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

DEPARTMENT OF THE NAVY MARINE CORPS RESERVE SUPPORT COMMAND KANSAS CITY, MISSOURI Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 2904 Charging Party	Case No. DE-CA-01-0881

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 **AUGUST 25, 2003**, and addressed to:

Federal Labor Relations Authority
Office of Case Control
1400 K Street, NW, 2nd Floor
Washington, DC 20424-0001

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RICHARD A. PEARSON
Administrative Law Judge

Dated: July 24, 2003
Washington, DC

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

MEMORANDUM DATE: July 24, 2003

TO: The Federal Labor Relations Authority

FROM: RICHARD A. PEARSON
Administrative Law Judge

SUBJECT: DEPARTMENT OF THE NAVY
MARINE CORPS RESERVE SUPPORT COMMAND
KANSAS CITY, MISSOURI

Respondent

Case No. DE-CA-01-0881

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 2904

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 transcripts, exhibits and any briefs filed by the parties.

Enclosures

FEDERAL LABOR RELATIONS AUTHORITY

Office of Administrative Law Judges
Washington, D.C.

DEPARTMENT OF THE NAVY MARINE CORPS RESERVE SUPPORT COMMAND KANSAS CITY, MISSOURI Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 2904 Charging Party	Case No. DE-CA-01-0881

Bruce E. Conant, Esquire
For the General Counsel

Dean D. Legacy, Labor Relations Specialist
For the Respondent

Before: RICHARD A. PEARSON
Administrative Law Judge

DECISION

On July 26, 2002, the General Counsel of the Federal Labor Relations Authority, by the Regional Director of its Denver Region, issued an unfair labor practice complaint, alleging that the Respondent violated section 7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute (the Statute) by reassigning certain work without providing the Union with notice and an opportunity to bargain. The Respondent filed its Answer on August 2, 2002, denying that it had any obligation to bargain with the Union in this instance. A hearing in this case was held in Kansas City, Missouri, on October 28, 2002, at which all parties were present and afforded the opportunity to be heard, to introduce evidence, and to examine and cross-examine witnesses. The General Counsel and the Respondent subsequently filed post-hearing briefs, which I have fully considered.

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

FINDINGS OF FACT

The American Federation of Government Employees (AFGE) is the exclusive representative of a nationwide unit of Marine Corps civilian employees, including approximately 83 such employees at the Department of the Navy's Marine Corps Reserve Support Command, Kansas City, Missouri (the Respondent or the Agency). AFGE Local 2904 (the Union or the Charging Party) is an agent of the AFGE for the purpose of representing the Respondent's bargaining unit employees, who work alongside military personnel and provide administrative support services for members of Marine Reserve units around the country.

The two administrative offices involved in the current dispute are the Individual Drilling Reserve Section (IDRS) of the Total Forces Branch, and the Orders and Pay Branch. Military Personnel Clerks[1] in the IDRS are responsible for maintaining the military records for members of Reserve units who are periodically called to active duty for short periods of time. This requires the clerks to regularly update the information in the Respondent's automated records system to correspond with the changes pertaining to each Marine's career, such as crediting them for attendance at drills and training, and updating their home addresses and dependent information. Much of this work involves transferring information from the service-members' personnel documents into the Marine Corps' computerized database, known as the Marine Corps Total Force System. In June of 2001, there were two civilian employees doing this work in IDRS: Patricia Bell, who was also the Chief Steward for the Union, and Connie Williams.

When a Marine is called up for active duty, an order must be created to document the change in status. This function is performed on the Marine Corps' computerized order-writing system, known as the Total Force Reserve Orders Request Management Application System (TF/RORMA). Generally, the field unit calling up the Marine (known as the operation sponsor) is responsible for inputting the data necessary for requesting an order,[2] and then that order is processed in Kansas City by the Orders and Pay Branch (OPB), which carries out the payroll functions for Reservists on active duty. However, some of these operational sponsors did not have

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[1] This position was later renamed Human Resource Assistant, but I will refer to it by the earlier name.

