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

U.S. DEPARTMENT OF VETERANS AFFAIRS VETERANS AFFAIRS MEDICAL CENTER COATESVILLE, PENNSYLVANIA Respondent	
and NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES, LOCAL R3-35, SEIU, AFL-CIO Charging Party	Case No. BN-CA-90612

NOTICE OF TRANSMITTAL OF DECISION

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

PLEASE BE ADVISED that the filing of exceptions to the attached Decision is governed by 5 C.F.R. §§ 2423.40-2423.41, 2429.12, 2429.21-2429.22, 2429.24-2429.25, and 2429.27.

Any such exceptions must be filed on or before **APRIL 11, 2001**, and addressed to:

Federal Labor Relations Authority
Office of Case Control
607 14th Street, NW., Suite 415
Washington, DC 20424-0001

GARVIN LEE OLIVER
Administrative Law Judge

Dated: March 12, 2001
Washington, DC

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

MEMORANDUM DATE: March 12, 2001

TO: The Federal Labor Relations Authority

FROM: GARVIN LEE OLIVER
Administrative Law Judge

SUBJECT: U.S. DEPARTMENT OF VETERANS AFFAIRS
VETERANS AFFAIRS MEDICAL CENTER
COATESVILLE, PENNSYLVANIA

Respondent

and Case No. BN-CA-90612

NATIONAL ASSOCIATION OF GOVERNMENT
EMPLOYEES, LOCAL R3-35, SEIU, 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

FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges OALJ

01-24

WASHINGTON, D.C.

U.S. DEPARTMENT OF VETERANS AFFAIRS VETERANS AFFAIRS MEDICAL CENTER COATESVILLE, PENNSYLVANIA Respondent and	Case No. BN-CA-90612
NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES, LOCAL R3-35, SEIU, AFL-CIO Charging Party	

Cynthia A. Williams, Esquire
For the Respondent

Edward J. Smith, Esquire
For the Charging Party

Richard D. Zaiger, Esquire
Alfred Gordon, Esquire
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 refusing to meet with and engage in face-to-face negotiations with the Charging Party (Union) over the Respondent's proposal to reorganize the Facilities Engineering Service, and by implementing this change without providing the Union an

opportunity to negotiate to the extent required by the Statute, and while negotiable proposals were still on the bargaining table.

Respondent's answer admitted the jurisdictional allegations as to the Respondent, the Union, and the charge, but denied any violation of the Statute.

For the reasons explained below, I conclude that the Respondent violated the Statute as alleged.

A hearing was held in Philadelphia, Pennsylvania.[1] The Respondent, Union, and the General Counsel were represented by Counsel and afforded a 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.[2] 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 National Association of Government Employees, SEIU, AFL-CIO (NAGE) is the certified exclusive representative of a nationwide consolidated unit of employees appropriate for collective bargaining at the Department of Veterans Affairs. The Union is an agent of NAGE for purposes of representing bargaining unit employees at the Respondent's Medical Center in Coatesville, Pennsylvania. The Union represents approximately 900 employees.

Mark D. Bailey, Sr., serves as the President of the Union, a position he has held for 12 years. However, Mr. Bailey has been removed from service as an employee of the Respondent and has had his access to Respondent's facility severely limited. Because of these limitations, the parties have arranged on previous occasions to hold negotiations at the Coatesville Memorial Community Center at 9th and Chestnut Streets in Coatesville, Pennsylvania.

1/ Case No. BN-CA-00373, involving the same parties and many of the same witnesses, was consolidated with this case for hearing. A separate decision was issued in that case on this date.

2/ The General Counsel's motion to strike portions of the Respondent's brief as asserting certain facts and documents not in evidence is supported by the record and, therefore, granted. See Tr. 5, lines 7-10.

NAGE and the Department of Veterans Affairs entered into a Master Agreement (contract) on April 28, 1992. (Jt. Exh. 1) Bailey was on NAGE's national negotiating team for the Master Agreement and is a signatory to that contract. Article 11, Section 2, of the parties Master Agreement concerns procedures for bargaining and contains the following language:

A. The Employer shall notify the Union prior to the planned implementation of a proposed change to conditions of employment. The notice shall advise the Union of the reason for the change and the proposed effective date.

