

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C. 20424-0001

MEMORANDUM

DATE: AUGUST 31, 2005

TO: The Federal Labor Relations Authority

FROM: SUSAN E. JELEN
Administrative Law Judge

SUBJECT: DEPARTMENT OF THE AIR FORCE
AIR FORCE MATERIEL COMMAND
SPACE AND MISSILE SYSTEMS CENTER
DETACHMENT 12, KIRTLAND AIR
FORCE BASE, NEW MEXICO

Respondent

and

Case No. SF-CA-04-0502

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 2263, AFL-CIO

Charging Party

Pursuant to section 2423.34(b) of the Rules and Regulations 5 C.F.R. § 2423.34(b), I am hereby transferring the above case to the Authority. Enclosed are copies of my Decision, the service sheet, and the transmittal form sent to the parties. Also enclosed are the transcript, exhibits and any briefs filed by the parties.

Enclosures

UNITED STATES OF AMERICA
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DEPARTMENT OF THE AIR FORCE AIR FORCE MATERIEL COMMAND SPACE AND MISSILE SYSTEMS CENTER DETACHMENT 12, KIRTLAND AIR FORCE BASE, NEW MEXICO Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 2263, AFL-CIO Charging Party	Case No. SF-CA-04-0502

NOTICE OF TRANSMITTAL OF DECISION

The above-entitled case having been heard before the undersigned Administrative Law Judge pursuant to the Statute and the Rules and Regulations of the Authority, the undersigned herein serves her Decision, a copy of which is attached hereto, on all parties to the proceeding on this date and this case is hereby transferred to the Federal Labor Relations Authority pursuant to 5 C.F.R. § 2423.34(b).

PLEASE BE ADVISED that the filing of exceptions to the attached Decision is governed by 5 C.F.R. §§ 2423.40-41, 2429.12, 2429.21-2429.22, 2429.24-2429.25, and 2429.27.

Any such exceptions must be filed on or before **OCTOBER 3, 2005**, and addressed to:

Office of Case Control
Federal Labor Relations Authority
1400 K Street, NW, 2nd Floor
Washington, DC 20005

SUSAN E. JELEN
Administrative Law Judge

Dated: August 31, 2005
Washington, DC

FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C.

DEPARTMENT OF THE AIR FORCE AIR FORCE MATERIEL COMMAND SPACE AND MISSILE SYSTEMS CENTER DETACHMENT 12, KIRTLAND AIR FORCE BASE, NEW MEXICO <p style="text-align: center;">Respondent</p>	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 2263, AFL-CIO <p style="text-align: center;">Charging Party</p>	Case No. SF-CA-04-0502

John Pannozzo, Jr., Esquire
For the General Counsel

Major Lawrence Lynch, Esquire
For the Respondent

Michelle Sandoval
For the Charging Party

Before: SUSAN E. JELEN
Administrative Law Judge

DECISION

Statement of the Case

This case arose under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the United States Code, 5 U.S.C. § 7101, *et seq.* (the Statute), and the Rules and Regulations of the Federal Labor Relations Authority (hereinafter FLRA/Authority), 5 C.F.R. Part 2423.

Based upon an unfair labor practice charge filed by the American Federation of Government Employees, Local 2263, AFL-CIO (Union or Charging Party), a complaint and notice of hearing was issued by the Regional Director of the San Francisco Regional Office of the Authority. The complaint alleges that the Department of the Air Force, Air Force Materiel Command, Space and Missile Systems Center, Detachment 12, Kirtland Air Force Base, New Mexico

(Respondent) violated section 7116(a)(1) and (5) of the Statute by temporarily relocating one bargaining unit employee while her office was being renovated and by relocating another bargaining unit employee and causing him to vacate a second work location.¹ The complaint also alleges that the Respondent implemented a reorganization of the Mission Support Directorate, which caused the relocation of various employees. These actions were taken without giving the Charging Party advance notice and an opportunity to bargain to the extent required by the Statute. The complaint further alleges that the Respondent violated section 7116(a)(1) and (8) of the Statute by conducting a formal meeting within the meaning of section 7114(a)(2)(A) of the Statute without affording the Charging Party notice and an opportunity to be represented. (G.C. Ex. 1(c)) The Respondent timely filed an Answer denying that it violated the Statute. (G.C. Ex. 1(d))

A hearing was held in Albuquerque, New Mexico on December 9 and 10, 2004, at which time all parties were afforded a full opportunity to be represented, be heard, examine and cross-examine witnesses, introduce evidence and argue orally. The General Counsel and the Respondent filed timely post-hearing briefs which have been fully considered.

Based upon 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

The Air Force Materiel Command, Space and Missile Systems Center, Detachment 12, Kirtland Air Force Base, New Mexico, is an activity of the United States Air Force, which is an agency within the meaning of 5 U.S.C. § 7103(a)(3). (G.C. Exs. 1(c) and 1(d))²

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At the hearing, paragraph 12 of the complaint was amended to reflect that bargaining unit employee Helwig was required to vacate Room 132 in Building 412. (Tr. 5-6)

2

The original transcript is referenced as Tr., followed by the appropriate page number. A supplemental transcript was prepared on January 27, 2005, and contains testimony of Lt. Col. Newberry that was omitted from the original transcript; it is referenced as Supp. Tr., followed by the appropriate page number. General Counsel Exhibits are referenced as G.C. Ex. and the appropriate exhibit number. Joint Exhibits are referenced as Jt. Ex. and the appropriate exhibit number. All dates are in 2004 unless otherwise specified.

The American Federation of Government Employees (AFGE), AFL-CIO is a labor organization under 5 U.S.C. § 7103(a)(4) and is the exclusive representative of a nationwide bargaining unit of employees of the Department of the Air Force, Air Force Materiel Command. The American Federation of Government Employees, Local 2263, AFL-CIO is an agent of AFGE for the purpose of representing employees at the Space and Missile Systems Center, Detachment 12, Kirtland Air Force Base. (G.C. Exs. 1(c) and 1(d)) The Charging Party and the Respondent are parties to a collective bargaining agreement (CBA) covering employees in the bargaining unit. (Jt. Ex. 1; Tr. 8-9) Michelle Sandoval is the Charging Party's Local President; Jason Robertson is the Charging Party's Detachment 12 representative. (Tr. 29-30, 50) Geleta Smith, a Detachment 12 employee, is a Steward for the Charging Party. (Tr. 50).

Detachment 12 is a geographically-separated part of the Space and Missile Systems Center at Los Angeles, California. It has been located at Kirtland Air Force Base since the mid-1990s. It provides space flight and access to space for the research and development community. (Tr. 271) The main administrative complex is a series of five conjoined buildings that are all connected with interior climate controlled walkways. (Supp. Tr. 4) Detachment 12 has approximately 393 personnel, including civilians, contractors and military. (Supp. Tr. 4-5)

The Mission Support Directorate (MSD) within Detachment 12 provides management support, technical services concerning computer networks, facilities, training and serves as a liaison regarding manpower and personnel matters in support of Detachment 12's research and redevelopment test and evaluation mission. (Tr. 22) Currently, there are four divisions within MSD: (1) Information Technology; (2) Manpower/Personnel and Training; (3) Facilities; and (4) Program Security. (G.C. Ex. 13; Tr. 23)

Socha Office Remodeling

Barbara Socha has served as Detachment 12's Security Officer for the past two and a half years. (Tr. 122) Socha works in the Research Development Center, a controlled area, and is responsible for physical and communications security. (G.C. Ex. 9; Tr. 122-123) Her function is to administer the physical, information, personnel and communications security programs for the Research, Development and Engineering Support Complex, Technical Services Division for the Detachment 12 MSD. (G.C. Ex. 9) Her duties include managing the overall security program, serving as the crime

prevention monitor, assisting in the design and installation of protective systems, and monitoring all controlled areas to insure compliance with classified information policies. (G.C. Ex. 9, page 2) She is responsible for on site security and control access into the facility and essentially serves as a guard. (Supp. Tr. 6-7)

Prior to February 2004, Socha worked alone in Building 410, Room 102, where she prepared permanent badges. (Tr. 124-125, 128-130) The adjacent Room 101 was a separate office used as a self-service log-in area where visitors could obtain their badges. (Tr. 127-128, 380-381) The visitor's log-in area contained a sign-in sheet, visitor's briefing statement and badge board. (Tr. 127-129, 334-335)

In February, Socha was directed to temporarily relocate to Building 412, Room 116 for about three weeks while the Respondent remodeled her office space. (Tr. 125) Socha helped design the new work space, at the request of Lt. Col. Santacroce, Director, MSD. The two offices were combined into a single office by removing the wall in the center and then putting in a single door and eliminating the two previous entries. The office space was redesigned to accommodate three additional security/contracting personnel. The office was also given new carpet and wallpaper. (G.C. Ex. 6; Tr. 95, 125-126, 135-136; Supp. Tr. 6-7)

