

Office of Administrative Law Judges

WASHINGTON, D.C. 20424-0001

DEPARTMENT OF VETERANS AFFAIRS

MEDICAL CENTER

MUSKOGEE, OKLAHOMA

Respondent

and

Case No.

AMERICAN FEDERATION OF GOVERNMENT

DA-CA-60197

EMPLOYEES, LOCAL 2250, AFL-CIO

Charging Party

Theodore W. Hanfelder	Representative of the Respondent
Saundra Harrison	Representative of the Charging Party
Kerry J. Simpson	Counsel for the General Counsel, FLRA
Before: GARVIN LEE OLIVER	Administrative Law Judge

DECISION

Statement of the Case

The unfair labor practice complaint alleges that Respondent violated section 7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute (the Statute), 5 U.S.C. §§ 7116(a)(1) and (5), by implementing a change in a parking regulation and parking plan without providing the Charging Party (Union) with notice and an opportunity to negotiate to the extent required by the Statute.

Respondent's answer contended that it met its bargaining obligations and agreement was reached with the Union on the parking plan at a meeting on December 14, 1995. Respondent denied any violation of the Statute.

For the reasons set forth below, it is concluded that a

preponderance of the evidence supports the alleged violation.

A hearing was held in Tulsa, Oklahoma. The Respondent, Charging Party, and the General Counsel were represented and afforded full opportunity to be heard, adduce relevant evidence, examine and cross-examine witnesses, and file post-hearing briefs. The Respondent and General Counsel filed helpful briefs. Based on the entire record, including my observation of the witnesses and their demeanor, I make the following findings of fact, conclusions of law, and recommendations.

Findings of Fact

The American Federation of Government Employees (AFGE) is the exclusive representative of a nationwide consolidated unit of employees appropriate for collective bargaining at the Respondent. The Union is an agent of AFGE for purposes of representing unit employees at Respondent's Muskogee, Oklahoma facility.

Partnership Agreement

The Union and the Respondent negotiated a Partnership Agreement dated January 20, 1995 to assist with resolution of labor management issues. This Partnership Agreement provided that a Muskogee Partnership Council (MPC or Partnership Council) composed of equal representatives from the Respondent and the Union would address mutual interests of labor and management. Decision making would be by consensus. The MPC was empowered to establish task forces and work groups as necessary to accomplish its work. Such groups would report back to the MPC for discussion and consensus. All agreements reached were to be distributed to each MPC member for review and comments prior to final signatures. The MPC decisions would initially be in the form of recommendations to the Director. Nothing was to preclude the parties from resolving formal disputes through third party intervention.

Parking Issue Referred

By letter dated April 26, 1995, Acting Medical Center Director David N. Pennington requested that the Partnership Council make recommendations to him for maximizing patient parking at the Respondent's facility. The Acting Director noted that numerous disabled, frail, and elderly veterans had to struggle with the walk to the buildings from the more remote parking lots, while some employees parked closer to the buildings.

Partnership Action

As a result of discussions over the parking issue at monthly MPC meetings in May, June, and July 1995, and consultation with engineering, security, and other offices at the Center, the MPC submitted a recommendation, which was approved by the new Medical Center Director Billy M. Valentine, proposing that employees voluntarily park at a gravel lot to allow patients access to closer lots. Notices were posted and placed in the daily bulletin requesting employees to allow patients to park in the lots closer to the hospital and noting the support of the MPC for this effort. Patients were also to be made aware, by signs and other means, that spaces closer to the building were being left vacant for their use.

The MPC continued to discuss and monitor the parking situation at meetings in August, September, and October 1995. At the August and September meeting the Chief of Security reported on the number of vacant spaces being left for patients and thanks were expressed to the staff for their cooperation.

New Partnership Work Group Convened

In October 1995 a small work group of the MPC began looking at the impact of anticipated construction on the entire parking situation because some spaces would be lost during the construction project. Management also felt that employees were drifting back to the close-in spaces. A draft of an interim parking policy developed by the work group was sent to the Director for review.

Director Refers New Draft

The Director concluded that the MPC draft did not address all of the appropriate considerations. At the Director's instructions, a revised draft was created by the Chief Engineer of the Center and circulated to the members of the MPC.

Partnership Considers New Draft

The revised draft, "Parking and Traffic Control Regulations," Medical Center Memorandum OO-23, November 14, 1995," was reviewed and discussed at a meeting of the MPC on November 20, 1995. The memorandum set forth the policy on parking and identified the priority in which

parking spaces would be allocated. Item 2.c. of the memorandum stated that, based on these priorities, the parking allocations were established as specified on an attached parking plan. Because the document made major changes to the prior regulation,⁽¹⁾ it was agreed that the Union could provide recommended modifications to the MPC by December 4, 1995 and a special meeting would be set up thereafter.