B. The Union shall have fifteen (15) calendar days from the date of notification to request bargaining and to forward written proposals to the Employer except in emergency situations where a 15 day notice would not be practicable.

C. If the Union does not request bargaining within the time limit, the Employer may implement the proposed change(s).

D. Upon timely request by the Union, bargaining will normally commence within ten (10) calendar days, unless otherwise agreed upon by the parties.

(Jt. Exh. 1 at 8-9). Other than stating that "bargaining will normally commence within ten (10) calendar days," the contract does not set any parameters with regard to procedures and timeliness for bargaining, and it is silent on the issue of the parties submitting additional proposals once bargaining has commenced.

Reorganization of the Facilities Engineering Service

On January 20, 1999, the Respondent, through Stephen Blanchard, Chief of Facilities Engineering Service, notified the Union that it planned to implement changes to the organizational structure of the Facilities Engineering Service effective February 20, 1999 and invited the Union to submit proposals over "procedures and adverse impact (I&I) issues" in accordance with Article 11 of the contract. (Jt. Exh. 3).

The Union responded with ground rules proposals and bargaining proposals dated January 31, 1999. (Jt. Exh. 4 & 5). The Union proposed in each document that the parties agree to an off-site meeting place with appropriate facilities for the negotiations due to management's decision to bar the Union President from the facility. (Jt. Exh. 4 at

2.IV; Jt. Exh. 5 at 3.C). In addition, in its bargaining proposals, the Union stated that it reserved the right to submit new proposals during the course of the negotiations as new or additional information regarding the reorganization came to light. (Jt. Exh. 5 at 3.D).

On February 9, 1999, the Respondent, through Blanchard, responded in writing to the Union's bargaining proposals by agreeing to some of the Union's proposals, in whole or in part, and declaring the rest nonnegotiable. Blanchard further stated that, in view of this action, responses to the proposals concerning ground rules and a suitable meeting place for negotiations were "not required at this time." Blanchard also stated that the proposal concerning the Union's right to submit new proposals during the negotiations was addressed in Article 11 of the agreement and it was "not necessary to bargain over this proposal." (Jt. Exh. 6 at 2).

On February 21, the Union requested a written allegation of nonnegotiability for the proposals Blanchard declared to be nonnegotiable. (Jt. Exh. 7). The Respondent responded by sending the Union another copy of its February 9 memorandum. (Jt. Exh. 8).

The Union responded by memorandum dated March 2, captioned "Counter proposals/Reorganization, Engineering Service." In this memorandum, the Union withdrew one proposal and submitted several counter proposals and two new proposals. (Jt. Exh. 9). The Union submitted counter proposals for Proposals 5, 13, 16, 18, 19, and 25; and submitted new proposals to replace Proposals 9 and 15. (Jt. Exh. 5 & 9). The Union specifically requested "to meet per the [S]tatute to resolve any and all issues[]" (Jt. Exh. 9 at 2.j) and asked for a list of dates and times when the Respondent would be able to meet at the Coatesville Community Center "to properly negotiate our I&I proposals." (Jt. Exh. 9 at 2.k).

On March 8, 1999, the Respondent, through George R. Pearson, Chief of Human Resources Management Service, responded by agreeing to one counter proposal as written, refusing to negotiate over certain proposals the Respondent considered to be new proposals, and declaring the rest nonnegotiable. (Jt. Exh. 10). Pearson declared that the Union's request to meet was a new proposal that management did not have to bargain over (Jt. Exh. 10 at 2.j) and stated that "[t]here is no need to meet or negotiate I&I proposals" (Jt. Exh. 10 at 2.k). Pearson's letter went on to state:

> This concludes management's requirement to accept and negotiate proposals regarding the reorganization of Engineering Service. Management is in the process of reorganizing the process effective this date. (Jt. Exh. 10).

On March 12, 1999, the Union submitted another memorandum stating why it believed its March 2, 1999, counter proposals were negotiable, slightly modifying one proposal, and asking for clarification of the Respondent's position with regard to several issues. (G.C. Exh. 3). The Respondent never responded.