[2] This data is contained, for example, in the Request for Reserve Active Duty Orders, a sample of which is General Counsel's Exhibit 4. The handwritten information on that document must be inputted into TF/RORMA in order to initiate an active duty order.

access to TF/RORMA, and they instead would submit the information to Kansas City to be inputted into the system.

For at least several years prior to June of 2001, when such requests for orders were received by the Respondent, employees in OPB inputted the data into TF/RORMA. Although Lt. Col. David McMillan, the Head of the Total Force Branch in June 2001, testified that it had always been the responsibility of the clerks in IDRS to input active duty request information into TF/RORMA when the operational sponsor was unable to do so, the evidence of record reflects that OPB employees had been regularly doing this task, except in certain unusual circumstances. For instance, when an employee in OPB was absent for three months in 1999, Ms. Bell filled in for that employee and inputted requests for orders into the computer; in May 2001, Ms. Williams was asked to handle, on a one-time basis, the orders for approximately 35 Marines who would be attending a conference.[3]

On June 7, 2001, a request for active duty orders was received by Ms. Williams in IDRS, who forwarded it, as she always did, to OPB for inputting. To her surprise, Ms. Williams and Ms. Bell soon received an email from a Marine in OPB, informing them: "Due to a shortage of personnel and work overload here at Orders and Pay Branch, we regret to inform you WE WILL NOT be able to assist you with TFRORMA input. Sorry for the inconvenience." (emphasis in original) (General Counsel Exhibit 2). As union steward, Ms. Bell immediately inquired about this announcement, and when she was told that IDRS employees were responsible for this work, she protested that the Agency was changing a past practice without notice or negotiation with the Union. The Agency did not reply further, however, and no negotiations on the matter took place.

During the time between June 2001 and the hearing, the two IDRS personnel clerks continued to input requests for orders into TF/RORMA. According to Ms. Bell, this work "can take up to 30 minutes to an hour", depending on whether some of the necessary information was missing or out-of-date (Tr. 22-23). According to Ms. Williams, "It could take as long as 45 minutes to an hour and a half." (Tr. 66). When information is missing or out of date, such as when a Marine needs a new physical exam, the clerk must contact the Marine, and perhaps follow up with him, to obtain the necessary information. The work is also time-sensitive, because the orders must be issued before the Marine can perform active

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[3] These Marines were among those whose records Ms. Williams regularly maintained, but she had not previously inputted order request data for them (Tr. 85-86).

duty. In order to complete the new work assigned to them, the IDRS clerks have, on occasion, worked more than their normal workday; they received credit hours for this time, which enabled them to take a corresponding amount of time off on other days. Ms. Bell's prior experience in performing this work in 1999 enabled her to adjust to the new assignment in 2001 slightly more easily than Ms. Williams, who often needed to ask Ms. Bell for help in learning the proper procedures for inputting the data into the TF/RORMA system. Both employees received the same performance appraisal ratings for 2001 as they had received the previous year, and both received cash awards for the 2001 year (as did most employees). In approximately December of 2001, the TF/RORMA system was replaced by a different computerized system, which is supposed to allow operational sponsors to input more of their order requests directly than under TF/RORMA, but it appears that the two IDRS clerks continue to input some of the requests themselves as well.

DISCUSSION AND CONCLUSIONS

Issues and Positions of the Parties

Both the General Counsel and the Respondent agree on several points. First, they agree that the decision to assign the inputting of active duty order requests to IDRS rather than OPB was an exercise of management's right under section 7106(a)(2)(B) of the Statute to assign work; therefore, the Respondent had no duty to bargain with the Union concerning the decision itself. The General Counsel only seeks to require the Agency to bargain concerning the impact and implementation of that decision, in accordance with section 7106(b)(2) and (3). Moreover, the Agency concedes that it provided the Union with no advance notice of the reassignment of duties and did not negotiate over the impact or implementation of its decision.

It is well established in the case law that:

> An agency is obligated to bargain over the impact and implementation of a change in unit employees' conditions of employment provided that the change has more than a *de minimis* effect on conditions of employment.