During the three week period that she was in Building 412, Room 116, Socha frequently had to return to Building 410 in order carry out her regular duties: to prepare a badge, to reprogram someone for access, or to escort contractors in the controller area for one to two hours per day. (Tr. 126-127) Socha shared her temporary office with Gary Fain, a bargaining unit employee, and a contractor. (Tr. 125)

After the remodeling, Socha returned to Building 410, Room 101. (Tr. 125) The centralized, remodeled work area contains one office instead of two, three additional seats for contract personnel and two new counters. (G.C. Ex. 6; Tr. 96, 128) The visitor's sign-in log, briefing statement and badges were relocated to the counter in front of Socha's desk. (G.C. Ex. 6; Tr. 334-335)

After the remodel, Socha became responsible for monitoring the visitor's sign-in log, providing the visitor's briefing and issuing their badges. (Tr. 129, 381) The remodeling of her work area resulted in changes to Socha's badging functions. (Supp. Tr. 7-8) The contractor, Mr. Kempton, also badges in visitors into the work area. (Tr. 373) Socha is responsible for ensuring that Kempton

properly discharges his badge duties. (Tr. 374) Further, the redesigned work area does not afford Socha the privacy that she had in her former office. (Tr. 136)

In addition, about a month after the remodeling, a 37 inch flat screen television was installed on the wall directly in front of Socha's desk. (Tr. 141-142, 379) Newberry stated that one of the reasons for the remodeling was to place the LCD screen in Socha's office. (Supp. Tr. 10) Socha did not request the television, although she did have input into the size of the screen. (Tr. 380, 382) The television flashes images in three second intervals from eight interior and eight exterior cameras. (Tr. 130, 329-330) Socha was assigned the responsibility for monitoring the security camera images during the day by the Director of Vehicle Operations (VO) Col. Miller. (Tr. 130, 379-380) The Mission Control Room turns off its security monitors while Socha is on duty thereby leaving her the responsibility for insuring security for the area. (Tr. 142-143, 379, 331)

The Charging Party was not provided advance notification or afforded the opportunity to bargain over the aforementioned changes that affected Socha. (Tr. 38, 324, 360-361) The Respondent did not notify or discuss the office remodeling with the Charging Party.

Prior to the remodeling, Socha was not responsible for issuing visitor's badges or for monitoring the eight interior and eight exterior security cameras. (Tr. 127-130) These security cameras were monitored by mission controllers in the Mission Control Room, which was located in Building 402. (Tr. 142, 379) Newberry testified that there was a 10 to 12 inch monitor in Socha's office prior to the remodeling and that Socha was assigned that security responsibility. (Tr. 330-332) However, there were no television monitors in Room 102 prior to the remodeling and Socha was not responsible for that task. (Tr. 138, 381-382)³

Helwig Office Relocation

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I credit Socha's testimony regarding the changes in her job duties as a result of the remodeling. In particular, I credit her testimony that she was not responsible for the monitoring of the 16 security cameras prior to the installation of the large screen television in her new work space. Her testimony in this regard was consistent and forthright regarding the effects of the changes.

Larry Helwig has served as Detachment 12's Training Manager, a bargaining unit position, since April 1998. (Tr. 144, 234, 244) He currently works in the Manpower/Personnel and Training Division and was previously in Management Support prior to the reorganization. (G.C. Exs. 4 and 13) His direct supervisor is Kathie Dixon. (Tr. 145) He is responsible for training employees in all seven directorates and ensures that all Detachment 12 employees meet the mandatory training requirements needed to further their careers. (Tr. 144, 343) He maintains a data base that captures everyone's training records. Helwig provides his training services to military, civilian and contracting personnel. (Tr. 144; Supp. Tr. 16-17)

Prior to February, Helwig's office was located in Building 413, Room 254. (Tr. 145) In February, Helwig's office was moved to Room 247. (Tr. 145-146, 340; Supp. Tr. 18-19) According to Newberry, VO had a demand for additional office space, and he gave them Helwig's office. (Supp. Tr. 19) Dixon informed Helwig of the office move on a Thursday and directed him to have his belongings moved into Room 247 by the following Monday. (Tr. 146) Helwig's regular day off is Friday, so he essentially had one day to move. The Respondent did not provide any assistance with the move. (Tr. 146) According to Helwig, it took the Respondent approximately two weeks to install Helwig's computer, telephone and fax. (Tr. 146-147) Due to the smaller size of Room 247, Helwig's training videos and equipment had to be stored in a separate office space and there was also less filing space. (Tr. 147-148)

Helwig Ordered to Vacate Room 132

As part of his duties as Training Manager, Santacrocce had requested that Helwig provide training services to VO employees. (Tr. 40-41, 148, 244; Supp. Tr. 22) The mission of VO is to recover satellite telemetry and to communicate with orbiting satellites. (Tr. 183) Beginning in January 2002, Helwig used Room 132 in Building 412 as a second office from which to provide training services to VO. (Tr. 40-41, 148, 244; Supp. Tr. 22) Room 132 was in close proximity to VO, although in a separate area from Helwig's assigned office. (Tr. 40) According to Helwig, in about March-April 2002, Santacrocce and Dixon agreed that Helwig would evenly split his work time between training employees in VO and his Management Support duties in Detachment 12. (Tr. 150, 191, 412-413) Dixon asserted, however, that Helwig was to perform the VO training in his spare time as long as it did not interfere with his regularly assigned duties. (Tr. 246-247) Dixon asserted that Helwig began neglecting his Detachment 12 training programs. Helwig

admitted that he spent more than half his work time performing VO training activities. (Tr. 413)

Helwig was given one of the two desks in Room 132. This room contained computer equipment, videos, files and training plans used to support the program. (Tr. 150) Helwig also used the room to provide face-to-face training assistance to the new acquisition personnel. (Tr. 150-151) Helwig also used Room 132 to perform his Detachment 12 training duties, namely, updating the data base. (Tr. 268-269) Moreover, Helwig dealt with approximately eight lieutenants on training matters while based in the area. (Tr. 41) Helwig is still listed as the Chief Training Manager on the hallway bulletin board. (Tr. 115, 148)

After Helwig was ordered to vacate Room 132 in February, he was forced to communicate with the group by telephone and electronic mail. (Tr. 151, 193, 238, 406-407) The use of telephone and email to communicate training information was far less effective than face-to-face dealings. (Tr. 151-152) In addition, Helwig would lose productive work time whenever he was stopped in the hallway to answer a training related question or had to retrieve certain training materials from his office. (Tr. 152) Further, the files and training materials that were previously stored in Room 132 were later moved to Room 247, which was already strained for storage space. (Tr. 152)

On September 8, Newberry barred Helwig from going to the VO. (Tr 273-274) Helwig no longer has a need to use Room 132 for VO training. (Tr. 181)

The Charging Party was not provided advance notification or afforded the opportunity to bargain over the above changes that affected Helwig. (Tr. 41, 324, 360-361)

April 16, 2004 All-Hands Meeting

On April 12, Commander Neumeister forwarded an email message, entitled MS All-Hands Call, to the Director of MSD Santacroce and the Deputy Director of MSD Captain Rebulanan, which stated that the Commander would address all MSD personnel on Friday, April 16, at 10:00 a.m. (G.C. Ex. 14) Employees who were scheduled to be on RDO (regular day off) were requested to contact Santacroce. (G.C. Ex. 7; Tr. 42, 44) The message was forwarded to all fourteen bargaining unit employees later that same day. (G.C. Ex. 7; Tr. 42, 132, 153, 155, 348-350) The Charging Party was not given prior notice of the All-Hands meeting. (Tr. 49-50)

On April 16, the All-Hands meeting took place at 10:00 a.m. at the Commander's Conference Room, which is outside the MSD work area. Neumeister, the highest ranking official at Detachment 12, conducted the meeting. Also present at the meeting were the six highest ranking management officials in MSD: Deputy Commander Newberry; Chief Engineer K. Beckstead; MSD Director John Santacroce; MSD Deputy Director Rene Rebulanan; and Division Chiefs Cheryl Jackson and Kathie Dixon. (Tr. 45, 47-48, 132, 155-156, 356, 364-365)

Approximately eleven unit employees attended the meeting. A number of employees were required to cancel their RDOs in order to attend the meeting. (G.C. Ex. 13; Tr. 51, 56, 99-101, 131, 153, 312, 367)

The Commander began the meeting by announcing that there would be a MSD reorganization and realignment. He showed the new organizational chart for MSD and explained how the organization was expanding from two divisions to four divisions. He also explained that management was changing and announced the new division chiefs. (Tr. 53-54, 293-294, 352).

The Commander also informed the employees that the organization would be co-locating functions in the same division. While he did not speak in any detail on any particular individuals moving offices, he indicated that employees would be moved in order to centralize them with their new division. (Tr. 350) No time frame was discussed of when the office changes would be effective, but there was an indication that in the future there would be some relocations so that people with like skills and like jobs could be co-located. (Tr. 159) The reorganization and new management structure were effective April 19. (Tr. 351-352).

