)(1) and (5) of the Statute, General Counsel contends that Respondent's course of conduct reflected bad faith bargaining. It adverts to the fact that the Union agreed to certain proposals, and initialed them, only after being misled by Respondent's negotiator, David Drake, at the March 4, 1986 meeting. Further, that Respondent refused to discuss and negotiate proposals made by the Union during the bargaining sessions, walked out of the meeting, and terminated negotiations. Finally, it is urged that the implementation of the Asbestos Policy on April 14, 1986 without having completed negotiations over asbestos EDP was likewise a refusal to bargain in good faith and violative of the Statute.

Contrariwise, Respondent takes the position that negotiations were finalized at the March 4 meeting and the parties had reached agreement on EDP for the asbestos workers. It disputes the allegation that Drake misled Union official Wilber and caused her to initial proposals which had not been consented to by Union representative Lewis in prior meetings. Management insists that Drake's departure from the meeting on March 26 has no significance, since Martinez, who represented the Union, made no proposals thereat and his sole purpose was to disrupt the negotiations. The Union was attempting, claims Respondent, to back out of the negotiations in view of the fact that the arbitrator's decision granted them more than they obtained via negotiations with management.

A duty to bargain in good faith is imposed upon both parties, who enter upon negotiations, under Section 7114(b) of the Statute. This duty is not fulfilled by merely meeting together. The totality of conduct at the bargaining sessions must be considered in determining whether a party has met its obligation in this regard. See Social Security Administration, 18 FLRA 511.

While the Respondent did meet on several occasions and entered into negotiations with the Union as to EDP for exposure to airborne asbestos, its entire course of conduct during the sessions in February and March, 1986 leads me to

conclude that Respondent did not engage in good faith bargaining.

Good faith bargaining during negotiations requires that neither party mislead the other as to its intentions, and it is essential that the Union and management agents do not engage in misrepresentations at the time. Where an employer in the private sector misled a union representative into believing that agreement had been reached and that only the execution of a contract remained, such conduct was deemed to constitute bad faith bargaining Mayes Bros. Inc., 153 NLRB 18 enf. as modified in NLRB v. Mayes Bros., Inc., CA 5 (1967), 66 LRRM 2031.15/

In the case at bar I am persuaded that Respondent's representative Drake misled Union president Wilber on March 4 at the negotiation session by stating that proposals 2, 5, 7 and 8, which had not yet been initialed, had been agreed upon by Lewis. Two of these proposals, 2 and 7, had been marked "Hold" by Lewis and there was no indication that he had intended to discontinue discussion thereon, nor does it appear that he assented to them.16/ With respect to Proposal 5, management knew that Lewis objected to the phrase "practically eliminated" but desired to discuss the item. As to Proposal 8, Lewis was concerned with the possible failure of protective clothing causing a loss of EDP, and thus he marked alongside the item: "if disturbed in any way, EDP will be paid, TP2". Thus, it seems clear that the Union, apart from not agreeing to these four proposals, intended to pursue further negotiations as to these matters. In such circumstances, Drake's informing Wilber that Lewis had agreed to Proposals 2, 5, 7 and 8 but did not have time to initial them, was a misrepresentation as to the course of the negotiations. It misled the Union representative and induced her to initial and agree to the

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15/ The Court commented that the Board did not specify whether the Company deliberately misled the Union representative, or whether its misleading conduct reflected a disinclination to contract with the union. However, the Court concluded, on either theory the Company failed to bargain in good faith.

16/ When tendered to Wilber, the word "Hold" had been lightly crossed out on Proposal 2. It was not established that Lewis had changed his position and thus struck "Hold" from this item.

aforesaid proposals which were the subject of dispute between the parties. Such conduct, in my opinion, constituted bad faith bargaining.

In viewing the various negotiation sessions regarding the payment of EDP to asbestos workers, I conclude that other actions by Respondent also evince a lack of good faith in bargaining with the Union. While Drake took the position that the parties reached agreement on the Asbestos Policy on March 4, Wilber brought up several matters on that date which management would not discuss. Thus, the Union desired to consider the problem arising when a bearded employee used a respirator. Moreover, Wilber wanted a clause which provided that if the arbitrator's award opposed any provision in the Asbestos Policy, the former would be controlling. Moreover, the Union President made it clear that Lewis wanted to submit some proposals and that some wordings may have to be changed. Accordingly, it was agreed to meet again on March 18.

