

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

.....
814TH COMBAT SUPPORT GROUP
BEALE AIR FORCE BASE,
CALIFORNIA

Respondent

and

Case Nos. 9-CA-00114
9-CA-00213

AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES,
LOCAL 2025, AFL-CIO

Charging Party

.....

Susan E. Jelen, Esquire
For the General Counsel

Major Phillip G. Tidmore
Captain Miriam Sumpter
For the Respondent

Before: BURTON S. STERNBURG
Administrative Law Judge

DECISION

Statement of the Case

This is a proceeding under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the U.S. Code, 5 U.S.C. Section 7101, et seq., and the Rules and Regulations issued thereunder.

Pursuant to a charge filed in Case No. 9-CA-00114 on December 4, 1989 and an amended charge first filed in Case No. 9-CA-00213 on February 14, 1990, by American Federation of Government Employees, Local 2025, AFL-CIO, Complaints and Notices of Hearing were issued by the Regional Director for Region IX, Federal Labor Relations Authority, San Francisco, California, on February 28 and May 7, 1990, respectively.^{1/}

^{1/} The Complaint in Case No. 9-CA-00213 consolidated the two cases.

The Complaint in Case No. 9-CA-00114 alleges that the 814th Combat Group, Beale Air Force Base, California, (hereinafter called the Respondent), violated Sections 7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute, (hereinafter called the Statute), by virtue of its actions in implementing a change in working conditions which resulted in a ban on established smoking areas within certain buildings without first giving the American Federation of Government Employees, Local 2025, AFL-CIO, (hereinafter called the Union) notice and the opportunity to bargain over "the change and/or procedures to be used in implementing the change". The Complaint in Case No. 9-CA-00213 alleges that Respondent violated Sections 7116(a)(1) and (5) of the Statute when on separate occasions it unilaterally designated out door smoking areas for the civil engineering squadron and the hospital squadron without first giving the Union notice and the opportunity to bargain over such changes in the unit employees conditions of employment. The Complaint also alleges that the Respondent further violated the Statute by virtue of its actions in bypassing the Union and soliciting directly from the unit employees their proposals for the establishment of outside smoking areas.

A hearing was held in the captioned matter on May 23, 1990, in Sacramento, California. All parties were afforded the full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues involved herein. The Respondent and the General Counsel submitted post hearing briefs on July 9 and 10, 1990, respectively, which have been duly considered.

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

Findings of Fact 2/

The Union is the exclusive representative of all civilian employees, excluding managers, supervisors and professional employees, located throughout Beale Air Force Base, California. Mr. Leroy Bright has been the president of the Union for about two years. Prior to becoming

2/ The facts for the most part are not in dispute. To the extent that the statement of facts set forth in General Counsel's post hearing brief comports with the record, I have adopted same.

president Mr. Bright served as first vice president for three years.

Case No. 9-CA-00114

On August 21, 1987, Colonel Richard Graham, Wing Commander for Beale Air Force Base, issued a "policy" entitled Smoking in the Work Place. Three days earlier, on August 18, 1987, Mr. Charles Carver the then president of the Union had agreed to a draft letter revising the smoking policy. The policy announced on August 21, 1987 stated, in pertinent part, as follows:

3. My policy on smoking in the work place follows. It is highly discouraged, but if a commander determines that it is in the best interest of his unit, he may designate a smoking area under the following conditions:

- a. It will be a place for smokers only.
- b. It cannot pollute the work place; either directly or indirectly through the ventilation system.
- c. It will not be a comfortable, relaxing place for smokers to congregate and spend time in.
- d. The smoking facility will be cleaned by smokers only.
- e. Procedures will be established by each unit and posted on the use of the facility.
- f. I will personally inspect and approve/disapprove each smoking area after the above are complied with and prior to its use.

Prior to the smoking policy issued on August 21, there were only minor limitations on the employees' ability to smoke, i.e. no smoking around fuels or other flammable materials.

After August 1987, for the most part, there was no smoking in most of the buildings located on Beale Air Force Base. In this connection, Mr. Bright, who works as a painter in the civil engineering squadron and has worked in

various buildings throughout the base, testified that he had noticed smoking areas in Building 2539 which is located in the Civil Engineering Compound, Building 2145, the Base Supply Building and Building 1086 which is the Headquarter's Building. However, he did acknowledge that he could not be sure that such smoking areas were still in use as of the time of the hearing.