The Commander asked if there were any questions. According to Newberry, there were no additional questions. According to Smith, the Commander answered some questions, but she did not give any details as to what was asked. (Tr. 57-58) After the Commander was finished, he passed the meeting over to Santacroce. The meeting continued with various management officials discussing the reorganization. (Tr. 102, 158-160) The meeting lasted about one hour. (Tr. 133, 156)

Newberry estimated that the Commander spoke for 15 to 20 minutes. The General Counsel's witnesses estimated he spoke for 30 to 40 minutes. Newberry left when the Commander left, but was aware that the meeting continued,

with other management officials speaking to the employees.
(Tr. 293)

Reorganization/Realignment

In December 2003, the Respondent determined that the management team for MSD was not functioning effectively. (Tr. 326) Captain Rebulanan was commissioned with conducting an in-house study and made certain recommendations regarding the management structure. The Commander, of course, was free to either accept or reject those recommendations; the recommendations he approved were set forth, in part, in G.C. Ex. 13. (Tr. 328) G.C. Ex. 13 indicates that there are 14 civilian billets for MSD. (Tr. 312) It further notes there would be significant changes relating to the number of divisions, training, program security and executive assistant. (Tr. 317)

The Respondent began implementing the reorganization and realignment on Monday, April 19, following the announcement at the April 16 All-Hands meeting. Prior to April 19, there were two divisions in Detachment 12: Technical Services and Management Support. (Tr. 25) After April 19, there were four divisions: Information and Technology; Manpower, Personnel and Training; Facilities; and Program Security. (Tr. 23) With regard to bargaining unit employees, all of the employees remained in MSD and their duties remained intact, but their supervisory chains were generally altered. There were approximately 14 bargaining unit employees in MSD and more than half of those had a change in supervision as a result of the reorganization. (G.C. Exs. 2 and 3; Tr. 51, 55, 57, 280-285, 353, 354) Approximately six employees were also relocated at some time after the April 19 meeting. (Tr. 55, 57)

Changes in Duties

The General Counsel asserts that as a result of the reorganization, two employees, Larry Helwig and Geleta Smith, experienced significant changes in their job duties. There is also evidence that Jeanette Myers had changes to her job duties.

Larry Helwig

As part of the reorganization/realignment, Helwig's office was moved from Room 247 to Room 216. (Tr. 161, 340, 354, Supp. Tr. 20) It took approximately two weeks for all the equipment to be functional. (Tr. 161) This office move was effectuated for the purpose of consolidating the

remaining training personnel, Helwig and Staff Sgt. Bonner, in the MSD. (Tr. 82) The new office is much bigger, with exterior windows. (Supp. Tr. 21)

Further, as part of the reorganization, co-worker Jeannette Myers was reassigned from Management Support to Information Technology, thus leaving Helwig and Bonner to handle all of the training duties. (G.C. Exs. 3, 4, 13; Tr. 161-162) Thereafter, Helwig was told that he could no longer perform training duties on behalf of VO, such as planning rehearsals for satellite launches, because of Myers' move. (Tr. 165-166) Instead, the Respondent directed Helwig to devote all of his work time tracking and coordinating the organization's mandatory training requirements. (Tr. 166) As a result, Helwig devotes nearly all of his time performing those tasks associated with Non-Critical Duty 5, which requires that Helwig "Accomplish special projects related to training and education matters, but not necessarily within the employee's speciality area." (G.C. Ex. 10; Tr. 168)⁴

After Bonner's departure in June, Helwig became solely responsible for tracking the individual development plans for not only the military and civilians, but also for the contractors. (Tr. 171-172, 243; Supp. Tr. 17-18) Prior to the reorganization, Helwig was only responsible for tracking the individual development plans for about 205 military and civilian personnel involving about 3000 mandatory training requirements. (Tr. 169) The enlisted personnel were responsible for tracking the individual development plans for the contractors. (Tr. 187) After Bonner left, the Respondent assigned the new contractor responsibilities to Helwig thereby adding another 289 individuals and 3400 training events to his workload. (Tr. 170-171) Helwig now prepares four spread sheets covering 493 individuals and about 6400 training events. (Tr. 173, 250-251) The

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According to Helwig's core document (G.C. Ex. 10), the primary purpose of his position is to serve as a training specialist responsible for developing and evaluating training materials. Duty 1 is to design ". . . complete, full-length training courses, or major course units along subject-matter or functional specialty areas" Duty 2 is to review ". . . existing training material and determines its usefulness or need to develop new materials. . . ." Duty 3 is to plan and conduct "a wide range of validity and reliability studies and surveys of training course design and materials. . . ." Duty 4 is to evaluate "contractor developed training courses/materials for accomplishment of objectives to satisfy both contractual and training requirements. . . ." (G.C. Ex. 10)

Respondent never provided Helwig with formal computer training regarding the preparation of spread sheets. (Tr. 173-174, 191)

Geleta Smith

Geleta Smith is an Information Technology Specialist, who is generally responsible for computer security, communication security, mission security, inspections, acquisition systems protection and program protection planning. (Tr. 21) As a result of the reorganization, Smith's division and supervisor was changed from Division Chief Cheryl Jackson in Technical Services to Newberry in Program Security. (G.C. Exs. 3, 4, 13) Newberry became Smith's acting supervisor until the permanent Division Chief Dever Langhoff reported in August. (Tr. 72)

On May 7, Newberry and Smith met to review her core document. There is no evidence that the core document was changed in any fundamental manner at this time, although there were some minor changes/corrections. (G.C. Ex. 2) One deletion to Duty 4, involving serving as alternate operations security manager, apparently occurred in February 2003. (G.C. Ex. 2) Newberry testified that there were no other changes to Smith's job, other than he became her direct supervisor. (Tr. 287, 288)

Smith testified at length, however, regarding her perceived changes to her responsibilities. With regard to Duty 4, Smith testified that after the reorganization the Respondent removed leadership roles and she was no longer designated as Detachment 12's primary focal point for acquisition systems protection or the lead in the development of the organization's Program Protection Plans. (G.C. Ex. 2; Tr. 60-61)

After the reorganization, Smith has been assigned the added responsibilities of serving as the acquisition point of contact for the Air Force Base Command Inspector General and, as of December 8, Detachment 12. (Tr. 62) These added responsibilities have increased Smith's workload with regard to training personnel, preparing presentations, interacting with space command and intermediate headquarters and ensuring that all inspections are completed. (Tr. 63) Moreover, acquisition work on behalf of Detachment 12 is time consuming and requires more than the five percent allotted for this Critical element. (Tr. 63) Smith testified that her workload with regard to Duty 3, performing computer/network systems security planning and development, has tripled. Smith is now required to draft an agreement for international program security that

encompasses fifty current programs, a task that she did not previously perform. (Tr. 54, 64)

With regard to Duty 1, Smith is supposed to serve as the organization's senior Information Technology Specialist for the Information Assurance program. As a result of the reorganization, Smith no longer deals with intelligence system requirements for functional integration and system security application. (Tr. 66-67) Smith asserts that this change is set forth in the substantive change from "information" to "intelligence". Further due to the reorganization, Smith no longer develops and executes Detachment 12's annual budget. (G.C. Ex. 2; Tr. 67)

After the April 19 implementation of the reorganization, Smith was given alternate responsibilities for various tasks instead of primary responsibility. (Tr. 69-73) For example, Smith no longer serves as the primary contact in Detachment 12 for handling chemical weapons convention treaties and open skies activities. (Tr. 70-71) Second, Smith no longer serves as the lead for the development of the organization's Program Protection Plan. (Tr. 71-72) Third, the primary responsibility for intelligence work dealing with sensitive compartment information or special access programs was transferred to Smith's Division Chief Dever Langhoff. (Tr. 72-73)⁵

Jeanette Myers

Jeanette Myers is presently an editor/writer for Detachment 12. (Tr. 207, 307) Prior to the reorganization, Myers worked in Management Support and was supervised by Dixon. (G.C. Ex. 4; Tr. 208) Myers also shared Room 247 with Helwig and spent approximately 25% of her time working with him on training matters. (Tr. 208-209, 211, 390-391) After the reorganization, Myers was moved to Information Technology and is supervised by Dan Kutz. (G.C. Exs. 3 and 13; Tr. 208) Myers has also been given new information management duties, with increased responsibilities. (G.C. Ex. 13; Tr. 268, 391)

Office Moves

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Although the evidence fails to support the General Counsel's allegation that Smith's core document was significantly changed, Smith's testimony regarding actual changes to her job responsibilities was persuasive. She credibly testified regarding both the loss of responsibilities and her new requirements.