Actions taken by Respondent's representative at the two subsequent meetings were also not indicative of good faith bargaining. Thus, Drake wanted Wilber to sign the Policy to show that negotiations were still in progress. Such a maneuver would certainly not be consistent with management's contention that an agreement had already been reached. Moreover, Lewis wanted to discuss a proposal re training, i.e. that the employee and his instructor be at different sessions for that purpose. He also wanted to discuss the term "practically eliminated" which had been objected to previously by the Union. However, Drake would not consider such discussions. At the final meeting on March 26 Union representative Martinez refused to sign the Policy and stated the Union wanted to continue negotiations. Both Lewis and Martinez desired to discuss the matters previously mentioned to management, but Drake told them they were done with the Policy and walked out of the meeting. Such factors reflect a desire on Respondent's part to reach an agreement on its terms, and they do not demonstrate a willingness to engage in collective bargaining as mandated by the Statute. The tactics employed by Respondent in refusing to discuss additional matters raised by the Union, as well as its discontinuance of negotiations, constitute bad faith bargaining. See Endo Laboratories, Inc., 239 NLRB 1111.

Respondent insists that it was entitled to implement the Revised Asbestos Policy on April 14, that it was merely implementing the negotiated agreement of the parties since no matter remained for discussion. I disagree. It is true that an agency, after having engaged in negotiations, may

implement certain terms and conditions of employment when an impasse is reached with a union without running afoul of the Statute. Department of Defense, Department of the Navy, Naval Ordnance Station Louisville, Kentucky, 17 FLRA 896; Department of Health and Human Services, Social Security Administration, Baltimore, Maryland, 16 FLRA 217. However, the parties herein neither reached complete accord as to the EDP proposals nor did an impasse exist between them after full negotiations. Contrariwise, the Respondent never fulfilled its duty to bargain by reason of its conduct at the meetings as aforesaid. Its termination of discussions and refusal to bargain as to Union proposals negates any inference of an impasse at the conclusion of negotiations. Thus, management was not entitled to put the Revised Asbestos Policy, to which the Union had not assented, into effect. In the face of the Union's desire to negotiate matters bearing on the revisions, the implementation thereof was likewise a refusal to bargain in good faith.

Remedy

Note is taken that General Counsel seeks as a remedy, inter alia, that Respondent be ordered to rescind MCPM 138-15, "Subject: Asbestos Operations", which is the Revised Asbestos Policy put into effect by management on April 14, 1986. The undersigned would agree that such remedy, under all the circumstances and in accord with the factors set forth in Federal Correctional Institution, 8 FLRA 604, is warranted. It is significant that Respondent's conduct during negotiations was deceptive in nature. Further, it does not appear that a status quo remedy would be disruptive of the VMAC's operations. Cf. Social Security Administration, 18 FLRA 511.

Despite the foregoing conclusion, the undersigned recognized that some of the provisions of the Revised Asbestos Policy which were implemented may well have redounded to the employees' benefit. Since the Union may not desire to have these beneficial effects withdrawn or to await further negotiations and an agreement, the status quo remedy involving a recission of the Policy will be ordered upon the request of the Union along with a directive to bargain in good faith.17/

17/ Provision is made in the recommended Order for retroactive EDP, if the parties renegotiate a Revised MCPM 138-15 in accordance with Section 7118(a)(7) of the Statute.

In sum, the undersigned concludes that Respondent violated section 7116(a)(1) and (5) of the Statute and failed to bargain in good faith by (1) making misrepresentations to the Union representative during the course of negotiations over Environmental Differential Pay to Asbestos Workers, and inducing her to initial and agree to bargaining proposals; (2) discontinuing negotiations with the Union, and refusing to bargain as to proposals made by the Union representatives concerning the payment of Environmental Differential Pay to asbestos workers; (3) implementing its Revised Asbestos Policy, MCPM 138-15, "Subject: Asbestos Operations," providing for Environmental Differential Pay to asbestos workers under certain circumstances, at a time when negotiations with the Union were still pending and Respondent had failed and refused to bargain in good faith.