In connection with the smoking areas that he, Mr. Bright, had noticed in his travels as a painter, the one he was most familiar with was the smoking area located in Building 2539 in the Civil Engineering Compound. Thus, he testified that as an employee he had been assigned to clean up a room on the first floor. Pursuant to a work order from his supervisor he painted the room, repaired holes in the walls, sanded and refinished benches and sealed spaces around vent fans which had been installed by the electricians. He then moved in ashtrays and placed a "Smoking Room" sign over the door. Following the completion of the above described work in October or November 1987, the smoking room was utilized by various unit employees for approximately two years. Mr. Everett Burkard, the Deputy Base Civil Engineer, in his testimony, acknowledged the existence of the smoking room and stated that he believed that it had been verbally authorized by higher management.

On March 30, 1988, Colonel Graham issued another memorandum on the smoking policy at Beale Air Force Base which reads in pertinent part as follows:

SUBJECT: Smoking Policy

TO: DISTRIBUTION CC

1. A recent message from HQ SAC gave guidance to all SAC units on the development of their local smoking policy.
2. My 21 August 1987 policy letter on smoking in the workplace has been incorporated into Beale AFB supplement to AFR 30-27. In concert with the latest SAC message, the following additional smoking policy is effective immediately.
 - a. Smoking will be prohibited in all SAC vehicles.
 - b. The smoking prohibition does not, repeat does not apply to outdoor areas,

privately owned vehicles, or quarters (including rooms in dormitories and base billeting).

c. Designated smoking areas must be restricted to non-work areas (where non-smokers are required to frequent).

d. Within recreational and break areas, such as open messes, bowling alleys, and dayrooms, there may be designated smoking areas provided ventilation and air flow are adequate.

3. I remain the final approval authority for designated smoking areas in the non-work areas.

In late November 1989 the smoking room in Building 2539 was closed up and the employees were thereafter forced to smoke outside the building. The smoking room was closed without any notice being given to the Union. In connection with the closing of the smoking room, Ms. Gail Williamson, the Civilian Personnel Officer, testified that she discovered the existence of the smoking room when she visited the building for purposes of attending a meeting.^{3/} Inasmuch as she was under the impression that there were no inside smoking areas, she checked out the matter and was unable to find any record indicating that the smoking area in Building 2539 had been approved. Although not clear from the record, it appears that Ms. Williamson was responsible for the closure of the smoking room. Subsequently, according to Mr. Burkard, the Civil Engineering Squadron unsuccessfully attempted to get written authorization for the smoking room.

Following the closing of the smoking room Mr. Bright spoke with Ms. Williamson about the matter. Ms. Williamson informed him that since no commander had authorized the smoking room Respondent was under no obligation to negotiate with the Union. When Mr. Bright responded that the smoking room had been in existence for over two years, Ms. Williamson informed him that it was Respondent's position that since this was not a new policy, Respondent did not have to discuss the matter with the Union.

At a later date Mr. Bright obtained from a management representative a copy of a message from Ms. Williamson to

^{3/} According to Ms. Williamson, it was the first time she had ever been in the building.

Headquarters, SAC, dated September 14, 1989, concerning the smoking policy at the Air Force Base. The message which is entitled "Revised Smoking Policy Negotiations" states as follows:

1. The same policy applies to both military personnel and civilian employees on Beale AFB. Smoking will be outside buildings only; no inside smoking areas have been approved by the Wing Commander.
2. All designated smoking areas must be personally approved by the Wing Commander. To date, no designated smoking areas have been approved for any work areas. All inside work places at Beale are currently smoke free. It is not anticipated that any inside work places will be approved as designated smoking areas in the future.

Case No. 9-CA-00213

On February 1, 1990, Colonel Terry Fenstad, USAF, issued a memorandum to all Civil Engineering Squadron (CES) personnel regarding "CES Smoking Policy." The memo stated as follows:

1. In supporting the concept of a smoke-free work environment, as well as the positions of Gen Chain and the 14 AD Commander; the following smoking policy for CES is effective upon receipt of this letter.
 - a. Smoking will not be condoned in any Civil Engineering building.
 - b. Smokers in every building will propose to the CE Commander an outside location which will provide necessary shelter during inclement weather. Additionally, they will address a plan to keep the area free of smoking debris.
 - c. The selected smoking area will not be at a main entrance which is continually crowded by a congregation of smokers. Furthermore, chairs and benches will not be taken outdoors in conjunction with smoking activities.
2. Admittedly, this policy is intended to both provide a smoke-free work environment and discourage smoking in general. The diversity of Civil Engineering facilities

and operations makes enforcement of a more flexible yet fair policy nearly impossible.