The General Counsel asserts that, as a result of the reorganization/realignment, six employees had their offices relocated: Larry Helwig, Lauren Frost, Wilfred Romero, Gary Fain, Juliana Myers and Jason Underwood. (Tr. 85-86, 139-140, 143) The office relocations are consistent with the reorganization and realignment. Office relocations frequently occur and are on-going within Detachment 12. (Tr. 363-364)

Larry Helwig

As stated above, Helwig was moved from Room 247 to Room 216. (Tr. 161, 340, 354, Supp. Tr. 20) This office move was effectuated for the purpose of consolidating the remaining training personnel, Helwig and Bonner, in the MSD. (Tr. 82)

Lauren Frost

Lauren Frost is a Management Analyst with MSD. (Tr. 197, 199) She is currently responsible for military and civilian manpower, civilian personnel and some aspects of military personnel. (Tr. 197) Frost's manpower duties consist of managing the organization's manpower document and providing reports to Civilian Personnel. (Tr. 384) Her personnel functions involve handling disciplinary actions, providing information to managers about personnel matters and performance appraisals. (Tr. 384) About 5% of Frost's work time is spent on disciplinary matters. (Tr. 387) Frost presently splits her work time between manpower and personnel. (Tr. 197-198) Prior to April 2, she devoted all of her time to manpower duties. (Tr. 198) After April 2, Frost assumed the personnel duties from Linda Duncan, who left the Respondent's employment and whose position has not been replaced. (Tr. 198-199, 201)

Frost's office was located in Building 413, Room 216. After the reorganization, Frost voluntarily agreed to exchange her office with that of Helwig and moved to Room 247. Frost volunteered because she knew that Helwig's office had to be realigned with his division as part of the reorganization. Frost is now in Room 247 of Building 413. (Tr. 199, 201-202, 206, 234, 254)

Frost's office in Room 247 is significantly smaller than Room 216, with less storage space. (Tr. 199, 254-255) She shares this office with a non-personnel employee, Jeanette Myers. (Tr. 200) Room 216 was a semi-private office space, which permitted Frost to discuss private employee issues with management officials. (Tr. 78) This shared office arrangement prevents Frost from conducting

private conversations with employees and managers concerning sensitive personnel matters. (Tr. 200, 386-387, 255) Jeanette Myers expressed concern over the office arrangement to Dixon, but no additional arrangements have been made. (Tr. 209-210, 255-256) In addition, Frost's computer screen, which is about ten feet from the door, faces the entrance and is visible to people walking down the hall. (Tr. 118, 199, 254-255) Thus, drafts of various personnel documents, including disciplinary actions, could be seen by others. (Tr. 387-388)

Jeanette Myers

As stated above, after the reorganization, Jeanette Myers was moved to Information Technology and given new duties in this area. (Tr. 208, 268, 391) Myers did not change her office space and now shares Room 247 with Frost. (Tr. 209) Their desks face each other and are separated by an eye-level partition. (Tr. 210) Since Frost works with manpower and personnel issues, private matters are sometimes discussed in Myers' presence. (Tr. 210)

Juliana Myers

Juliana Myers is a computer clerk in the Base's stay-in-school program and works in the Contracting Division. (Tr. 212) She is not part of MSD. (Tr. 293, 300) Prior to the reorganization, she worked with her Contracting group in Building 413, Room 280. (Tr. 212-213) On May 14, Facilities Chief Lt. Cy Yost moved Myers to Room 215, away from her Contracting work area. (Tr. 212-213, 392-393) Juliana Myers was moved into the office that had been occupied by Jason Underwood, who was moved to the glass room in Building 413. (Tr. 80) Myers has remained in Room 215 since that time. (Tr. 218-219) As a result of being separated from the Contracting group, Myers has had a decrease in assignments. (Tr. 213-214) She has also experienced frequent interruptions due to the office traffic and has less storage space. (Tr. 213, 215) Myers' computer screen faces the center of the room, exposing certain privacy information to visitors. (Tr. 213-214) Myers was not provided access to a telephone, computer, fax machine or typewriter at the time of her office relocation. (Tr. 214-215) Myers, who serves as the records custodian for Contracting, is separated from those materials. (Tr. 215-216)

Gary Fain

Gary Fain works as a security specialist. According to Newberry, Fain changed offices in September 2003. This

office change was not related to the reorganization, but was made to accommodate the new deputy director. (Tr. 297) Further Fain had asked to change offices, since he did not like sharing an office with Geleta Smith. (Tr. 298) According to Smith, after the reorganization, Fain was moved from Room 214, Building 413 to Room 166, Building 412. (Tr. 84) Fain was sharing an office in Building 412, Room 116 with a contractor in February, when Socha was also temporarily assigned to that office. (Tr. 125) The evidence is unclear as to what office Fain is currently occupying.

Wilfred Romero

Wilfred Romero was hired in early 2003. Due to health problems, he had difficulty climbing stairs and was moved from a second floor office to a first floor office. Newberry testified that this move occurred in early 2004 and was not related to the reorganization, but rather to Romero's physical limitations. (Tr. 301-302) According to Smith, Romero was moved from Room 212 to the "glass room" on the first floor, but has since been moved again. (Tr. 85)

Jason Underwood

Jason Underwood worked in Room 215 and was moved to the "glass room" on the first floor. (Juliana Myers now occupies Room 215.) He has also been moved again, although there was no testimony regarding his current location. (Tr. 85) Newberry testified that he was moved sometime before the reorganization. (Tr. 303)

Positions of the Parties

General Counsel

1. Unilaterally relocated Barbara Socha's office for three weeks in February 2004 and returned her to a new work area.

Counsel for the General Counsel asserts that the Respondent made changes to Socha's working conditions that were greater than *de minimis* in impact and that its failure to provide advanced notice and an opportunity to bargain to the Charging Party constituted a violation of section 7116 (a) (1) and (5) of the Statute. There were numerous changes in her conditions of employment associated both with the temporary relocation to Building 412, Room 116 and with her placement back into the renovated work area in Building 410, Room 101.

With regard to the temporary relocation, the General Counsel notes that Socha was frequently required to return to Building 410 to accomplish her work, specifically, to prepare a badge or to reprogram someone for certain access to the facility. Further, she spent one to two hours daily escorting contractors into the controller area.

After Socha returned to her remodeled work area, there were significant changes affecting her responsibilities regarding the visitor's badging system. After the renovation, the visitor's badge board, sign-in log and briefing document were moved into Socha's work area and she became responsible for the daily administration of the temporary badge operation. She signed in visitors, provided the visitor's briefing and issued the temporary badge. The temporary badging system had previously been a self-sufficient operation located in Room 102. Further Socha became responsible for ensuring that contractor Kempton properly discharged his badging duties on those occasions that he performed that task. Moreover, when Socha was absent from work, she has to make alternative arrangements for someone to open Room 101 based on the changes in the badging process.

Socha now shares her office space with Kempton and there are two available seats for future contractors in Room 101. This shared office arrangement deprived Socha of the privacy she once enjoyed in her former work area. Moreover, the contractor has access to employees' social security numbers whenever Socha performs clearance work. Further, due to the increased foot traffic, Socha cannot leave or secure her work area until the end of the day.

The greatest change in Socha's working conditions occurred about a month after she returned when the plasma screen television was installed on the wall in front of her desk. Miller assigned Socha the daily responsibility for monitoring the security images that were displayed on the screen from the sixteen interior and exterior cameras. The Mission Control Room, which had monitored the daily images prior to the renovation, turned off their cameras. Contrary to Newberry's testimony, Socha did not have a monitor in her work area and did not have monitoring responsibilities prior to the remodeling.

The General Counsel asserts that the Respondent's position that there was no change in Socha's conditions of employment is contrary to the record evidence and should be rejected.

In summary, the General Counsel argues that the impact of the change on Socha's conditions of employment is clearly more than *de minimis*. The Respondent's failure to notify the Union and afford it an opportunity to bargain should therefore be found to be a violation of the Statute. *U.S. Penitentiary, Leavenworth, Kansas*, 55 FLRA 704, 715 (1999) (*USP Leavenworth*).

2. Unilaterally relocated Larry Helwig's office from Room 254 to Room 247 and ordered him to vacate Room 132 in February 2004.

The General Counsel argues that the Respondent's actions in ordering Helwig to relocate from Room 254 to Room 247 and to vacate Room 132 clearly involved changes in his working conditions. These actions had impact which was more than *de minimis* in nature.

The evidence reflects that Helwig was provided one day to relocate and was not afforded any assistance with the move by the Respondent. Room 247 was half the size of his prior office space and the lack of space forced Helwig to store his training videos and equipment in a separate office. Also there was less filing space for his paperwork. According to Helwig, it took about two weeks before his computer, telephone and fax machine were installed.

With regard to Room 132, Helwig had used that room as a second office for over two years to perform both his assigned VO and MSD training duties. A desk in this space was provided to store his training materials and provide onsite training to VO personnel. He also used Room 132 to store his computer equipment, videos, files and training plans. After the order to vacate, the VO training materials had to be moved out of Room 132 and stored in the smaller Room 247. By not having access to Room 132, Helwig was forced to communicate with the VO employees through telephone and electronic mail, which was less effective than the former onsite training. In September, Helwig was ordered to stop conducting VO training.