*Social Security Administration, Office of Hearings and Appeals, Nashville, Tenne*ssee, 58 FLRA 363, 364 (2003); *see also* cases dating back at least to *Department of Health and Human Services, Social Security Administration, Chicago Region*, 15 FLRA 922, 924 (1984). The legal dispute in this case has thus been reduced to whether the reassignment of

duties here had more than a *de minimis* effect on employees' conditions of employment.

The General Counsel and the Union argue that the new work assigned to the IDRS employees was "very time consuming, estimated at anywhere from 3 to 22 ½ hours monthly for each employee involved." G.C. Post-Hearing Brief, at 9. They also assert that the new work was different from that which they otherwise performed and that the change was a permanent one. The Respondent argues that the reassignment had no adverse impact at all on the employees: all their working conditions remained exactly the same, despite the additional assignment; moreover, not only were their performance appraisals unaffected, but they received cash awards for 2001.

Analysis

A preliminary factual issue should be addressed before discussing the central legal issue. As noted by the Authority in cases such as *General Services Administration, Region 9, San Francisco, California*, 52 FLRA 1107, 1111 (1997)("*GSA*"), it is first necessary to find that there has been a change in conditions of employment before evaluating whether the impact of the change is more than *de minimis*. In the context of this case, however, it is clear that the email message of June 7, 2001 represented a change in a longstanding practice, if not an official agency policy.

Although the Respondent's only witness, Lt. Col. McMillan, seemed to contend in his testimony that employees in OPB had never been assigned the task of inputting orders, and that no change occurred in the assignment policy in June 2001 (Tr. 78, 79-80, 84-85), the Respondent's opening statement at the hearing conceded that the only issue in dispute is whether the impact of the change was *de minimis* (Tr. 11-12), and its post-hearing brief explicitly stated (at p. 1) that a change was made. In truth, Col. McMillan conceded that he didn't know whether employees in OPB or IDRS had actually been performing the input of active duty orders during his tenure, that he only could speak to the official policy on the matter. Given Col. McMillan's limited knowledge on this point; the testimony of the IDRS employees; and the June 7 email stating that OPB would no longer be able to "assist" IDRS, it is clear that regardless of the official, written policy, OPB employees had been primarily performing the inputting work prior to June 7, and they would no longer do so after June 7.

Having found that a change in a longstanding practice occurred on June 7, it remains to be determined whether that change "had more than a *de minimis* impact on employees' conditions of employment." *GSA*, *supra* at 1111. The relevant

standard for making that determination was set forth in *Department of Health and Human Services, Social Security Administration*, 24 FLRA 403, 407-08 (1986)("*SSA*"). Noting that it will "place principal emphasis on such general areas of consideration as the nature and extent of the effect or reasonably foreseeable effect of the change on conditions of employment of bargaining unit employees",[4] the Authority has stated that "the totality of the facts and circumstances presented in each case must be carefully examined." *Department of Transportation, Federal Aviation Administration, Washington, D.C.*, 20 FLRA 481, 483 (1985)("*FAA*"). Although the Authority has emphasized that there is no all-inclusive list of criteria for making this decision, it has cited such factors as the extent of the change in work duties, location, office space, hours, wages and benefits; the temporary or permanent nature of the change; the number of employees to be affected by the change and the parties' bargaining history;[5] as well as equitable considerations in balancing the various interests. *Id.*

In evaluating the totality of the facts in this particular case, I found the attempt by the General Counsel, through the testimony of the two IDRS employees, to portray their additional duties as time-consuming and qualitatively different from their other work, to be unconvincing. This is not because Ms. Bell and Ms. Williams lacked personal credibility, but rather because the overall evidence does not support those characterizations. Looking at the overall work performed by the IDRS clerks, their job was to maintain the personnel files of approximately 135 Marines and to ensure that the Respondent's computerized personnel database contained accurate and up-to-date information on those Marines. This involved working with "hard copies" of the various personnel records used by the Marine Corps and inputting data from those records into the computerized database. The "new" work assigned to them after June 7 also involved the use of personnel records concerning those same Marines whose records they were already assigned, and the entry of information from those records into the Agency's computerized system. The only difference was that the specific form used for requesting active duty orders, NAVMC 11350, was new to them, and the information was entered into the TF/RORMA database rather than the Marine Corps Total Force System database. Both systems were accessed directly on their computers at their desks, and both involved the same type of work and skills. While Ms. Bell and Ms. Williams suggested

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4 *SSA* at 408.