The above quoted memorandum was posted and distributed to the unit employees in CES. Mr. Bright, although a CES employee, testified that he received a copy of the memorandum from one of his union stewards. Following receipt of the memorandum, Mr. Bright approached Ms. Williamson and asked her whether she had informed Colonel Fenstad that he was under an obligation to discuss this new policy with the Union. Ms. Williamson denied that it was a new policy.

In connection with the position of Ms. Williamson, i.e. that the February 1, 1990 memorandum was not a new policy, Respondent introduced an earlier memorandum dated October 28, 1987, signed by Colonel Goodman, who appears to be colonel Fenstad's predecessor. The memorandum reads as follows:

SUBJECT: CES Smoking Policy

TO: All CES Personnel

1. In supporting the concept of a smoke-free work environment as well as the positions of Gen Chain and the 9 SWR Commander; the following smoking policy for CES is effective upon receipt of this letter.

a. Smoking will not be condoned in any Civil Engineering building.

b. Smokers in every building will propose to the CE Commander an outside location which will provide necessary shelter during inclement weather. Additionally, they will address a plan to keep the area free of smoking debris. This action will be completed by 1 December 1987.

c. The selected smoking area will not be at a main entrance which is continually crowded by a congregation of smokers. Furthermore, chairs and benches will not be taken outdoors in conjunction with smoking activities.

2. Admittedly this policy is intended to both provide a smoke-free work environment and discourage smoking in general. The diversity of Civil Engineering facilities and operations make enforcement of a more flexible yet fair policy nearly impossible.

With respect to the October 28, 1987, memorandum, Mr. Burkard testified that he "probably drafted" the memorandum, but did not think that the Union was given a copy since "it was just a statement of policy . . . on something that had already been coordinated with the Union". Ms. Williamson testified that she first saw the memorandum in a file on the smoking policy but did not know if it was given to the Union or to the employees. Unit employee Rand Kirsham testified that while she was aware of the February 1990 memorandum, she had no recollection of the October 28, 1987 memorandum.

In March 1990 Mr. Bright received a complaint about the Respondent's smoking policy at the base hospital. According to Mr. Bright a Civil Engineering Squadron employee named Hoyt while working at the hospital was verbally reprimanded for smoking in a certain area outside the hospital. Mr. Bright was unaware of any policy regarding restrictions on outside smoking and had never been given notice of any policy wherein outside smoking areas had been established. It was only upon investigation of Mr. Hoyt's complaint that the policy regarding designated outside smoking areas was discovered.

The record indicates that the base hospital issued two different smoking notices which are dated June 5, 1989 and January 9, 1990 which read as follows:

SUBJECT: Smoking in Hospital Facilities

TO: All Sections

1. We must take the initiative to protect the health of all patients and hospital personnel. Smoking is not permitted in any hospital facility. Smoking is allowed only in the picnic area outside the hospital dining room. No smoking is permitted behind the trailers, on the loading dock, or outside the dental clinic.

2. This policy is effective immediately. HR 30-27 will be changed to reflect this guidance.

SUBJECT: Hospital Smoking Policy

TO: All Sections

1. In line with SAC directives we have an establishes smoking area on the hospital

grounds. It is being developed into a covered patio area. It is the only place smoking is permitted.

2. Smoking is not permitted:

In front of the hospital
Outside the Emergency Room
On the dock

3. It is the responsibility of each staff member to enforce this policy.

Mr. Bright denied that the Union was ever given notice of the smoking policy at the hospital and claimed that he only learned of the policy in March 1990. Lt. Colonel John Sheehan, Administrator of the 814th Strategic Hospital at the base, testified that he wrote both memos regarding the smoking policy at the hospital and admitted that he did not speak with the Union prior to issuing either memo and that the Union was not given a copy of either memo. It appears however, that the employees were given copies of the memos and were aware that they were only to smoke outside at the picnic area which is located at the rear of the hospital.

The Union filed the charge concerning the smoking policy for the Civil Engineering Squadron on February 14, 1990. Subsequently, the charge was amended on April 11, 1990 to include the smoking policy at the hospital.

