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

U.S. DEPARTMENT OF AGRICULTURE FOOD AND SAFETY INSPECTION SERVICE BOISE CIRCUIT, BOULDER/SALEM DISTRICT BOISE, IDAHO Respondent	
and NATIONAL JOINT COUNCIL OF FOOD INSPECTION LOCALS AFGE, LOCAL 2233, AFL-CIO Charging Party	Case Nos. SF-CA-03-0350 SF-CA-03-0717

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 **JULY 12, 2004**, 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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PAUL B. LANG
Administrative Law Judge

Dated: June 8, 2004
Washington, DC

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MEMORANDUM DATE: June 8, 2004

TO: THE FEDERAL LABOR RELATIONS AUTHORITY

FROM: PAUL B. LANG
Administrative Law Judge

SUBJECT: U.S. DEPARTMENT OF AGRICULTURE
FOOD AND SAFETY INSPECTION SERVICE
BOISE CIRCUIT, BOULDER/SALEM DISTRICT
BOISE, IDAHO

Respondent

and Case Nos. SF-CA-03-0350
SF-CA-03-0717

NATIONAL JOINT COUNCIL OF FOOD
INSPECTION LOCALS
AFGE, LOCAL 2233, 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 transmittal form sent to the parties, and the service sheet. Also enclosed are the pleadings, motions, exhibits and briefs filed by the parties.

Enclosures

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

U.S. DEPARTMENT OF AGRICULTURE FOOD AND SAFETY INSPECTION SERVICE BOISE CIRCUIT, BOULDER/SALEM DISTRICT BOISE, IDAHO Respondent	
and NATIONAL JOINT COUNCIL OF FOOD INSPECTION LOCALS AFGE, LOCAL 2233, AFL-CIO Charging Party	Case Nos. SF-CA-03-0350 SF-CA-03-0717

R. Timothy Sheils, Esquire
For the General Counsel

Jonathan Theodule
For the Respondent

William Starr
For the Charging Party

Before: PAUL B. LANG
Administrative Law Judge

DECISION

Statement of the Case

On February 7, 2003, the American Federation of Government Employees, Local 2233, AFL-CIO (Union) filed an unfair labor practice charge, designated as Case No. SF-CA-03-0350, against the U.S. Department of Agriculture, Food Safety and Inspection Service (USDA). On May 16, 2003, the Regional Director of the San Francisco Region of the Federal Labor Relations Authority (Authority) issued a

Complaint and Notice of Hearing arising out of the unfair labor practice charge against the U.S. Department of Agriculture, Food Safety and Inspection Service, Boise Circuit, Boulder/Salem District, Boise, Idaho (Respondent). In the Complaint it was alleged that the Respondent had

committed an unfair labor practice in violation of §7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute (Statute) by unilaterally assigning an additional plant to a member of the bargaining unit represented by the Union without providing the Union with notice and an opportunity to bargain to the extent required by the Statute.

On June 30, 2003, the Regional Director approved an informal settlement agreement pursuant to §2423.25(a)(1) of the Rules and Regulations of the Authority and the Complaint was withdrawn.[1]

On August 8, 2003, the Union filed a second unfair labor practice charge, designated as Case No. SF-CA-03-0717, against the USDA. On November 10, 2003, the Regional Director of the San Francisco Region of the Authority issued an Order Consolidating Cases, Complaint and Notice of Hearing against the Respondent in both of the aforementioned cases. In the consolidated Complaint it was alleged that the Respondent had committed an unfair labor practice in violation of §7116(a)(1) and (5) of the Statute by assigning two additional plants to a member of the bargaining unit represented by the Union[2] without providing the Union with notice and an opportunity to bargain to the extent required by the Statute. It was further alleged that the Respondent had violated the terms of the informal settlement agreement and that the agreement had been rescinded by the Regional Director on October 16, 2003.

A consolidated hearing was held on both cases on January 30, 2004, in Boise, Idaho. Each of the parties was present with counsel and was afforded the opportunity to present evidence and to cross-examine witnesses. This Decision is based upon consideration of all of the evidence, including the demeanor of witnesses, and of the post-hearing briefs submitted by the parties.

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[1] An informal settlement is not subject to approval by or an order of the Authority. The Regional Director may reinstitute formal proceedings if the Respondent fails to comply with its obligations under the agreement.

[2] The first assignment was the subject of the original Complaint.

Positions of the Parties

The General Counsel

The General Counsel maintains that the addition of two food processing plants to the work assignment of Patricia Hall, a food inspector who is a member of the bargaining unit, constituted a change in her working conditions which was greater than *de minimis*. According to the General Counsel, the permanent addition of even a single plant, let alone two plants, to an employee's work assignment was not a routine occurrence. Furthermore, the addition of the second plant was a violation of the informal settlement agreement.

According to the General Counsel, the result of the Respondent's action was to allow Hall less time to complete her inspection of each plant. Therefore, she was forced to report that some of the assigned inspection procedures had not been completed, a fact that could have an adverse impact on her performance evaluations.

The General Counsel also maintains that, even though the Union had not requested bargaining over prior changes to the assignments of bargaining unit employees, it had not waived the right to receive notice and an opportunity to bargain.