Having concluded that Respondent violated Section 7116(a) (1) and (5) of the Statute, I recommend the Authority issue the following order designed to effectuate the purpose thereof.

ORDER

Pursuant to section 2423.29 of the Rules and Regulations of the Federal Labor Relations Authority and section 7118 of the Statute, the Authority hereby orders that the Veterans Administration, Washington, D.C. and Veterans Administration Medical Center, Leavenworth, Kansas, shall:

1. Cease and desist from:

(a) Failing and refusing to bargain in good faith with American Federation of Government Employees, AFL-CIO, Local 85, the exclusive representative of its employees at Leavenworth, Kansas, concerning its Revised MCPM 138-15, "Subject: Asbetos Operations," involving the payment of Environmental Differential Pay to bargaining unit employees exposed to asbestos in the performance of their duties.

(b) In any like or related manner, interfering with, restraining, or coercing its employees in the exercise of their rights assured by the Statute.

2. Take the following affirmative action in order to effectuate the purposes and policies of the Federal Service Labor-Management Statute:

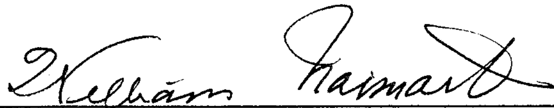
(a) Upon request by American Federation of Government Employees, AFL-CIO, Local 85, the exclusive representative

of its employees at Leavenworth, Kansas, rescind, and discontinue the implementation of, Revised MCPM 138-15, "Subject: Asbestos Operations," involving the payment of environmental differential pay to bargaining unit employees exposed to asbestos in the performance of their duties.

(b) Upon request by American Federation of Government Employees, AFL-CIO, Local 85, the exclusive representative of its employees at Leavenworth, Kansas, bargain in good faith concerning the Revised MCPM 138-15, "Subject: Asbestos Operations," involving the payment of environmental differential pay to bargaining unit employees exposed to asbestos in the performance of their duties, and, if an agreement is reached, make any such agreement as to the payment of environmental differential pay retroactive to April 14, 1986.

(c) Post at its facility in Leavenworth, Kansas 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 Director of the Leavenworth, Kansas facility, or a designee, 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 section 2423.30 of the Authority's Rules and Regulations, notify the Regional Director, Region VII, Federal Labor Relations Authority, 535 - 16th Street, Suite 310, Denver, CO 80202, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply.



WILLIAM NAIMARK
Administrative Law Judge

Dated: February 2, 1988
Washington, D.C.

NOTICE TO ALL EMPLOYEES

PURSUANT TO

A DECISION AND ORDER OF THE

FEDERAL LABOR RELATIONS AUTHORITY

AND IN ORDER TO EFFECTUATE THE POLICIES OF

CHAPTER 71 OF TITLE 5 OF THE

UNITED STATES CODE

FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS STATUTE

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT fail and refuse to bargain in good faith with American Federation of Government Employees, AFL-CIO, Local 85, the exclusive representative of our employees at Leavenworth, Kansas, concerning its Revised MCPM 138-15, "Subject: Asbetos Operations," involving the payment of Environmental Differential Pay to bargaining unit employees exposed to asbestos in the performance of their duties.

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 by American Federation of Government Employees, AFL-CIO, Local 85, the exclusive representative of our employees at Leavenworth, Kansas, rescind, and discontinue the implementation of, Revised MCPM 138-15, "Subject: Asbestos Operations," involving the payment of environmental differential pay to bargaining unit employees exposed to asbestos in the performance of their duties.

WE WILL, upon request by American Federation of Government Employees, AFL-CIO, Local 85, the exclusive representative of our employees at Leavenworth, Kansas, bargain in good faith concerning the Revised MCPM 138-15, "Subject: Asbestos Operations," involving the payment of environmental differential pay to bargaining unit employees exposed to

asbestos in the performance of their duties, and, if an agreement is reached, make any such agreement as to the payment of environmental differential pay retroactive to April 14, 1986.

____
(Agency or Activity)

Dated: __________________ By: ________________________________
(Signature)

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, Region VII, whose address is: 535 - 16th Street, Suite 310, Denver, CO 80202, and whose telephone number is: (303) 837-5224.