The changes had an adverse impact on Helwig's ability to perform his VO and MSD training duties. *See, VA Medical Center, Phoenix, Arizona*, 47 FLRA 419, 424 (1993) (*VA Phoenix*) (change affecting single employee not *de minimis*).

The Respondent failed to provide advance notification and an opportunity to bargain concerning the Helwig office relocation to Room 247 and vacating of Room 132, and therefore violated section 7116(a)(1) and (5) of the Statute.

**3. All-Hands Meeting in the Mission Support
Directorate on April 16, 2004**

Counsel for the General Counsel asserts that the April 16 All-Hands meeting meets the criteria for a formal discussion under section 7116(a)(2)(A). In that regard, the All-Hands meeting constitutes a "discussion" under the Statute, which has been defined as any meeting between representatives of the agency and unit employees.

Department of Defense, National Guard Bureau, Texas Adjutant General's Department, 149th TAC Fighter Group (ANG) (TAC), Kelly Air Force Base, 15 FLRA 529, 532 (1984) (Kelly AFB) and Veterans Administration, Washington, D.C. and VA Medical Center, Brockton Division, Brockton, Massachusetts, 37 FLRA 747, 754 (1990) (VA Brockton).

The General Counsel further asserts that the All-Hands meeting contained all of the factors to establish that the meeting was formal. The meeting was conducted by Neumeister, the highest ranking official of Detachment 12. Further the meeting was attended by six of the highest ranking management officials in MSD, both military and civilian. The meeting took place on a Friday morning in the Commander's Conference Room, which is outside the work area. Both the location and date of the meeting were unique. The employees were formally notified of the meeting through an email message which originated with the Commander. Further, attendance at the meeting was mandatory and employees who were scheduled for their regular day off were required to cancel their RDOs and report to work for the meeting. The Commander spoke for 30 to 45 minutes, including a question and answer session. Other management officials spoke to the employees after the Commander concluded his portion of the meeting.

The General Counsel asserts that the meeting was called to discuss the reorganization of MSD and the corresponding realignment of personnel within the new divisions. The Commander provided the rationale for the reorganization and realignment. In addition, numerous supervisory changes were announced at the meeting. The Commander used a power point presentation of the new organization. The General Counsel asserts that the Respondent failed to present any evidence contesting the first four formality criteria. The Respondent acknowledged that the meeting lasted at least 15 to 20 minutes and that a new organizational chart was used by the Commander.

Finally, the General Counsel asserts that the meeting concerned personnel policies, practices and matters

affecting working conditions. Although the Respondent may argue that the purpose of the meeting was merely to inform the MSD employees about changes in the management structure, the evidence shows that the reorganization did effect bargaining unit employee working conditions. *General Services Administration, Region 9, Los Angeles, California*, 56 FLRA 683, 685 (2000) (Authority affirmed an arbitration award finding GSA held a "formal meeting" concerning a report that provided an assessment of the agency.) See also *Bureau of Engraving and Printing*, Case No. 3-CA-2704, ALJ Report No. 25 (April 28, 1983) (meeting to announce a reorganization constituted a formal discussion).

In conclusion, the General Counsel asserts that the four elements needed to establish the Union's right of representation under section 7114(a)(2)(A) of the Statute at the All-Hands meeting have been satisfied. Accordingly, the Respondent's failure to provide advance notification of the All-Hands meeting to the Charging Party was a violation of section 7116(a)(1) and (8) of the Statute.

4. Unilaterally implemented a reorganization and realignment, which included office relocations, between April 19 and May 2004.

The General Counsel asserts that the April 19 reorganization resulted in fundamental changes to conditions of employment of bargaining unit employees and had a substantial impact on the working conditions of the affected employees. The increase in the number of divisions resulted in seven employees changing divisions, changes in the chain of command and six employee office relocations. These offices were moved for the purpose of realigning the employees within their divisions. See *Federal Aviation Administration, Northwest Mountain Region, Renton, Washington*, 51 FLRA 35, 37 (1995) (FAA); *U.S. Department of Health and Human Services, Social Security Administration, Baltimore, Maryland and Social Security Administration, Fitchburg, Massachusetts District Office, Fitchburg, Massachusetts*, 36 FLRA 655, 668 (1990) (SSA Fitchburg).

The changes were announced to the employees at the April 16 All-Hands meeting for the first time and as a *fait accompli*. The Union did not have adequate notice of the changes. See *United States Department of the Air Force, 913th Air Wing, Willow Grove Air Reserve Station, Willow Grove, Pennsylvania*, 57 FLRA 852, 856 (2002) (Willow Grove); *U.S. Army Corps of Engineers, Memphis District, Memphis, Tennessee*, 53 FLRA 79, 82 (1997) (COE). Thus, under these circumstances, it would have been futile for the Union to have submitted a bargaining request. *U.S. Department of the*

Air Force, Headquarters, Air Force Logistics Command, Wright-Patterson Air Force Base, Ohio, 38 FLRA 887, 889 (1990).

Further, as a result of the reorganization, three bargaining unit employees, Smith, Helwig and Jeanette Myers, were negatively affected by significant changes in their job duties. As a result of the reorganization, Helwig no longer performs work in four out of five of his Critical areas or 90% of his job description. Instead, he devotes nearly all of his time performing duties under Non-Critical Element No. 5, a catch-all element that concerns special projects. The work that Helwig performs under this element concerns tracking individual development plans for civilian, military and contracting personnel. This latter obligation, which was assigned to Helwig after Bonner's departure in June, greatly increased his workload, more than doubling the number of employees and nearly doubling the number of training events that Helwig became responsible for tracking. Moreover, these duties are primarily administrative in nature and below his existing GS-11 grade. Plainly, these changes represent far more than mere fluctuations in workload as represented by the Respondent.

Helwig received a midyear progress review from Dixon on November 1, that contained negative comments concerning his lack of thoroughness. The review, which was based on the observations of Dixon and Newberry during the six month period from April 1 to September 30, clearly covered the recent four month time frame during which Helwig had assumed Bonner's contractor tracking responsibilities. During the past two years, Helwig had received positive performance evaluations from Dixon based primarily on recommendations made by VO. It is clear that the reorganization has adversely affected Helwig's career progression, performance, promotion potential and lateral movement. *Willow Grove, 53 FLRA at 857; U.S. Department of Justice, Immigration and Naturalization Service, United States Border Patrol, San Diego Sector, San Diego, California, 35 FLRA 1039, 1040 (1990).*

In regard to Smith, she experienced significant changes in four out of five of her job duties. These changes, after the reorganization, adversely impacted Smith by increasing certain duties and removing important leadership responsibilities. For example, with regard to Smith's decreased leadership role, Respondent removed Smith's designation as the Detachment 12's focal point for acquisition systems protection and her lead position for the organization's Program Protection Plans. Similarly, Smith is no longer involved with intelligence system requirements for

functional integration and system security application. Respondent had no specific explanation for the removal of these leadership positions. In addition, as a result of the reorganization, there were other duties that Smith was once primarily responsible that she has now been given an alternate responsibility. For example, the chemical weapons convention treaties and open skies activities. Finally, the primary responsibility for intelligence work concerning sensitive information and special access programs was transferred to Division Chief Langhoff.

All of these changes prevent Smith from fulfilling the purpose of her position and exceeding the respective job standards. Moreover, Smith will require additional training to perform the aforementioned new duties and that will impact her ability to perform the job. Further, these changes adversely affect Smith's career progression.

Respondent tried to explain away all of the changes to Smith's job duties as mere fluctuations in her workload. Nonetheless, Respondent's own MSD study explicitly stated that Helwig's Training and Smith's Program Security areas were to experience significant changes from their current structures as a result of the reorganization. The Union was not afforded advance notification or an opportunity to bargain over the negative impact of these changes to Helwig and Smith's job duties.

In regard to Jeanette Myers, as a result of the reorganization, her training responsibilities were removed and replaced with increased information management duties. These changes caused the Respondent to re-write her core document and re-classify Myers' position. Moreover, prior to the reorganization, Myers shared an office with Helwig because of their shared training responsibilities. However, after the reorganization, Myers shares an office with Frost, who deals with sensitive personnel and manpower matters. Again, Respondent failed to provide advanced notice or an opportunity to negotiate over the adverse impact of these changes to Myers' job content and work location.

Other employees also experienced negative impact as a result of the reorganization. Frost now shares a small office with Jeanette Myers, which prevents her from conducting private conversations with employees and managers concerning sensitive personnel matters. Respondent failed to make alternate arrangements for Frost to have a private conference area to conduct her sensitive business despite five such rooms being available for that purpose. In addition, Room 247, which is a cramped work area, does not contain sufficient storage space for either Jeanette Myers

or Frost. Plainly this shared office arrangement negatively impacted both employees. See *FAA*, 51 FLRA at 37.