The Respondent reorganized its Facilities Engineering Service as of March 28, 1999. (G.C. Exh. 4). This reorganization effected a reduction in the number of shops and a realignment of employees under supervisors some of whom work in different trade areas than the employees they supervise. The reorganization impacted bargaining unit employees in a number of ways, from issues regarding fair and equitable assignment of work; to adequate direction and supervision, workplace safety, and effects on employee ratings and performance appraisals.

Discussion and Conclusions

Respondent Violated Section 7116(a)(1) and (5) of the Statute by Failing to Negotiate in Good Faith over the Reorganization of the Facilities Engineering Service, and by Unilaterally Implementing the Reorganization While Negotiable Proposals Were Still on the Bargaining Table

Determining the organization of an Agency is a management right under section 7106(a)(1) of the Statute. "An agency does not have an obligation to bargain over such decisions, but it does have an obligation to bargain over the procedures and appropriate arrangements that it will observe in exercising its right . . . ." *U.S. Department of Transportation, Federal Aviation Administration, Washington, DC and Michigan Airway Facilities Sector, Belleville, Michigan*, 44 FLRA 482, 493 (1992). In determining whether an agency has an obligation to provide notice and an opportunity to bargain when it exercises a management right, the Authority considers whether the Respondent changed the conditions of employment, and if so, whether those changes had more than a *de minimis* impact on employees' conditions of employment. *Id.* at 492-93; *Department of Health and Human Services, Social Security Administration*, 24 FLRA 403 (1986). In assessing whether the effect of a decision is more than *de minimis*, the Authority looks to the foreseeable effect, or the reasonably foreseeable effect, of the change

on bargaining unit employees' conditions of employment. *Id.* at 407-08.

Here, the evidence establishes that the Respondent changed working conditions when, on March 28, 1999 it reorganized the Facilities Engineering Service. When the number of shops was reduced, employees were reassigned to different shops and started reporting to supervisors with different trade specialties. The effects of this change were clearly foreseeable, as the Union was able to define and address them in proposals it submitted prior to the reorganization. (Jt. Exh. 5). For example, prior to implementation, the Union expressed concerns over the fair and equitable assignment of work and over the impact of the new supervisory structure on employee ratings and performance appraisals.

Because the reorganization of the Facilities Engineering Service caused foreseeable changes in working conditions that were more than *de minimis*, Respondent was obligated to provide the Union with notice and an opportunity to negotiate over the change prior to implementation.

Respondent's Failure to Respond to the Union's Ground Rules Proposals and Failure to Meet Face-to-Face to Negotiate Over the Reorganization of the Facilities Engineering Service Amount to Bad-Faith Bargaining in Violation of Section 7116 (a)(1) and (5) of the Statute

1. Respondent bargained in bad faith in violation of section 7116(a)(1) and (5) of the Statute when it ignored the Union's ground rules proposals

The Authority has held that an agency violates section 7116(a)(1) and (5) of the Statute when it fails to respond to a union's legitimate demand to bargain ground rules. *Army and Air Force Exchange Service, McClellan Base Exchange, McClellan Air Force Base, California*, 35 FLRA 764, 768-69 (1990) (*McClellan AFB); see also Environmental Protection Agency*, 16 FLRA 602 (1984)(*EPA*). This is particularly true where the parties disagree about the method or place of bargaining and where a party reiterates its demand to address the method or place of negotiation. *McClellan AFB,* 35 FLRA at 769.

Here, the Union submitted comprehensive ground rules proposals covering everything from the number and authority of negotiators, to the place and manner of negotiation meetings. In its ground rules document, the Union

specifically requested face-to-face negotiations, and the Union reiterated that proposal in its bargaining proposals. The Union further proposed that it retain the right to offer additional proposals throughout the bargaining process, which was "in the nature of a proposed ground rule itself, i.e., a guide for the conduct of the negotiations." *EPA*, 16 FLRA at 613.