Union Comments on New Draft

By letter dated December 4, 1995 to the MPC, the Union submitted proposals and stated, "As this issue has been addressed several times in the Partnership Council with no apparent lasting resolution, consider this letter a formal demand to bargain, unless consensus is reached prior to or at the next scheduled Partnership Council meeting." Two of the Union's proposals were that parking space allocations be negotiated and that references to parking allocations being established as specified on an attached parking plan to the regulation be deleted.

The Respondent Revises Draft

The Respondent revised the November 14, 1995 draft of the Parking and Traffic Control Regulations by preparing another draft dated December 13, 1995. The December 13 draft did not adopt the Union's proposal that allocations be negotiated, but did include some of the Union's proposals, and it eliminated any reference to an attached parking plan. However, the parking allocation plan dated November 14, 1995 was again attached to the draft.

Partnership Work Group Meets

On December 14, 1995, Union president and Partnership Council member Sandra Fletcher, Union Steward Jackie Stafford, Chief of Human Resources Management Service Ron Meyerricks, and Chief Nurse and Partnership Council Co-chair Rosemary Westerman met as a working group of the MPC to discuss the December 13, 1995 draft of the Parking and Traffic Control Regulations. Ms. Westerman testified that all of the Union's concerns were addressed at this meeting and the parking allocation plan was part of the discussion at this meeting as it had been at all meetings. Ms. Westerman testified that the Union did not give specific agreement to the allocation of parking spaces on the plan, but never said that it was unacceptable, and she left the meeting feeling the parties were in agreement to issue the policy. According to Ms. Westerman, the only outstanding issue was whether it was appropriate to include reference to the 1972 local agreement in the memorandum, and it was agreed that researching this issue would not delay publishing the memorandum. Ms.

Fletcher testified that no final agreement was reached at this meeting on the policy or concerning the assignment of specific parking spaces as contained in the attached plan. According to Ms. Fletcher, the various parking plans prepared by the engineering department had been discussed in general terms in view of the construction going on, but no agreement was reached as to the specific spots or the number of parking spaces for employees, patients, and visitors and construction was still proceeding at this time.

The Respondent Issues Regulations and Parking Assignments

Subsequent to this meeting, the Respondent issued the final Parking and Traffic Control Regulations dated December 14, 1995 with a parking allocation plan attached to the policy as "Approved Parking Plan, January 3, 1996." The normal practice was for such regulations to be routed to the service chiefs and the Union for their signatures on a coordination routing slip before issuance. The written documentation was not initiated in this instance.

No Consensus by Partnership Council

The Respondent's final parking policy was discussed at the MPC meeting held on December 18, 1995. Ms. Westerman reported that the subgroup was in agreement concerning the issuance of the policy. However, Union vice president Fred Sheeler stated that, since Sandra Fletcher was not in attendance, he could not concur on the parking policy. Therefore, it was concluded that the MPC did not have consensus on this issue.

Regulations and Parking Assignments Implemented

The Union did not receive a copy of the December 14, 1995 policy with the attached parking plan until December 26, 1995.⁽²⁾ In a Daily Bulletin dated January 9, 1996 and through an electronic mail system, bargaining unit employees were informed by the Respondent of the new parking policy and a change in parking lot assignments which would be implemented January 10, 1996. The Union advised the Respondent on January 9, 1996 that, while most points in the proposed policy had been agreed upon at the December 14th meeting, it had not been forwarded for concurrence as was the usual practice, and the attached parking allocations had not been agreed upon.

Positions Taken by the Union and the Respondent

The Respondent implemented the changes on January 10, 1996, as scheduled. The Union and the Respondent exchanged a series of letters between January 9 to 24, 1996 and engaged in one meeting.⁽³⁾ The Union requested to bargain, contending that there had been neither the culmination of a consensus agreement by the Partnership Council nor an agreement with the Union over changes to the parking space allocations and parking policy. The Respondent's position was that the Union's concerns had been addressed in the December 14, 1995 meeting, the attachment regarding parking space allocations was part of the policy statement, and there was no need to route a final product to the Union prior to implementation since the Union's concerns were incorporated into the final policy. The Respondent refused to meet with the Union to bargain further and contended that it had met its labor relations responsibilities regarding the parking issue.