Discussion and Conclusions

The General Counsel takes the position that Respondent violated Sections 7116(a)(1) and (5) of the Statute when it unilaterally changed a condition of employment, i.e. closing the smoking room in Building 2539, without giving the Union notice and the opportunity to bargain over the change prior to its implementation. In support of its position the General Counsel contends that the smoking room became a condition of employment by virtue of the fact that it had been in existence for several years with the knowledge and approval of management. In such circumstances, according to the General Counsel, it could not be unilaterally closed without bargaining. Additionally, the General Counsel takes the position that Respondent committed a further violation of the Statute when it unilaterally restricted outdoor smoking to certain designated areas outside the Hospital and the Civil Engineering Squadron Buildings without again giving notice to the Union and an opportunity to bargain

over the matter. To the extent that Respondent relies on Section 7118(a)(4)(A) of the Statute as a defense to its actions in designating an outside smoking area for the hospital, General Counsel would find such defense to be without merit since Respondent prevented the timely filing of the charge by failing to perform a duty owed to the Union, namely, putting the Union on notice of the change. Finally, the General Counsel would find an additional 7116(a)(1) and (5) violation predicated upon Respondent's action in bypassing the Union and soliciting input directly from the employees as to where the outside smoking areas should be.

Respondent, on the other hand, takes the position that with respect to the closing of the smoking area in building 2539 it was under no obligation to bargain with the Union since the Union by signing off on the August 1987 "policy" statement gave the Commander the sole power to approve smoking areas. Accordingly, since the smoking area in Building 2539 had not been approved by the commander, Respondent was under no obligation to bargain with the Union over its closing. In essence, Respondent takes the position that by executing the smoking policy in August 1987 the Union waived its right to bargain over the closing. With respect to Respondent's letter of February 1, 1990 concerning the restriction on smoking outside the CES Building, it is Respondent's position that it was under no obligation to bargain since the letter was merely a restatement of the smoking policy currently in effect by virtue of an earlier smoking policy letter issued on October 28, 1987 by the previous commander of the base. There being no change, Respondent argues that it was under no obligation to bargain. Respondent raises a similar argument with respect to the restrictions imposed on smoking outside the hospital. Additionally, with respect to the outside smoking policy for the hospital it is Respondent's further position that the charge based thereon is barred by Section 7118(a)(4) of the Statute since there was no showing that the Respondent "had acted to prevent the charging party from learning of the changes through concealment of the changes".

It is well settled, and there does not appear to be any dispute among the parties, that smoking policies involve conditions of employment and that any changes therein are, as a general rule, negotiable as to substance, impact and manner of implementation. Department of Health and Human Services, Public Health Service, Health Resources and Services Administration, Oklahoma City Area, Indian Health Service, Oklahoma City, Oklahoma, 31 FLRA 498.

It is also well settled that a condition of employment may be established by a past practice which has been consistently exercised for a substantial period of time with the knowledge and consent of management. Department of the Treasury, Internal Revenue Service, (Washington, D.C.), and Internal Revenue Service Hartford District (Hartford, Conn.), 27 FLRA 322.

Finally, it is well settled that an agency may not make changes in conditions of employment without first notifying the exclusive bargaining representative of the affected employees and affording it the opportunity to bargain over the changes. Department of Health and Human Services, et al., supra.

Applying the above cited principles of law to the facts of Case No. 9-CA-00114, I find that the Respondent violated Sections 7116(a)(1) and (5) of the Statute when it unilaterally and without prior notice to the Union closed down the smoking room in Building 2539. In reaching this conclusion I rely on the mutually corroborative testimony of Union President Bright and Deputy Base Civil Engineer Burkard to the effect that the smoking room in Building 2539 had been constructed pursuant to orders from management and been utilized as a smoking room by unit employees for a period of two years with the knowledge and consent of management. Accordingly, I further find that the smoking room in Building 2539 became a condition of employment which under normal circumstance could not be changed without first notifying the Union and affording it the opportunity to bargain with respect to substance, impact and the manner of implementation. However, in view of the August 21, 1987, policy on "Smoking in the Work Place" which had been agreed to by the Union, the continued existence of any smoking area was dependent solely on the "final approval" of the Base Commander.

While the Base Commander, by virtue of the August 21, 1987 agreed upon policy on "Smoking in the Work Place", was under no duty to bargain with the Union over the substance of his decision to close down the smoking room, absent a waiver, he was, however, under a duty to bargain with the Union with respect to the impact and manner of implementation of his decision to close down the smoking room. Having failed to give the Union prior notice of his decision to close the smoking room and an opportunity to bargain over the impact and manner of implementation of the closure, I find that the Respondent violated Sections 7116(a)(1) and (5) of the Statute.