The General Counsel acknowledges that the lowest level of recognition and bargaining between the Union and the Respondent is on the national level. However, all prior permanent changes to work assignments were accomplished only after the Union was notified and there had been informal discussions at the local level. Such discussions had always resolved problems, thus obviating the need for bargaining at the national level.

The General Counsel argues that a *status quo ante* remedy is appropriate in this case. Furthermore, the circumstances warrant a nontraditional remedy whereby the Respondent would be directed to raise Hall's evaluation in the absence of documentary evidence justifying a lower rating.

The Respondent

The Respondent maintains that the addition and deletion

of food processing plants to the work assignments of Consumer Safety Inspectors such as Hall is a routine process that is the result both of the Respondent's legal obligation to accommodate requests for inspection and of changes in the operations of the plants such as the addition or cancellation of night shifts. Such adjustments are also necessitated by the leave schedules of employees. Therefore, according to the Respondent, the addition of the two plants to Hall's assign-ment did not amount to a change in conditions of employment so as to create a duty to bargain. Even if the addition of the plants to Hall's assignment constituted a change in her conditions of employment, such change was *de minimis* because both her duties and her work schedule remained the same. Furthermore, Hall has never been reprimanded, counseled or informally criticized because of her failure to complete any procedures at a plant.

The Respondent further maintains that it provided advance notice of the changes to Hall's work assignment both to Hall herself and to William E. Starr, the President of the Union and the designated local representative of the national Union. Neither the national nor the local Union requested bargaining, nor had there ever before been a request for bargaining over such changes.

The Respondent argues that it fully complied with the informal settlement agreement inasmuch as the agreement only required that it give notice and an opportunity to bargain over matters that are negotiable in the first place. In any event, the Respondent's obligations under the agreement would only have been triggered by a request to bargain. The Union has never made such a request either in the case of Hall or in other similar circumstances.

Even if the changes to Hall's work assignment were to be considered a change in her conditions of employment, the Respondent argues that a *status quo ante* remedy would not be appropriate because it would disrupt the Respondent's operations and would interfere with its exercise of a management right pursuant to §7106 of the Statute.

Findings of Fact

The Respondent is a unit of the USDA which is an

"agency"
within the meaning of §7103(a)(3) of the Statute. The Union is a local representative of the American Federation of Government Employees, AFL-CIO (AFGE) which is a "labor organization" as defined in §7103(a)(4) of the Statute. The AFGE is the exclusive representative of a unit of employees of the USDA which is appropriate for collective bargaining.

Hall's Working Conditions Before the Changes to Her Assignment

Hall is a member of the national bargaining unit represented by the AFGE and is employed by the USDA in the Boise Circuit as a Consumer Safety Inspector.[3] Hall's duties require her to visit various food processing plants to conduct inspections. The purpose of the inspections is to insure adherence to regulatory standards regarding factors such as sanitation, employee hygiene, accuracy of weights, proper operation of equipment and pest control. Hall also insures that the plants keep the required records. (The formal job description is set forth in Resp. Ex. 1.) Hall is required to make daily visits to each of the plants assigned to her, but in no particular order. She has been asked by her supervisor to vary the order of her visits in order to maintain the element of surprise. Hall is not required to spend a particular amount of time at each plant or to divide her time equally among the plants. Each day she receives a computer generated procedure schedule which indicates the procedures that she is to complete at each plant. At the end of the work day she reports which of the procedures she has completed (GC Ex. 3 is an example of a report for an individual plant).

Hall is assigned to the second shift. Her shift begins when she leaves her home in Idaho Falls, Idaho each day at about 2:30 p.m. She returns home at around 1:00 a.m., but that time may vary depending upon the location of the last plant that she visits and the time that she spends at each plant.

The Respondent normally issues a list of all plants that are to be inspected and the inspectors to whom each plant is assigned about two weeks before the inspections are

[3] Neither of the parties has suggested that Hall's work routine, other than with regard to the additions to her assignment, is not typical of that of all other Consumer Safety Inspectors in the bargaining unit.

to be made. The lists are sometimes revised, in which case Hall usually receives a revised schedule. The revised schedule of assignments to inspectors for the week of January 4 through 10, 2004, was issued on December 29, 2003 (Resp. Ex. 2). Hall had four plants assigned to her for that week: King B Jerky, Golden Valley[4], Heinz Frozen Food Company and Targhee Brands, Inc.[5] The King B Jerky plant was to be open for inspection beginning at 1430, which is when Hall would leave her home at the start of her shift. The other three plants were to be available for inspection beginning at 1530. This did not mean that Hall would necessarily inspect the King B Jerky plant first; in accordance with her supervisor's request she would vary the order in which the plants were inspected.

[4] It was stipulated that the listing of Intermountain Meat was a typographical error (Tr. 141).

[5] According to Hall, the Targhee night shift closed in September of 2003 for what was expected to be 120 days. Hall was responsible for inspecting three plants as of the time of the hearing (Tr. 55).