Since the parking policy and parking space assignments were implemented on January 10, 1996, close-in parking next to the hospital and in the paved northeast lot has been restricted to patients. Employees have been required to park behind the hospital or in the remote lower gravel lot. As of the date of the hearing, the Respondent was planning to negotiate a long-term lease for the gravel lot. In that event, future plans were to regrade and pave the lot and install lighting.

Discussion and Conclusions

Duty to Bargain Parking

It is well established, and not in dispute here, that the provision of parking facilities for bargaining unit employees and the distribution of parking places among employees are conditions of employment within the meaning of section 7103(a)(14) of the Statute, and management is obligated to give the exclusive representative the opportunity to bargain over the substance, impact, and implementation of changes in such parking arrangements. Immigration and Naturalization Service, Los Angeles District, Los Angeles, California, 52 FLRA 103 (1996); U.S. Department of Labor, Washington, D.C., 44 FLRA 988 (1992); United States Immigration and Naturalization Service, 43 FLRA 3 (1991).

Position of the Parties

Counsel for the General Counsel contends that the Respondent's failure

to complete bargaining with the Union prior to the implementation of changes to the Parking and Traffic Control Regulations and the parking assignments constituted a violation of section 7116(a)(1) and (5) of the Statute. The General Counsel argues that the Respondent failed to achieve consensus through the efforts of the Partnership Council or through agreement by formal bargaining with the Union and took final action by issuing and later implementing the Parking and Traffic Control Regulations and specific parking assignments without bargaining with the Union to the extent required by the Statute.

The Respondent defends on the basis that it reached full agreement with the Union on December 14, 1995 and that its efforts, including the Director's discussions with the Union, were not merely in the context of the Partnership Council but constituted good faith bargaining. The Respondent also contends that the Union received a copy of the final regulation on December 14, 1995, and any request to bargain should have been made within ten days by December 24, 1995.

No Agreement Was Reached

I credit the testimony of Ms. Fletcher that the parking allocation plan was not agreed to at the December 14, 1995 meeting. The record reflects that this meeting was of, or was reasonably considered by the Union to be, a Partnership Council subgroup or task force which was responsible to report back to the full Partnership Council for consensus. The record reflects that the Partnership Council had been given initial jurisdiction of the parking matter. Under the Partnership Council agreement, all agreements reached were to be distributed to each Partnership Council member for review and comments prior to final signatures. This was not done in this instance, and no consensus was reached at the December 18, 1995 meeting of the Partnership Council. The Union had made it clear in its December 4, 1995 letter that it was demanding to bargain unless consensus was reached through the Partnership Council. Further, the December 13 draft memorandum, which was the main topic of discussion at the December 14 meeting, eliminated any reference to an attached parking allocation plan, and the memorandum does not specifically state who will make the space allocations and reallocations based on the priorities set forth in the memorandum. This is further evidence that there was no meeting of the minds regarding the specific allocation of spaces and no agreement in the collective bargaining sense.

Contrary to the Respondent's position, I have found that the Union did not receive a copy of the final policy until December 26, 1995 and was not aware of an implementation date of January 10, 1996 until notice was provided on January 9, 1996 to all bargaining unit employees. Unlike the situation in the past, the Union had not been asked to sign a coordination routing slip before issuance of the memorandum. When the Union received word that the policy and parking allocations would be

implemented on January 10, 1996, the Union advised the Respondent that agreement had not been reached and again requested to bargain. The Respondent implemented the change as scheduled.

The Violation

It is concluded that the Respondent violated 7116(a)(1) and (5) by implementing changes to the Parking and Traffic Control Regulations and the parking assignment plan for unit employees without completing bargaining with the Union over the decision and its impact and implementation.

The Remedy

Where management makes a unilateral change regarding a negotiable condition of employment, the effectuation of the purposes and policies of the Statute requires the imposition of a *status quo ante* remedy, absent special circumstances, in order not to render meaningless the mutual obligation to negotiate concerning changes in conditions of employment. E.g., Veterans Administration, West Los Angeles Medical Center, Los Angeles, California, 23 FLRA 278, 281 (1986). The General Counsel requests that the Respondent be ordered to reinstate the past practice regarding parking, both with respect to the policy and parking assignments. The Respondent claims that close proximity parking for aged, frail veterans, some in wheelchairs, or on crutches, or oxygen, with such ailments as heart related diagnoses, is necessary to accomplish its mission, and they should not have to endure the prospect of a long walk from remote lots.