The Respondent ignored the Union's ground rules proposals entirely. In addition, the Respondent short-circuited the Union's attempts to meet face-to-face. Such a face-to-face negotiation session might possibly have allowed the parties to move beyond their negotiability concerns to address the underlying negotiable interests expressed through the Union's proposals. The parties' apparent continuing disagreement over their right to submit additional proposals throughout the bargaining process could also conceivably have been resolved through appropriate ground rules negotiations. The Respondent claims that the Union's ground rules did not include dates to commence bargaining. This, too, could have been resolved at the time by the Respondent's response or by appropriate counter proposals. The Union's substantive Proposal 25.B, which the Respondent failed to address, also covered the matter in providing, in part, "[u]pon one (1) week of receipt of Ground Rules . . . both parties meet to negotiate such Ground Rules." (Jt. Exh. 5 at 3).

There is no indication that the Union sought, by its ground rules proposals, "'to delay, or avoid, the bargaining process.'" *U.S. Department of the Air Force, Headquarters, Air Force Logistics Command, Wright-Patterson Air Force Base, Ohio*, 36 FLRA 912, 917 (1990)(quoting *U.S. Department of the Air Force, Headquarters, Air Force Logistics Command, Wright-Patterson Air Force Base, Ohio*, 36 FLRA 524, 533 (1990)). Accordingly, by its failure to respond to the Union's ground rules document, and by its wholesale refusal to discuss the Union's proposals dealing with the conduct of the negotiations, the Respondent has bargained in bad faith in violation section 7116(a)(1) and (5) of the Statute.

2. Respondent bargained in bad faith in violation of section 7116(a)(1) and (5) of the Statute by refusing to meet face-to-face to negotiate as the Union requested

Section 7103(a)(12) of the Statute defines "collective bargaining" as:

> the performance of the mutual obligation of the representative of an agency and the exclusive

> representative of employees in an appropriate unit in the agency to *meet at reasonable times* and to consult and bargain in a good-faith effort to reach agreement with respect to the conditions of employment . . . . (emphasis added).

This concept is further defined in section 7114(b)(3), which obligates the parties, in carrying out their duty to negotiate, "to meet at reasonable times and convenient places as frequently as may be necessary[.]"

In *McClellan AFB*, 35 FLRA at 769, the Authority found it unnecessary to decide "whether face-to-face bargaining is required under the meaning of section 7114(b)(3) of the Statute."[3] In the absence of Authority precedent, "[a]ttention may properly be given . . . to interpretations of the same language as found in the National Labor Relations Act (NLRA), section 8(d), 29 U.S.C. § 158(d)." *Id.* at 778. To that end, the National Labor Relations Board has construed section 8(d) to require face-to-face negotiations. *The Westgate Corp.*, 196 NLRB 306, 313 (1972); *see also Twin City Concrete, Inc.*, 317 NLRB 1313, 1313-14 (1995); *Alle Arecibo Corp.*, 264 NLRB 1267, 1273 (1982).

Here, the evidence establishes that the Union requested several times to meet face-to-face to negotiate and that the Respondent flatly refused each time. The Union made such a request in paragraph IV of its ground rules document and in paragraph C of its original bargaining proposals. As shown above, the Respondent ignored the ground rules document entirely, and it declared that no response was required to paragraph C of the bargaining proposals. The Union reiterated its request in paragraphs 2.j and 2.k of its first set of counter proposals, to which the Respondent declared: "There is no need to meet or negotiate I&I proposals." (Jt. Exh. 10 at 2.k). Finally, the Union asked the Respondent for formal clarification as to whether it was "refusing to bargain per . . . the Statute" (G.C. Exh. 3 at 2.k), but the Respondent never responded.

By its refusal to meet face-to-face to negotiate the appropriate arrangements and procedures involved in the reorganization of the Facilities Engineering Service, the Respondent has failed to perform its duty to negotiate as defined in section 7114(b)(3) of the Statute, and has

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3/ In *McClellan AFB*, the General Counsel did not allege in the complaint that the Respondent's refusal to meet face-to-face violated section 7116(a)(1) and (5) of the Statute. 35 FLRA at 769-70. The complaint in the instant case alleges such a violation. (G.C. Exh. 1(c)).

therefore, bargained in bad faith in violation of section 7116(a)(1) and (5).