5 However, these two factors are to be given only limited weight. *SSA* at 408.

that it was difficult for them to become familiar with the new forms, the record demonstrates just the opposite. Ms. Bell had become familiar with inputting orders into TF/RORMA two years earlier during a three-month detail; she did so without special training, but simply by observing other employees on the job and asking them when she had questions. Similarly, Ms. Williams was able to learn any unfamiliar terms or procedures simply by asking Ms. Bell or other personnel familiar with the system. Thus, while it is understandable that an employee might experience anxiety at working with a new form or on a new database, the difficulties here were

minimal, because the “new” work was so similar to the type of

work they were already performing.

The General Counsel attempted to quantify the time required to perform the new assignment, but the testimony of the witnesses was very approximate on this point. Ms. Bell said that "[i]t can take up to 30 minutes to an hour" to do one set of orders and that she averaged "between six and twelve orders a month." (Tr. 22, 24). Ms. Williams said "[i]t could take as long as 45 minutes to an hour and a half," and that she averaged between seven and fifteen orders a month (Tr. 66, 67). But even the lower of their time estimates suggest that many routine cases take less than 30 (or 45) minutes to process, as they both indicated that the work "can" take "up to" those times. The examples they gave of situations in which the work might take longer than normal (e.g. the absence of a required document such as a physical or an HIV test) do not suggest that the personnel clerk has to do much additional work, other than contacting the Marine and reminding him to obtain the necessary form. Therefore, using 10 sets of orders per month as a reasonable average for each employee, I find that the new assignment likely required each of them to work between five and seven hours per month, and certainly no more than ten hours a month. Ten hours would represent six percent of a normal work month.

It is even more difficult to quantify the effect of this new work assignment on Ms. Bell's and Ms. Williams' working conditions. In most respects, their actual working conditions did not change at all. As noted by the Agency and conceded by the General Counsel, the employees' pay, job classification and normal work hours remained the same. They did the new work in the same location, and in the same general manner, as their other work. There is no indication that it affected their prospects for promotion, either positively or negatively (a function of the fact that the new work was so similar to the old work). It did cause them to work beyond their normal work day on some occasions, but again the testimony here is very general. None of the witnesses testified whether the IDRS clerks were expected to perform all of their former duties as well as the new ones within the same time frame, or whether some of their other assignments were relaxed after June 2001. However, Ms. Bell testified that she "would work on an average between two to six hours sometimes during the

week additionally to clean up stuff that should have been done

but it was backlogged because of the orders request." (Tr. 26). She was not required to work overtime to do this work, but she received credit hours for it. Ms. Williams, who was less familiar with the TF/RORMA system than Ms. Bell, testified that on days when she inputs orders, she "may work 15 minutes over credit hours," but no overtime. (Tr. 67-68). She also noted that because of her new duties, she got behind on a project of updating her Marines' records to reflect increased life insurance coverage but there is no indication that this affected her supervisor's evaluation of her work performance. *Id.* Looking at the witnesses' testimony together, it is apparent that the IDRS clerks were able to perform their new duties with only minor adjustments to their workday routine, and that they were able to delay performance of other work in order to accommodate the need to input orders at a specific time.

While the parties did not specifically discuss the matter, I find the circumstances in which the "change" occurred to be relevant to "the nature and extent" of the change. Specifically here, the reassignment of inputting orders from OPB to IDRS was communicated by a Sergeant in OPB, and only after IDRS had sent a new order request to OPB. I am struck by the almost-offhand nature of the communication, and that it was sent by a relatively junior-level official. While the lack of an official memo from Colonel McMillan or Captain Hobbs to announce the new assignment might be viewed as intentional concealment of the new policy by management, under these circumstances it appears to me that it is indicative of the informality of the change, and the lack of policy planning on this matter by management. It appears to have been a reaction to a manpower shortage in OPB, rather than a deliberate plan to rearrange work responsibilities throughout the agency. This also relates to the question of whether the change was temporary or permanent, cited in some Authority decisions. While the General Counsel argues that the change was permanent, that is not at all clear from the record. Ms. Bell and Ms. Williams testified that IDRS clerks continue to input active duty orders, but they also indicated that the new computerized records system is intended to shift this work to the field, a fact that Colonel McMillan corroborated. The record is silent as to how much of this disputed work is still being performed by IDRS. The circumstances in which the change was implemented suggest that the reassignment was