The Respondent's justification for not imposing a *status quo ante* remedy, to make entrance to the hospital easier for such patients, is no different from the justification for its proposal when first referred to the Partnership Council for recommendations in April 1995. The record reflects that the past practice, including the system agreed to by the Partnership Council in July 1995, whereby employees would voluntarily park in the remote lots and leave the closer lots for patients, was working, although not perfectly, with the aid of signs announcing this policy for the benefit of all concerned. The staff was commended for its cooperation at one time. It appears that a major impetus for change from that voluntary system was the construction project which reduced the number of parking spaces. This project may now be further along, thus freeing up additional spaces. Accordingly, I do not find that the record supports a finding of special circumstances at this time which would justify not imposing a *status quo ante* remedy.

Based on the above findings and conclusions, it is 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 Statute, it is hereby ordered that the Department of Veterans Affairs Medical Center, Muskogee, Oklahoma shall:

1. Cease and desist from:

(a) Changing employee parking policies and employee parking assignments without first completing bargaining with the American Federation of Government Employees, Local 2250, AFL-CIO, the employees' exclusive collective bargaining representative, concerning any proposed change in such policies and assignments.

(b) In any like or related manner, interfering with, restraining or coercing bargaining unit 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 Statute:

(a) Rescind the changes in the policy governing employee parking and employee parking assignments implemented on January 10, 1996 and return to the policy in effect prior thereto.

(b) Notify and, upon request, bargain with the American Federation of Government Employees, Local 2250, AFL-CIO, the employees' exclusive collective bargaining representative, concerning any proposed change in policy regarding employee parking and employee parking assignments.

(c) Post at its facilities 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, 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 Regulations, notify the Regional Director, Dallas Region, Federal Labor Relations Authority, in writing, within 30 days from the date of this Order as to what steps have been taken to comply.

Issued, Washington, DC, April 14, 1997

GARVIN LEE OLIVER

Administrative Law Judge

NOTICE TO ALL EMPLOYEES

POSTED BY ORDER OF THE

FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the Department of Veterans Affairs Medical Center, Muskogee, Oklahoma violated the Federal Service Labor-Management Relations Statute and has ordered us to post and abide by this notice.

We hereby notify our employees that:

WE WILL NOT unilaterally implement a change in conditions of employment, including the Parking and Traffic Control Regulations and parking assignments for bargaining unit employees, without first notifying the American Federation of Government Employees, Local 2250, AFL-CIO, the exclusive representative of our employees, and fulfilling our obligation

to bargain over the changes in conditions of employment.

WE WILL NOT, in any like or related manner, interfere with, restrain or coerce employees in the exercise of rights assured them by the Federal Service Labor-Management Relations Statute.

WE WILL rescind the Parking and Traffic Control Regulations issued December 14, 1995 and implemented January 10, 1996 along with the parking assignments implemented January 10, 1996 and return to the policy in effect prior thereto.

WE WILL notify and, upon request, bargain with the American Federation of Government Employees, Local 2250, AFL-CIO, the employees' exclusive collective bargaining representative, concerning any proposed change in policy regarding employee parking and employee parking assignments.

(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 its provisions, they may communicate directly with the Regional Director of the Federal Labor Relations Authority, Dallas Regional Office, whose address is: 525 Griffin Street, Suite 926, LB 107, Dallas, Texas 75202 and whose telephone number is: (214) 767-4996.

1. At the time, the parties were operating under "Parking and Traffic Control Regulations", Medical Center Memorandum 00-23, which was dated January 27, 1995. The past practice concerning changes to parking spaces and assignments had been that the Respondent would provide written notice to the Union and an opportunity to negotiate over changes. The record reflects several written concurrences by the Union to the Respondent's parking proposals during the 1980 - 1988 time period.

2. Ms. Westerman testified that her secretary took a copy of the December 14, 1995 regulation to the Union office, possibly on December 15, 1995. The secretary did not testify. I credit Ms. Fletcher's testimony which is supported by a copy of the regulation bearing a Union received stamp of December 26, 1995.

3. Shortly after Director Valentine arrived in June 1995 he met with Union president Fletcher about two or three times a week "to discuss issues before they were blown out of proportion." They sometimes remarked on the status of the parking matter which had been referred to the Partnership Council. During one meeting, Fletcher referred to a proposed map and questioned the need for doctors to have reserved spaces. Valentine explained that it is the industry-wide standard for physicians to have reserved parking, and Fletcher accepted this observation. Also, after the policy was issued, the Union had one parking place. In commenting on the lack of negotiations, Fletcher told Valentine, "Do you think I would have negotiated away three of my own parking spaces?" Following this conversation, Valentine arranged for the Union to have another space. I do not agree with the Respondent that these discussions constituted negotiations leading to an agreement on the parking policy or parking allocations.