3. Respondent violated section 7116(a)(1) and (5) of the Statute by unilaterally implementing the reorganization of the facilities engineering service while there were negotiable proposals on the bargaining table

"It is long established [under the Statute] that an agency 'must meet its obligation to negotiate prior to making changes in established conditions of employment[.]'" *U.S. Department of Justice, Immigration and Naturalization Service, Washington, DC*, 56 FLRA 351, 356 (2000)(INS) (quoting *Department of the Air Force, Scott Air Force Base, Illinois*, 5 FLRA 9, 11 (1981)). It is equally well settled that "[w]here a union submits bargaining proposals and an agency refuses to bargain over them based on the contention that they are nonnegotiable, . . . the agency acts at its peril if it then implements the proposed change in conditions of employment." *U.S. Department of Health and Human Services, Social Security Administration, Baltimore, Maryland*, 39 FLRA 258, 262-63 (1991)(*SSA*). If it is determined that there are negotiable proposals on the table, "the agency will be found to have violated section 7116(a)(1) and (5) of the Statute by implementing the change without bargaining over the negotiable proposal[s]." *Id.* at 263.

The Respondent contends that all the proposals received in the Union's March 2, 1999, counter proposals letter are "new" proposals and thus, nonnegotiable. However, the Respondent's Chief of Human Resources Management admitted that some of the proposals in that letter were indeed counter proposals. (Tr. 81-83). Nevertheless, even if some of the March 2, counter proposals were in fact new proposals, that does not mean those new proposals are nonnegotiable. The parties' contract is silent as to the parties' ability to present new proposals throughout the bargaining process. In addition, as explained above, the Respondent refused to negotiate over the Union's ground rules proposal that it be allowed to submit new proposals during the bargaining process. Those new proposals were, therefore, on the table in accordance with the contract and with the Union's stated intention to reserve its right to present them.

The Union submitted its last communication on March 12, 1999. The Respondent failed to respond and implemented the reorganization on March 28, 1999. As the Authority stated in *INS*, 56 FLRA at 357:

> The bargaining process requires on-going communication, so that the parties may avail themselves of appropriate options [revised proposals, a request for assistance from FMCS or FSIP, a negotiability appeal, or a preimplementation ULP charge, if necessary], ultimately leading to lawful implementation.

Proposal 5 is a Negotiable Appropriate Arrangement

> Proposal 5 states:
>
> All employees who are requested to work out of the trade area will be properly trained. . . . Employee's Position Description[s] will reflect all duties and responsibilities prior to having employee work out of trade areas.

(Jt. Exh. 9). The Respondent admitted that this proposal is a counter proposal (Tr. 82), so there is no issue as to whether it was properly on the bargaining table. As to the negotiability of the proposal, in a nearly identical situation, the Authority has found that proposals requiring adequate training where a reorganization required employees to be assigned new tasks was negotiable as an appropriate arrangement. *American Federation of Government Employees, Local 3231 and Social Security Administration*, 22 FLRA 868, 872-74 (1986). In addition, "[t]he Authority has consistently held that a position description does not constitute an assignment of duties but merely reflects the duties which have been assigned to a position or an employee." *National Federation of Federal Employees, Local 1497*, 9 FLRA 151, 152 (1982)(*NFFE*); *see also Patent Office Professional Association and U.S. Department of Commerce, Patent and Trademark Office, Washington, DC*, 47 FLRA 10, 28-29 (1993)(*POPA*). The Union's proposal did not seek to interfere with the assignment of work, but rather sought to ensure that the assigned work was adequately reflected in the employees' position descriptions. Therefore, Proposal 5 is negotiable and was properly on the bargaining table when the Respondent implemented the reorganization.

Proposal 9 is a Negotiable Appropriate Arrangement

> Proposal 9 states:
>
> All Shop areas will have break rooms, computer access, men's & women's bathrooms, men's & [sic] shower areas,

> locker facilities, telephones, coffeepots and televisions.

(Jt. Exh. 9). Though this proposal did not appear as part of the Union's original proposal package, as discussed above, the Union reserved its right to submit proposals during the bargaining process, and the Respondent refused to bargain over this ground rule. In addition, the parties' contract is silent on the matter. Therefore, Proposal 9 was properly on the bargaining table when the Respondent implemented the reorganization.