Juliana Myers, as a result of the reorganization, was separated from her Contracting group resulting in decreased work assignments. These work assignments are very important for Myers, who is a stay-in-school employee and could seek permanent employment with the agency after her graduation. In addition, Juliana Myers experiences frequent interruptions, has less storage space and her computer screen, which faces the center of the room, exposes privacy information to visitors. Finally, Myers was not given access to a telephone, computer, fax machine or typewriter at the time of her May 14 office relocation. These were matters that the Union would have raised during impact bargaining with the Respondent.

In summary, the aforementioned changes concerning the reorganization and subsequent realignments of personnel with their respective divisions, had adverse impact that was more than *de minimis*. Newberry was blatantly incorrect when he testified that six employees was the controlling consideration in determining whether a change was *de minimis* thereby resulting in a bargaining obligation. *Willow Grove*, 57 FLRA at 857. Plainly, the Respondent's failure to provide advance notification and an opportunity to bargain over the reorganization and realignment violated section 7116(a)(1) and (5) of the Statute.

Respondent

1. Relocation of Barbara Socha

Respondent asserts that it had no obligation to bargain with the Union when it temporarily relocated Barbara Socha while her office was being remodeled, inasmuch as any adverse effect of the temporary location was *de minimis* in nature. It asserts that the remodeling of her office was completely unrelated to any of the other allegations of the case, and particularly was in no way related to the management reorganization of MSD. The Respondent specifically disputed Socha's testimony of the effects of her new work station, particularly her testimony that she can never leave her work station now since she does not have a separate office that can be locked. The Respondent notes that certain of her duties actually require her to leave her office and there is now another individual in the office who can be there when she is gone. The Respondent also disputes her testimony that there is increased traffic in her office because of the badge function, and notes that this function is, in fact, part of her job as security manager. The

Respondent asserts that Socha has always been responsible for monitoring and controlling access to the facility, and thus the monitoring of the new large screen in her office is not a change. In conclusion, the Respondent asserts that the Union has no right to bargain over how it assigns work, the determination of the methods and means of performing work, or how it determines security functions will be performed.

2. Relocation of Larry Helwig

Respondent asserts that it had no obligation to give the Union notice and the opportunity to bargain regarding the move of Larry Helwig from one office to another and when it instructed him to vacate Room 132 in Building 412. Helwig is the Detachment 12 MSD training manager and is responsible for the training for the entire Detachment. His move from Room 254 to Room 247 was necessitated by VO taking a part of the building where Helwig's office was located. The move was completely unrelated to the reorganization in April. Respondent asserts that Helwig moved from a four-person office to a two-person office and that none of his conditions of employment changed as a result of the move. There were some delays in getting telephone and computer lines hooked up. The move of one employee in a nationwide 36,000 member bargaining unit with only minor changes to his working conditions, does not result in any changes to his conditions of employment that are more than *de minimis*.

With regard to the allegation that Helwig was instructed to vacate Room 132, the Respondent asserts that it had the right to instruct Helwig in the performance of his duties, including what duties he will perform and where he will perform them. The evidence reflects that in 2003, Helwig began to occasionally leave his primary duty location in the MSD and go to the VO area. Over time, he spent more time in that area, to the apparent detriment of his work for MSD. In February, Helwig was told not to go down to VO any more. He continued to do so, and in September, Newberry ordered him not to go to VO.

Helwig claimed that as a result of the reorganization, there was a drastic change in his duties. However, the Respondent asserts that Helwig was not given additional duties, but merely asked to perform the duties he was always responsible for. Respondent asserts that there were no new duties, although some of Helwig's tracking requirements may have increased and he may have been required to do more reports. Respondent further asserts that Helwig's assertion that his work in the VO was leading him to a better career was not correct, and an attempt to have his job reclassified

was halted after it appeared that the attempt could lead to a downgrade. Rather the Respondent asserts that the only thing that happened was that MSD management finally woke up and told Helwig to do his job. The Union has no right to bargain over how or where the Respondent directs an employee to perform his duties.

3. April 16, 2004 All-Hands Meeting

The evidence reflects that Neumeister, the Commander of Detachment 12, held a meeting on April 19, to announce the realignment of the MSD management function. The sole purpose of the meeting was to announce the new management team. He also told the attendees that the management structure was changing from two divisions to four divisions, who the new division chiefs were, and showed a slide of the new management structure. Apparently there were no questions, and Neumeister left the room. The meeting did continue, with other management personnel discussing the changes.

The Respondent asserts that the meeting held by Neumeister was not a formal discussion because it did not involve a discussion concerning any grievance or personnel policy or practice or other general condition of employment. The sole purpose of the meeting was to announce the management changes to the MSD. There was no obligation to invite the Union because the Union did not have a single statutory responsibility to discharge at the meeting.

The Respondent denies that a massive move of employees was announced at the meeting and asserts that the Union's own witnesses could not agree on this allegation. The evidence reflects that Neumeister indicated that there might be some relocations in the future, but did not identify any individual. The only thing at issue at the meeting was the announcement of the management structure and the meeting did not concern any grievance or personnel policy or practice or other general condition of employment. Therefore, the meeting was not a formal discussion within the meaning of section 7114(a)(2)(A) and the Respondent did not violate the Statute by failing to notify the Union and affording it the opportunity to be present.

4. Reorganization and Realignment of Detachment 12

The Respondent asserts that the Commander of Detachment 12 knew in the fall of 2003 that changes needed to be made to the management structure of MSD. As a result, supervisory chains of command were altered and the MSD went from two divisions to four divisions. The Respondent

denies, however, that there were any adverse effects on bargaining unit employees as a result of the reorganization. The Respondent asserts that much of the testimony presented by the General Counsel's witnesses did not even relate to the reorganization, noting that not every thing that happened in Detachment 12 was related to the reorganization.

With regard to allegations regarding job changes as a result of the reorganization, the Respondent denies that there were changes to Smith's core document or to her job. Rather there were fluctuations in Smith's workload, and her assignments were all reflected in her core document. Newberry's testimony is corroborated by the minor pen and ink changes to Smith's core document. The Respondent also asserts that the job change for Jeannette Myers was not related to the reorganization and was merely a coincidence of timing. Further, the claim that Frost inherited extra duties was clearly a result of the loss of another civilian employee in June, rather than as a result of the reorganization.

5. Office changes

On April 19, the Respondent did not "cause unnamed agency employees" to change offices. Smith testified that six people changed offices as a result of the reorganization: Fain, Underwood, Frost, Romero, Juliana Myers and Helwig. According to the Respondent, Fain was actually moved in September 2003 and the move was made to accommodate him since he did not like sharing an office with Smith. Julianna Myers, who had not been a part of MSD since August 2003, was moved when an active duty officer returned from duty in Afghanistan. Romero was moved in early 2004 to an office on the first floor, in order to accommodate his physical limitations. Underwood, who was a stay-in-school employee, occupied a temporary office for a week or two before he moved into his permanent office in February.

With regard to Helwig and Frost, the evidence shows that they switched offices sometime in April and that Frost volunteered to swap offices with Helwig so that he could be closer to the people he routinely interacted with. The office Helwig now occupies is bigger and nicer. While Frost is now in a less desirable office and has to share the space, management is aware of the problems and hopefully will be able to solve some problems in the future. Frost's concerns about sharing an office with someone who does personnel work are unfounded.

The Respondent asserts that the evidence, rather than showing a large reorganization and accompanying office

moves, showed that there was a reorganization of management only and a few office moves that were completely unrelated to that reorganization. Most of the Respondent's actions were separate, isolated incidents involving one employee. Further, any effects of any action by the Respondent on the employees were *de minimis* in nature. Therefore, the Respondent had no obligation to bargain with the Union over the impact and implementation of these changes. *Pension Benefit Guaranty Corporation*, 59 FLRA 48 (2003) (PBGC).

The Respondent finally argues that it is not obligated to bargain on changes to employee core documents, as such procedures are set forth in Article 17 of the Master Labor Agreement (MLA) (Jt. Ex. 1) Similarly, the right of management to assign work and direct employees which is contained in the Statute is also contained in Article 3 of the MLA. (Jt. Ex. 1)

Analysis and Conclusions

Prior to implementing a change in conditions of employment, an agency must provide the exclusive representative with notice of the change and an opportunity to bargain over those aspects of the change that are within the duty to bargain under the Statute. *USP Leavenworth*, 55 FLRA at 715. When, as here, an agency exercises a reserved management right and the substance of the decision is not itself subject to negotiation, the agency nonetheless has an obligation to bargain over the procedures to implement that decision and appropriate arrangements for unit employees adversely affected by that decision, if the resulting change has more than a *de minimis* effect on conditions of employment. See *Department of Health and Human Services, Social Security Administration*, 24 FLRA 403, 407-408 (1986).