intended to be a short-term measure, although it has continued in effect for more than a year.[6]

Although the Authority stated in *SSA*, 24 FLRA at 408, that it will look at the number of employees affected by a change "primarily to expand rather than to limit the number of situations where bargaining will be required[,]" it must at least be noted that only two bargaining unit employees in this case were assigned the task of inputting active duty orders. When this fact is combined with the other evidence surrounding the change in duties, I conclude that the reasonably foreseeable impact of the change was *de minimis*. In reaching this conclusion, I recognize as factors in favor of the General Counsel's position that the change did increase, in some small measure, the IDRS clerks' workload;[7] that it required some adjustment to unfamiliar terminology; that it caused them to work beyond their regular work day on a few occasions; and that the change has lingered for more than a year. These factors are outweighed, however, by the fact that in almost every respect, the working conditions of the IDRS clerks remained exactly the same as before; that the nature of the "new" work was precisely the same as work that they had been doing; and that the change appears to have been an informal response to temporary conditions in OPB rather than a formal reorganization. The ways in which the clerks' work changed was extremely slight, both quantitatively and

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[6] Compare the above facts, for instance, to the more systematic method in which changes were made in cases such as *Social Security Administration, Malden District Office, Malden, Massachusetts*, 54 FLRA 531, 543 (1998)("*SSA Malden*"), and *U.S. Department of Justice, Immigration and Naturalization Service, United States Border Patrol, San Diego Sector, San Diego, California*, 35 FLRA 1039, 1045 (1990).

[7] As the Authority noted in *SSA Malden*, 54 FLRA at 537, the fact that management felt a task needed to be reassigned from one group of employees to another demonstrated that it was not insignificant. But taken literally, such a rationale would require bargaining on every change. If an agency's determination that a change is worth making automatically meant that the change is "significant" for bargaining purposes, then no change would be *de minimis*.

qualitatively, and the ways in which their working conditions

remained the same were many and fundamental. I find that the nature and effects of the change here more closely resemble those in the *SSA* and *FAA* cases, *supra*, than the cases cited by the General Counsel; *see also*, *U.S. Department of Labor, Washington, D.C. and U.S. Department of Labor, Employment Standards Administration, Chicago, Illinois*, 30 FLRA 572, 579-80 (1987).

For all these reasons, I conclude that the General Counsel has failed to prove, by a preponderance of the evidence, that the Respondent changed conditions of employment in a way that was more than *de minimis*. Therefore, the Respondent was not required to provide the Union with notice of the change or to negotiate concerning it. Accordingly, the Respondent did not commit an unfair labor practice.

Based on the foregoing, I recommend that the Authority issue the following Order:

ORDER

IT IS ORDERED that the Complaint be, and hereby is, dismissed.

Issued, Washington, DC, July 24, 2003.

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RICHARD A. PEARSON
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of this DECISION, issued by RICHARD A. PEARSON, Administrative Law Judge, in Case No. DE-CA-01-0881 were sent to the following parties:

_____

CERTIFIED MAIL AND RETURN RECEIPT	**CERTIFIED NOS:**
Bruce E. Conant **2188** Counsel for the General Counsel Federal Labor Relations Authority 1244 Speer Boulevard, Suite 100 Denver, CO 80204-3581	**7000 1670 0000 1175**
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Patricia Bell **2201** Union Steward AFGE, Local 2904 P.O. Box 8599 Kansas City, MO 64114	**7000 1670 0000 1175**

Dated: July 24, 2003
Washington, DC