As to the proposal itself, the Authority has consistently held that amenities such as break rooms are negotiable conditions of employment. *See, e.g., National Association of Government Employees, Local R1-144 and U.S. Department of the Navy, Naval Underwater Systems Center, Newport, Rhode Island*, 43 FLRA 1331, 1345-46 (1992); *Department of the Treasury, Internal Revenue Service, (Washington, DC) and Internal Revenue Service, Hartford District, (Hartford, Connecticut)*, 27 FLRA 322, 325 (1987); *American Federation of Government Employees, Social Security Local 3231, AFL-CIO and Department of Health and Human Services, Human Services, Social Security Administration*, 16 FLRA 47, 48-49 (1984)(finding negotiable a proposal requiring the employer to provide a refrigerator, stove and/ or microwave oven, utensils, phone, coffee maker or dispensing machine, sink and/or dishwasher). Inasmuch as reassigning employees to different shops would adversely affect their conditions of employment *vis à vis* these amenities, the Union's proposal is negotiable as an appropriate arrangement.4

Proposal 13 is a Negotiable Appropriate Arrangement/ Procedure

Proposal 13 states:

> All employees under the same trade Position Description rotate job assignments in a fair & equitable manner with appropriate records being kept (recording of job assignments).

(Jt. Exh. 9). The Respondent's Chief of Human Resources Management admitted that this proposal is a valid counter proposal, so there is no issue as to whether it was properly on the bargaining table. "It is well established that proposals which accomplish a distribution 'fairly and

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4/ The Respondent's brief states that "[9] will be accepted as written as all shop areas have the resources requested." (Resp. brief at 4).

equitably' are negotiable." *Illinois Nurses' Association* and *Veterans Affairs Medical Center, Illinois*, 28 FLRA 212, 229 (1987)(*Illinois Nurses' Association*). These proposals are negotiable procedures that "ensure fairness and equity in the assignment of duties" and do not interfere with management's right to assign such duties. *Id.* at 229; *see also American Federation of Government Employees, AFL-CIO, General Committee of AFGE for SSA Locals and Social Security Administration*, 23 FLRA 329 (1986)(Proposal 4 & 7)(*AFGE General Committee*); *American Federation of Government Employees, AFL-CIO, Local 32*, 3 FLRA 784, 792-94 (1980). In this case, such a proposal also amounts to a negotiable appropriate arrangement for employees adversely affected by management exercising its right to organize employees by criteria other than trade.

Proposal 16 is a Negotiable Appropriate Arrangement/ Procedure

> Proposal 16 states:
>
> All employees who are required to clean-up service rooms or shop areas will not have this time held against their performance standards and that these responsibilities be rotated in a fair & equitable manner among all shop staff.

(Jt. Exh. 9). This counterproposal is clearly related to the original Proposal 16, and the Respondent did not contend that it was a new proposal and thus nonnegotiable. It was therefore properly on the bargaining table when the Respondent unilaterally implemented the reorganization.

The second part of this proposal is negotiable for the same reasons as Proposal 13, in that it requires a fair and equitable assignment of work. The first part of the proposal – that time spent cleaning up service rooms not be held against an employee's performance standards – is negotiable because it "deals with consequences arising from the nature of the work assigned." *AFGE General Committee*, 23 FLRA at 337 (Proposal 7). In *AFGE General Committee*, the Union proposed that employees who deal primarily with non-English speaking claimants not be disadvantaged by their less frequent ability to be evaluated using the Agency's telephone monitoring techniques. The Authority found that proposal bargainable as an "appropriate arrangement for employees adversely affected by management's exercise of a reserved right." *Id.* at 338. Similarly, in the instant case, employees who are assigned to clean up service rooms would have less time to perform the work on which their ratings are based. The Union's proposal is therefore an

appropriate arrangement protecting employees from the possible negative effects of their taking time to perform assigned duties for which they will not be rated.

Proposal 19 is a Negotiable Appropriate Arrangement/ Procedure

Proposal 19 states:

> All employees' Position Descriptions will reflect their job responsibilities and assignments and those job assignments be provided in a fair & equitable manner.

(Jt. Exh. 9). Though this proposal is related to the Union's original Proposal 19, and the Respondent does not contend that it is a new proposal. The first part of the proposal - requiring accurate position descriptions – directly mirrors Proposal 5 and is thus negotiable for the reasons stated above. *See NFFE*, 9 FLRA at 152; *POPA*, 47 FLRA at 28-29. The second part of the proposal – requiring fair and equitable assignment of work – is identical to Proposal 13 and is thus, negotiable as described above. *See Illinois Nurses' Association*, 28 FLRA at 229.