With respect to the memorandum dated February 1, 1990, which was directed to the Unit employees in the Civil Engineering Squadron and which limited the areas outside the building where the unit employees could smoke, I find, in agreement with the General Counsel, that since the memorandum changed an existing condition of employment the Union was entitled to prior notice and an opportunity to bargain over the substance, impact and manner of implementation of the newly announced policy. In reaching this conclusion, it is noted that the smoking policy which had been agreed to and published by the Respondent on August 21, 1987, applied only to smoking in the work place. There were no restrictions on outside smoking. To the extent that Respondent claims that the February 1, 1990 memorandum was merely a restatement of any earlier memorandum issued by the prior Base Commander on October 28, 1987, and therefore not a change in a condition of employment, I find that the record evidence is insufficient to support Respondent's position. In this latter connection, Mr. Burkard, who believes that he was responsible for the October 28, 1987 memorandum, was of the opinion that the memorandum had not been served on the Union. Moreover, Mr. Burkard's testimony does not indicate whether or not the October 28, 1987 was distributed to the unit employees. Unit employee Kirsham who was aware of the February 1, 1990 memorandum testified that he had no recollection whatsoever of the earlier October 28, 1987 memorandum. Ms. Gail Sheehan, who had found the October 28, 1987 memorandum in the Respondent's files, testified that since she was not employed at Respondent's installation until 1988, she had no knowledge as to whether the memorandum had been posted or distributed to unit employees.

Based upon the foregoing analysis of the record testimony in connection with the October 28, 1987 memorandum, I find that there is insufficient evidence in the record to support Respondent's position that the February 1, 1990 memorandum was merely a restatement of the existing policy concerning outside smoking. Accordingly, I find that February 1, 1990 memorandum changed the working conditions of the unit employees assigned to Civil Engineering Squadron since it, for the first time, restricted the area where the unit employees could smoke outside the building. Having issued the memorandum without giving the Union prior notice and the opportunity to bargain over the substance, impact and manner of implementation of the charge, Respondent violated Sections 7116(a)(1) and (5) of the Statute.

With respect to the restrictions imposed by Respondent on smoking outside the hospital, the record indicates that

the first time the Union became aware that such restrictions existed was in March 1990 when a unit employee complained to President Bright that he had been verbally reprimanded for smoking outside the building in a nondesignated smoking area. It was only upon investigation of the employee's complaint that President Bright discovered that the Respondent had issued on June 5, 1989 and January 9, 1990 separate notices limiting the area outside the hospital where employees were allowed to smoke. With regard to the aforementioned notices, Lt. Colonel Sheehan, Administrator of the Hospital, testified that he wrote both notices, that he did not speak to the Union prior to issuing the notices, and that the Union was not given a copy of either of the notices.

Inasmuch as the Respondent failed to give the Union prior notice of the change and the opportunity to bargain over the substance, impact and manner of implementation, I find that Respondent violated Sections 7116(a)(1) and (5) of the Statute. Further, contrary to the contention of Respondent, I find that Section 7118(a)(4)(A) is not a bar to the instant complaint despite the fact that it is based on a charge filed more than six months after the issuance of the original notice restricting the area where unit employees could engage in outside smoking. While Section 7118(a)(4)(A) does state that any charges which are based upon conduct or events which occurred more than six months prior to the filing of the charges are untimely, it also provides for relief from such time limits when it can be shown that the charging party had been prevented by the Respondent agency or labor organization from timely discovering the alleged unlawful conduct by concealment or by failing to perform a duty owed the charging party. United States Department of Labor, 20 FLRA 296. Inasmuch as the record evidence clearly establishes that Respondent failed to perform the duty of giving the Union prior notice of the change embodied in the memorandum, I find that the charges are not barred by Section 7118(a)(4)(A) of the Statute. Aside from the fact that the record establishes that no formal notice of the change was given to the Union, there is also no evidence indicating that the Union was, or should have been, aware of the change from other sources. Cf. Veterans Administration and Veterans Administration Medical Center, Lynons, New Jersey, 24 FLRA 255. United States Department of the Treasury, IRS, and U.S. Department of the Treasury, IRS, Houston District, 20 FLRA 51.