In applying the *de minimis* doctrine, the Authority looks to the nature and extent of either the effect, or the reasonably foreseeable effect, of the change on bargaining unit employees' conditions of employment. *United States Department of the Treasury, Internal Revenue Service*, 56 FLRA 906, 913 (2000) (IRS). In determining whether the reasonably foreseeable effects of a change are greater than *de minimis*, the Authority addresses what a respondent knew, or should have known, at the time of the change. See *VA Phoenix*, 47 FLRA at 423.

Socha Office Remodeling

The evidence is undisputed that the Respondent remodeled Socha's office, by combining it with the adjoining office. The redesigned office has space for four individ-

uals, although only two (Socha and a contractor) currently occupy the space, counters for customer service, and a new security monitor. During the time that the office was being remodeled, Socha was temporarily relocated to another office for approximately three weeks. The Respondent did not give the Charging Party notice of the remodeling of the office or of the temporary relocation of Socha.

Although the Respondent argues that it had no duty to bargain over the temporary relocation of Socha, I find that the relocation had more than a *de minimis* impact. In that regard, I find that Socha temporarily shared an office with two other employees, was separated from her regular work office, and had to return on a regular basis to the area in order to perform her duties regarding permanent badges and escort duties. Further, I find that following the remodeling, Socha assumed additional duties with regard to processing temporary visitor badges, as well as certain security monitoring duties. The Respondent does not dispute the addition of the additional duties regarding temporary visitor badges and I credit Socha's testimony regarding her new responsibilities with regard to monitoring the security cameras. Her testimony regarding this additional duty, particularly in light of the installation of the monitoring television in front of her desk, was consistent and logical.

Therefore, I find that the effects of the temporary location and the subsequent effects of the remodeling on Socha's job responsibilities were greater than *de minimis*. Therefore, the Respondent violated section 7116(a)(1) and (5) of the Statute when it failed to give the Charging Party notice and the opportunity to bargain over these changes. *PBGC*, 59 FLRA at 50-51.

Relocation of Larry Helwig and removal from second office

The evidence is undisputed that the Respondent ordered Helwig to relocate from Room 254 to Room 247 and to vacate Room 132 in February. Helwig was given one day to relocate and was not given any assistance with the move. I credit Helwig's testimony that there were some delays in the use of the computer, telephone and fax machine for almost two weeks as a result of the move, noting that Helwig's testimony in this matter was uncontradicted by the Respondent. Room 247 was half the size of Helwig's prior office space and lacked adequate storage for his training materials and equipment. The loss of access to Room 132 further decreased his office space.

I find that the evidence clearly demonstrates that the changes in Helwig's offices had an adverse impact on his

ability to perform his various training duties. VA *Phoenix*, 47 FLRA at 424. Further the Authority has found that the effects were greater than *de minimis* where a change resulted in, among other things, smaller offices. See *Environmental Protection Agency and Environmental Protection Agency, Region II*, 25 FLRA 787, 789-90 (1987).

Therefore, I find that the Respondent violated section 7116(a) (1) and (5) of the Statute when it failed to give the Charging Party notice and the opportunity to bargain over these changes. See *PBGC*, 59 FLRA at 50-51.

All-Hands Meeting on April 16, 2004

Section 7114(a) (2) (A) of the Statute provides: "An exclusive representative of an appropriate unit in an agency shall be given the opportunity to be represented at any formal discussion between one or more representatives of the agency and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment."

In order for a union to have the right to representation under section 7114(a) (2) (A) the following requirements are necessary: There must be (1) a discussion; (2) which is formal; (3) between a representative of the agency and a unit employee or employee's representative; (4) concerning any grievance or any personnel policy or practice or other general condition of employment. Further, in order to determine whether meetings constitute formal discussions, the totality of the circumstances presented must be examined and the following illustrative factors are considered: (1) status of the individual who held the discussion; (2) whether any other management representatives attended; (3) the site of the discussion; (4) how the meeting for the discussion was called; (5) the length of the discussion; (6) whether a formal agenda was established; and (7) the manner in which the discussions were conducted. *Social Security Administration, Office of Hearings and Appeals, Boston Regional Office, Boston, Massachusetts*, 59 FLRA 875 (2004).

In agreement with the General Counsel, I find that the April 16 All-Hands meeting meets the criteria for a formal discussion under section 7114(a) (2) (A) and that the Respondent's failure to provide advance notification of the All-Hands meeting to the Charging Party and afford it the opportunity to be present was a violation of section 7116(a) (1) and (8) of the Statute.

In that regard, the evidence reflects that the All-Hands meeting was specifically called to announce the reorganization and subsequent realignment of personnel in MSD. The Commander and his subordinate management representatives were present at the meeting, along with most of the bargaining unit employees within the MSD. At the meeting the Commander explained the reorganization from two to four divisions, with concurrent changes to the supervisory structure. The rationale for the reorganization was set forth for the employees and they were told of the determination that employees would be co-located within their divisions. Although no individual moves were discussed, the Commander indicated that there would be future moves as a result of the reorganization.

Therefore, the evidence clearly reflects that the April 16 All-Hands meeting was a discussion between representatives of the agency and unit employees. *Kelly AFB, 15 FLRA at 532 and VA Brockton, 37 FLRA at 754.*

Further, I find that the evidence reflects that the April 16 meeting was formal in nature. In *F.E. Warren Air Force Base, Cheyenne, Wyoming, 52 FLRA 149, 155-57 (F.E. Warren) (1996)*, the Authority discussed the element of "formality" in section 7114(a)(2)(A). The Authority noted, that, in some cases, formality is established based on the purpose of a discussion. In other cases, formality is assessed through an examination of several factors set forth in Authority precedent. Whichever approach is used, the Authority reaffirmed that the totality of the facts and circumstances presented in each case must be considered in determining formality.

In this matter, the evidence reflects that the meeting was scheduled in advance and was conducted by the Commander with the management staff present. It was held in the Commander's Conference Room, which is separate from the normal work area, and was mandatory. At least three employees were required to change their regular day off in order to attend the meeting. Although no minutes or notes were taken of the meeting, the organizational slide presented by the Commander at the meeting was later placed on the internal network for access by the organization. The Commander spoke for at least 20 minutes and other management officials continued the meeting after the Commander left.

Finally, the evidence establishes that the meeting concerned personnel policies, practices and matters affecting working conditions. Although the Respondent argues to the contrary, asserting that the meeting was only an announcement of a change in management structure, this is

clearly an overly narrow interpretation of the content of the meeting. The purpose of the meeting was to announce the new reorganization, which entailed not only changes in the management structure, but changes to the divisions themselves (increasing from two to four divisions), with resulting changes in divisions and supervision to more than half of the bargaining unit employees is MSD. Further, employees were informed of impending moves of unit employees in order to be aligned with their new divisions. These issues of the number of divisions, changes in supervision and possible relocations are directly related to unit employees' conditions of employment.

Therefore, I find that the Respondent violated section 7116(a) (1) and (8) of the Statute when it failed to give the Charging Party notice and an opportunity to attend the April 16 All-Hands meeting, in violation of section 7114(a) (2) (A).

Implementation of Reorganization and Realignment

The Respondent admits that it implemented a reorganization of MSD on April 19, but essentially denies that the reorganization had any impact on bargaining unit employees. Rather the Respondent asserts that the reorganization was fundamentally a change to the management structure. Further, although admitting that certain bargaining unit employees had changes to their immediate supervisors and supervisory hierarchy, the Respondent argues there was no impact on employees that was greater than *de minimis*. The Respondent further asserts that changes to employee duties, if any, were not even related to the reorganization. The Respondent asserts that certain employees were moved in order to realign them within their new divisions, but that other moves were either before the reorganization or not a part of the reorganization.

The evidence reflects that the reorganization of MSD took place on April 19, as stated to the employees in the April 16 All-Hands meeting. As part of this reorganization, the Respondent created four divisions, instead of the original two divisions, and named the new division directors. More than half of the bargaining unit employees were assigned to the new divisions, with the subsequent change in management structure.

Immediately following the implementation of the reorganization, various office moves occurred within MSD, primarily consolidating employees within their particular divisions. For instance, Helwig and Lauren Frost exchanged offices, in order for Helwig to be closer to his division

and to share space with Bonner. Although Frost had volunteered for this exchange, the office moves were approved and allowed by management as part of its intent to align like offices. This office exchange resulted in Frost having a less desirable office situation.

In *IRS*, 56 FLRA at 906, the Authority found that the Respondent violated the Statute by refusing to bargain over the impact and implementation of a move which involved nine unit employees being moved from the ninth to the third floor. The Authority found the change in conditions of employment was more than *de minimis*, noting there were several problems with the move itself, including some computers being inoperable and the denial of some security access to retrieve computer files. The Authority noted that in *SSA Fitchburg*, 36 FLRA at 668, it found that because an employee lost a window seat and the seating assignments of four employees were changed, the change in the condition of employment was more than *de minimis*. *Department of the Air Force, Air Force Logistics Command, Sacramento Air Logistics Center, McClellan Air Force Base, California*, 35 FLRA 217 (1990) (Respondent changed the conditions of employment of bargaining unit employees when it relocated them from one building to another without providing the Union with prior notice and an opportunity to bargain over the impact and implementation of the change.)