As the record establishes that there were negotiable proposals on the bargaining table when the Respondent implemented the reorganization of the Facilities Engineering Service[5], the Respondent violated section 7116(a)(1) and (5) of the Statute by implementing the reorganization without completing the negotiation process. *SSA*, 39 FLRA at 262-63.

Remedy

When an Agency, in the exercise of a management right, changes a condition of employment without fulfilling its obligation to bargain over the appropriate arrangements for affected employees and the procedures management will use to exercise its right, the Authority assesses the appropriateness of a *status quo ante* remedy using the criteria set forth in *Federal Correctional Institution*, 8 FLRA 604 (1982)(*FCI*). The *FCI* factors involve balancing the nature and circumstances of the violation against the degree of the disruption in government operations that would be caused by a *status quo ante* remedy. *Id.* at 606. Accordingly, in determining whether a *status quo ante* remedy would be appropriate in cases such as this, the Authority considers, among other things:

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5/ Proposals 18 and 25 are more properly characterized as requests for information. The Respondent's brief acknowledges that, with respect to 18, the information is available. (Resp. brief at 4).

(1) whether, and when, notice was given to the union by the agency concerning the action or change decided upon; (2) whether, and when, the union requested bargaining on the procedures to be observed by the agency in implementing such action or change and/or concerning appropriate arrangements for employees adversely affected by such action or change; (3) the willfulness of the agency's conduct in failing to discharge its bargaining obligations under the Statute; (4) the nature and extent of the impact experienced by adversely affected employees; and (5) whether, and to what degree, a *status quo ante* remedy would disrupt or impair the efficiency and effectiveness of the agency's operations. *FCI,* 8 FLRA at 606.

In the instant case, the Union responded to the Respondent's proposed change within the specified contractual time limits, yet the Respondent ignored its bargaining obligations by failing to respond at all to the Union's ground rules proposals and by either severely limiting the bargaining process or failing to engage in bargaining at all. The Respondent refused to meet as requested and then unilaterally declared the negotiations to be over.

The Authority requires that any conclusion that a *status quo ante* remedy would be disruptive to the operations of an agency be "based on record evidence." *Army and Air Force Exchange Service, Waco Distribution Center, Waco, Texas*, 53 FLRA 749, 763 (1997). In the absence of such record evidence, "the Authority 'should' restore the status quo." *U.S. Department of Justice, Immigration and Naturalization Service*, 55 FLRA 892, 906 (1999)(quoting *National Treasury Employees Union v. FLRA*, 910 F.2d 964, 969 (D.C. Cir. 1990)). The Respondent has offered no evidence of any disruption that a *status quo ante* remedy would cause. The *FCI* factors overwhelmingly favor a *status quo ante* remedy in this case.

Based on the above findings and conclusions, it is recommended that the Authority issue the following Order:

ORDER

Pursuant to section 2423.41(c) of the Authority's Rules and Regulations and section 7118 of the Federal Service Labor-Management Relations Statute, it is hereby ordered that the U.S. Department of Veterans Affairs, Veterans Affairs Medical Center, Coatesville, Pennsylvania, shall:

3. Cease and desist from:

(a) Changing working conditions of unit employees by implementing a reorganization of the Facilities Engineering Service, or any other unit, without providing the National Association of Government Employees, Local R3-35, SEIU, AFL-CIO, the agent of the exclusive representative of its employees, an opportunity to negotiate to the extent required by the Federal Service Labor-Management Relations Statute.

(b) Failing or refusing to meet face-to-face with the

designated representative of the National Association of Government Employees, Local R3-35, SEIU, AFL-CIO, for the purpose of engaging in collective bargaining as required by the Federal Service Labor-Management Relations Statute.

(c) Failing or refusing to negotiate over ground rules for collective bargaining as required by the Federal Service Labor-Management Relations Statute.

(d) Failing or refusing to respond to the National Association of Government Employees, Local R3-35, SEIU, AFL-CIO, requests to bargain over matters appropriate for collective bargaining under the Federal Service Labor-Management Relations Statute.