Turning now to the last issue, namely the alleged bypass of the Union, I find, in agreement with the General Counsel,

that the February 1, 1990 memorandum entitled "CES Smoking Policy" issued to the Civil Engineering Squadron unit personnel constituted a bypass of the Union since it was an attempt to deal directly with the unit employees on a condition of employment. Paragraph 1(b) invited the "smokers in every building to propose to the Commander an outside location which will provide necessary shelter during inclement weather. Additionally, the smokers were to address a plan to keep the area free of smoking debris. Inasmuch as the Union is charged with the responsibility of representing the employees with respect to conditions of employment and had indicated its desire in the past to discuss the smoking issue, I find that Respondent's action in communicating directly with the employees on the smoking issue derogated the Union's status and constituted a bypass within the meaning of the Statute. United States Department of Transportation, FAA, 18 FLRA 48.4/

Having concluded that the Respondent violated Sections 7116(a)(1) and (5) of the Statute, it is hereby recommended that the Authority issue the following Order:

ORDER

Pursuant to section 2423.29 of the Federal Labor Relations Authority's Rules and Regulations and Section 7118 of the Federal Service Labor-Management Relations Statute, the Authority hereby orders that the 814th Combat Support Group, Beale Air Force Base, California shall:

1. Cease and desist from:

(a) Unilaterally changing working conditions of employees exclusively represented by American Federation of Government Employees, Local 2025, (hereinafter called the Union), by banning smoking in Building 2539 without first notifying the Union and affording it the opportunity to

4/ In IRS and IRS Indiana District Office, 31 FLRA 832, the Authority made it clear that all polling of employees is not prohibited. Rather, each case must be considered on its own facts in order to determine whether an agency's action constituted a bypass. Having considered all the circumstances surrounding the communication it directed to the employees, I find the Respondent did commit a bypass in violation of the Statute.

bargain concerning the procedures to be observed in implementing the change, and appropriate arrangements for employees adversely affected by the change.

(b) Unilaterally changing conditions of employment by establishing designated smoking areas outside various buildings located at Beale Air Force Base without providing the Union with prior notice and the opportunity to bargain concerning the substance of the change.

(c) Bypassing the Union by dealing directly with the unit employees concerning the establishment of outside smoking areas.

(d) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of 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) Restore the designated smoking area in Building 2539 that existed prior to November 1989.

(b) Rescind the memoranda which established designated smoking areas outside the hospital and Civil Engineering Squadron Building.

(c) Notify the Union of any intent to close down the existing smoking area in Building 2539 and upon request bargain with the Union concerning the procedures to be observed in implementing the change, and appropriate arrangements for employees adversely affected by the change in an existing condition of employment.

(d) Notify and, upon request, bargain with the Union with respect to any decision to designate smoking areas outside the hospital and the Civil Engineering Squadron Building.

(e) Post at its facilities in Beale Air Force Base, California, 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 and they 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.

(f) Pursuant to section 2423.30 of the Authority's Rules and Regulations, notify the Regional Director, Region IX, Federal Labor Relations Authority, 901 Market Street, Suite 200, San Francisco, California, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

Issued, Washington, DC, March 14, 1991.


BURTON S. STERNBURG
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 make unilateral changes in working conditions of employees exclusively represented by American Federation of Government Employees, Local 2025, AFL-CIO (hereinafter called the Union), by banning smoking in Building 2539 without first notifying the Union and affording it the opportunity to bargain concerning the procedures to be observed in implementing the change, and appropriate arrangements for employees affected by the change.

WE WILL NOT unilaterally change conditions of employment by establishing designated smoking areas outside various buildings located at Beale Air Force Base without providing the Union with prior notice and the opportunity to bargain over the change.

WE WILL NOT bypass the Union by dealing directly with unit employees concerning where outside smoking areas should be established.

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 restore the designated smoking area in Building 2539 that existed prior to November 1989.

WE WILL rescind the memoranda which established designated smoking areas outside the hospital and Civil Engineering Squadron Building.

WE WILL notify, and upon request, negotiate with the Union over any future decision to ban the designated smoking area in Building 2539.

WE WILL notify, and upon request, negotiate with the Union over any future decision to designate smoking areas outside the hospital and Civil Engineering Squadron Building.

(Activity)

Dated: _____ By: _____
(Signature) (Title)

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

If employees have any questions concerning this Notice or compliance with any of its provisions, they may communicate directly with the Regional Director of the Federal Labor Relations Authority, Region IX, whose address is: 901 Market Street, Suite 220, San Francisco, California 94103, and whose telephone number is: (415) 744-4000.