In this matter, it is apparent that there are serious limitations to the actual work space occupied by Detachment 12. However, the ongoing need for changes to the work space is not a defense against the failure to afford the exclusive bargaining representative the opportunity to bargain to the extent required by the Statute. The evidence establishes that, as a result of the reorganization, at least two employees, Helwig and Frost, were moved to different offices without the Respondent giving notice to the Charging Party. There were disruptions of telephone and computer service, as well as changes to the adequacy of office space. Frost was moved to an office which she shares with another bargaining unit employee who is not a part of her division, and has legitimate concerns regarding her loss of privacy in performing her personnel work. While the Respondent argues that other office moves, such as Julianna Meyers, were not related to the reorganization, the timing and outcome of the office moves belies this defense and supports the unit employees' understanding that the moves were related in some way to the reorganization.

The evidence also reflects that the changes in job duties for Helwig and Smith were related to the reorganization of MSD. Both were specifically directed to focus on

certain aspects of their assigned duties to the exclusion of other duties. Helwig is no longer performing VO duties and has had an increase in the reporting and tracking of individual development plans for civilian, military and contracting personnel. Smith has had an increase in certain responsibilities and a decrease in other areas. The Respondent knew, or should have known, that these changes in job responsibilities would have an impact on bargaining unit employees that was greater than *de minimis*.

Under these circumstances, I find that the reorganization of MSD had a significant impact on the conditions of bargaining unit employees and that the Respondent was obligated to give the Charging Party notice and an opportunity to bargain regarding the impact and implementation of the changes. Changes involving supervision, job duties and responsibilities, and office moves have had an impact that was greater than *de minimis* on the bargaining unit employees. The Respondent's argument that the changes had no effect on bargaining unit employees is not reasonable and shows a deliberate avoidance by the Respondent of the duties and obligations towards the exclusive bargaining representative as set forth in the Statute. Therefore, after careful consideration of the record evidence, I conclude that the Respondent committed an unfair labor practice in violation of section 7116(a)(1) and (5) of the Statute by implementing a reorganization and realignment in the MSD without providing the Charging Party with notice and an opportunity to bargain over the impact and implementation of the change.

Remedy

The General Counsel requests that an appropriate remedy would include a traditional cease and desist order, post-implementation bargaining with regard to the remodeling of Barbara Socha's office, returning Larry Helwig to Room 132 of Building 412 as well as Room 254 in Building 413. Further, the General Counsel asserts that a *status quo ante* remedy is appropriate with regard to the reorganization and realignment of the MSD. Such a remedy would not be disruptive to the operations of MSD "based on the record evidence." *Federal Correctional Institution*, 8 FLRA 604, 606 (1982) (*FCI*); *COE*, 53 FLRA at 84-86; *United States Immigration and Naturalization Service, Washington, D.C.*, 55 FLRA 69, 70, n.3 (1999).

Where an agency has failed to bargain over the impact and implementation of a management decision, the Authority evaluates the appropriateness of a *status quo ante* remedy using the factors set forth in *FCI*, 8 FLRA at 606. These

factors are: (1) whether and when notice was given the union by the agency concerning the change; (2) whether and when the union requested bargaining; (3) the willfulness of the agency's conduct in failing to discharge its bargaining obligation; (4) the nature and extent of the adverse impact on unit employees; and (5) whether and to what degree a *status quo ante* remedy would disrupt or impact the efficiency and effectiveness of the agency's operations. *United States Department of Energy, Western Area Power Administration, Golden, Colorado*, 56 FLRA 9, 13 (2000). With regard to the fifth factor, the Authority has held that a finding that a *status quo ante* would be disruptive to the operations of an agency must be "based on record evidence." *Id.*

With regard to the first and second *FCI* factors, it is undisputed that the Respondent did not give the Charging Party any notice regarding the reorganization and subsequent realignment. Rather, the reorganization was announced as a *fait accompli* on Friday, April 16, and implemented on the following Monday, April 19. The Charging Party had no opportunity to submit a bargaining request and any attempt to do so would have been futile. The evidence further demonstrates that the Respondent's actions in failing to discharge its bargaining obligations were willful. The evidence further demonstrates that the reorganization had an adverse impact on bargaining unit employees with regard to changes in supervision, changes in duties and responsibilities, and office moves. Moreover, there is no evidence that a return to the *status quo ante* would disrupt or impair the efficiency and effectiveness of the agency's operations. The record establishes that the Respondent often has made changes in employee job duties and responsibilities and there have been, and continue to be, frequent workplace relocations within MSD. Further, the Respondent did not present evidence to support that such a remedy would disrupt or impair the efficiency and effectiveness of the agency's operations.

Therefore, I find that a *status quo ante* remedy is an appropriate remedy in this matter.

Having found that Respondent violated section 7116(a) (1) and (5) of the Statute, it is recommended that the Authority adopt the following:

ORDER

Pursuant to section 2423.41 of the Authority's Rules and Regulations and section 7118 of the Federal Service Labor-Management Relations Statute, the Department of the Air Force, Air Force Materiel Command, Space and Missile

Systems Center, Detachment 12, Kirtland Air Force Base, New Mexico, shall:

1. Cease and desist from:

(a) Unilaterally relocating bargaining unit employees and remodeling employee work areas, without first providing advance notification and bargaining with the American Federation of Government Employees, Local 2263, AFL-CIO (Charging Party) to the extent required by the Federal Service Labor-Management Relations Statute (Statute).

(b) Failing to provide the Charging Party advance notification and the opportunity to be represented at formal discussions with bargaining unit employees concerning any grievance or any personnel policy or practices or other general conditions of employment, including special All-Hands meetings.

(c) Unilaterally implementing a reorganization of the Mission Support Directorate and realignment of unit employees, without first providing advance notification and bargaining with the Charging Party to the extent required by the Statute.

(d) In any like or related manner, interfering with, restraining, or coercing unit employees in the exercise of their rights assured by the Federal Service Labor-Management Relations Statute.

2. Take the following affirmative actions in order to effectuate the purposes and policies of the Statute:

(a) Upon request of the Charging Party, negotiate over the remodeling of Barbara Socha's work area in Building 410, Room 101, including, but not limited to any floor plan.

(b) Return Larry Helwig to Room 254 in Building 413 and return the use of Room 132 in Building 412 to Larry Helwig.

(c) Provide the Charging Party with advance notice and the opportunity to be represented at formal discussions with bargaining unit employees, including special All-Hands meetings.

(d) Rescind the reorganization of the Mission Support Division and realignment, including returning those

employees who were moved to different offices back to their former work locations, and return to the *status quo ante*.

(e) Provide the Charging Party with advance notice concerning any intended changes in working conditions, including any intent to implement a reorganization and realignment and, upon request, bargain with the Charging Party regarding procedures that management will observe in taking these actions and appropriate arrangements for employees adversely affected by these actions.

(f) Post through Detachment 12, where bargaining unit employees are employed, 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 Commander, 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 ensure that such Notices are not altered, defaced, or covered by any other material.

(g) Pursuant to section 2423.41(e) of the Authority's Rules and Regulations, notify the Regional Director, San Francisco 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 herewith.

Issued, Washington, DC, August 31, 2005.

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SUSAN E. JELEN
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 the Air Force, Air Force Materiel Command, Space and Missile Systems Center, Detachment 12, Kirtland Air Force Base, New Mexico, 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 relocate any bargaining unit employee and return that employee to a remodeled work area, without first providing advance notification and bargaining with the American Federation of Government Employees, Local 2263, AFL-CIO (Charging Party) to the extent required by the Federal Service Labor-Management Relations Statute (Statute).

WE WILL NOT unilaterally move a unit employee's office space, without first providing advance notification and bargaining with the Charging Party to the extent required by the Statute.

WE WILL NOT unilaterally order a unit employee to vacate an office space, without first providing advance notification and bargaining with the Charging Party to the extent required by the Statute.

WE WILL NOT fail to provide the Charging Party advance notification and the opportunity to be represented at formal discussions with bargaining unit employees concerning any grievance or any personnel policy or practices or other general conditions of employment, including special All-Hands meetings.

WE WILL NOT unilaterally implement a reorganization of the Mission Support Directorate and realignment of unit employees, without first providing advance notification and bargaining with the Charging Party to the extent required by the Statute.

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 of the Charging Party, negotiate over the remodeling of Barbara Socha's work area in Building 410, Room 101, including, but not limited to any floor plan.

WE WILL return Larry Helwig to Room 254 in Building 413 and return the use of Room 132 in Building 412 to Larry Helwig.

CERTIFICATE OF SERVICE

I hereby certify that copies of the **DECISION** issued by SUSAN E. JELEN, Administrative Law Judge, in Case No. SF-CA-04-0502, were sent to the following parties:

CERTIFIED MAIL & RETURN RECEIPT

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DATED: August 31, 2005
Washington, DC