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

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

(a) Rescind the changes in the organization of the Facilities Engineering Service that became effective on or about March 28, 1999, and return to the organization that had been in effect.

(b) Notify, and upon request, bargain to completion with the National Association of Government Employees, Local R3-35, SEIU, AFL-CIO, concerning the reorganization of the Facilities Engineering Service, or any other unit, to the extent required by the Federal Service Labor-Management Relations Statute, prior to implementing the reorganization.

(c) Post at its facilities at the Coatesville Medical Center where bargaining unit employees represented by the National Association of Government Employees, Local R3-35, SEIU, AFL-CIO are located, 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 Chief Executive Officer 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 ensure that such Notices are not altered, defaced, or covered by any other material.

(d) Pursuant to section 2423.41(e) of the Authority's Rules and Regulations, notify the Regional Director, Boston Regional Office, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

Issued, Washington, DC, March 12, 2001.

_____
GARVIN LEE OLIVER
Administrative Law Judge

NOTICE TO ALL EMPLOYEES

POSTED BY ORDER OF THE

FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Authority has found that the U.S. Department of Veterans Affairs, Veterans Affairs Medical Center, Coatesville, Pennsylvania, violated the Federal Service Labor-Management Relations Statute, and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY EMPLOYEES THAT:

WE WILL NOT reorganize the Facilities Engineering Service, or any other unit, without providing the National Association of Government Employees, Local R3-35, SEIU, AFL-CIO, the exclusive representative of our employees, with notice and an opportunity to negotiate over any proposed reorganization to the extent required by the Federal Service Labor-Management Relations 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 NOT fail or refuse to meet with the designated representative of the National Association of Government Employees, Local R3-35, SEIU, AFL-CIO, for the purpose of engaging in collective bargaining as required by the Federal Service Labor-Management Relations Statute; fail or refuse to negotiate over ground rules for collective bargaining as required by the Federal Service Labor-Management Relations Statute; or fail or refuse to respond to the Union's requests to bargain over the matters appropriate for collective bargaining under the Federal Service Labor-Management Relations Statute.

WE WILL rescind the changes in the reorganization of the Facilities Engineering Service that became effective on or about March 28, 1999, and return to the organization that had been in effect.

WE WILL notify, and upon request, bargain with the National

Association of Government Employees, Local R3-35, SEIU, AFL-CIO, concerning any proposed reorganization of the Facilities Engineering Service to the extent required by the Federal Service Labor-Management Relations Statute.

_____
(Respondent/Agency)

Dated:_____By:_____
_
(Signature)
(Title)

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

If employees have any questions concerning this Notice or compliance with its provisions, they may communicate directly with the Regional Director, Boston Regional Office, Federal Labor Relations Authority, whose address is: 99 Summer Street, Suite 1500, Boston, MA 02110, and whose telephone number is: (617)424-5730.

CERTIFICATE OF SERVICE

I hereby certify that copies of the **DECISION** issued by GARVIN LEE OLIVER, Administrative Law Judge, in Case No. BN-CA-90612, were sent to the following parties:

CERTIFIED MAIL AND RETURN RECEIPT — **CERTIFIED NOS**:

Alfred Gordon, Esquire — P168-060-272
Richard Zaiger, Esquire
Federal Labor Relations Authority
99 Summer Street, Suite 1500
Boston, MA 02110

Cynthia Williams, Esquire — P168-060-273
VAMC, Regional Counsel
5000 Wissahickon Avenue
P.O. Box 13106
Philadelphia, PA 19101

Edward Smith, Esquire — P168-060-274
NAGE, Local R3-35, SEIU
317 S. Patrick Street
Alexandria, VA 22314

REGULAR MAIL:

Mark Bailey, President
NAGE, Local R3-35
P.O. Box 155
1400 Black Horse Hill Road
Coatesville, PA 19320

Kenneth Lyons, President
NAGE, SEIU, AFL-CIO
159 Burgin Parkway
Quincy, MA 02169

_____
CATHERINE L. TURNER, LEGAL TECHNICIAN

DATED: MARCH 12, 2001
WASHINGTON, DC