The Addition of the Targhee and Golden Valley Plants

Targhee first appeared on Hall's schedule in January of 2003. Prior to the addition of Targhee she was assigned two plants. When Hall learned of the addition of the Targhee plant she contacted her supervisor, Dr. Muhammad Ali, and asked if it was a permanent assignment. Ali informed her that the assignment was permanent and that he was going to assign the Heinz plant to another inspector. Hall thereupon telephoned Ali and said that King B was up for sale, that Heinz was not running a full shift and that Targhee had a very small shift. She expressed concern to Ali that, "you're going to work me out of a job." Ali stated that plants close all of the time and that they would have to hope for the best
(Tr. 57, 58). As it turned out, King B remained in operation.

In August of 2003 the Golden Valley plant was added to Hall's assignment. Hall testified that, after the addition of a fourth plant to her schedule, she was not able to spend as much time at each plant. Consequently, she was sometimes unable to complete all of the inspection procedures which had been assigned.[6] When asked by me whether she had been reprimanded, counseled or received any adverse comments from a supervisor because of her failure to complete certain procedures, her response was, "Not at this point" (Tr. 69).[7]

As of the time of the hearing Hall's most recent performance appraisal had been completed on March 21, 2003, and presented to her on March 31, 2003 (GC Ex. 4).[8] She received ratings of "meets" on the two critical appraisal elements: "VERIF [verification] OF HACCP [Hazard Analysis on Critical Control Points] PLANS" and "VERIF OF SSOPS

[6] Hall was not required to spend any set amount of time at a particular plant on any given day.

[7] There is no evidence that any other inspector has suffered adverse effects because of a failure to complete inspection procedures, nor is there evidence that either Hall or a Union representative discussed with a representative of the Respondent the possibility of adverse effects on inspectors because of the addition of plants to their assignments.

[8] There was no explanation for the fact that Hall and her supervisor apparently signed the appraisal form on April 25, 2002, as well as after the appraisal had been completed.

[Standard Sanitation Operation Procedures].” She received ratings of “exceeds” (the highest possible rating) on the two other noncritical appraisal elements: “PERFORMS INSP/ CONDUCTS SAMP” and “MAIN LIAIS [presumably, maintains liaison]/ADMIN DUTIES.” Her overall rating was “Fully Successful” which is midway between the highest and lowest levels. Hall testified that she has formerly received ratings of “exceeds” on the first two elements, but that she has been receiving ratings of “meets” on those elements for the past several years (Tr. 70).

Hall testified that the King B plant is about 12 miles from her home, the Heinz plant is about 53 miles from her home, the Targhee plant is about 39 miles from her home and the Golden Valley plant is about 13 miles from her home. Hall estimates that the addition of the Targhee plant added about 54 miles of driving, and an hour and a half of driving time, to her daily work routine. Prior to the addition of Targhee she spent about three hours in each of the two plants. She now spends from an hour and a half to, at the most, two hours in each of the three plants.[9] Hall further testified that the addition of Targhee and Golden Valley to her assignments added about one hour to her work day, not counting the commuting time. She receives no extra compensation for the additional hours because the Respondent took away her “travel time”
(Tr. 73-79).

On cross-examination Hall acknowledged that the length of her work day depends on the order in which she decides to visit the plants and that she determines the order (Tr. 96, 97). She also acknowledged that factors other than the time she spends at a plant could affect whether she could complete all of the scheduled inspection procedures. Such factors include the product that is being produced and whether the equipment is operating. If an inspection procedure is not completed for any reason, Hall circles “Not Performed” on the procedure sheet (Tr. 107, 109). She does not make any other notations as to the reason, although she does pass along such information to the Inspector in Charge on the day shift

[9] Hall did not testify as to the allocation of time in each of the four plants immediately before the temporary cessation of the night shift at Targhee.

(Tr. 106).[10]

Hall also stated on cross-examination that, although her assignment to the Golden Valley Plant began in August of 2003, she first learned of the assignment by e-mail, probably in early July, several weeks before it appeared on the weekly assignment sheet. She spoke to Starr about the assignment shortly after she received the e-mail (Tr. 118-120).

The Union's Reaction to the Changes to Hall's Assignment

Starr testified that all bargaining is conducted at the national level, but that the parties "discuss issues" locally. According to Starr, the collective bargaining agreement states that the parties should attempt to resolve issues at the lowest level possible.[11]

Starr further testified that, in the past, Ali would contact him regarding proposed changes. Starr would then contact the employees involved and ask whether they had any issues. If so, he and Ali, and sometimes the employees, would try to resolve the issues.[12]

On or about January of 2003 Hall informed Starr that the Targhee plant had been permanently added to her assignment; this was Starr's first notice of the change. He then verified that no Union official at a higher level had received notice. Starr contacted Ali and asked him if the Targhee plant was a permanent assignment. When Ali told

[10] In objecting to certain questions during the cross-examination of Hall, counsel for the General Counsel stated that the inspection procedure sheet (GC Ex. 3) had been introduced for the sole purpose of illustrating the type of work that Hall performs in each plant. In reliance on that statement, counsel for the Respondent did not pursue a line of questioning as to other possible reasons for Hall's failure to complete certain inspection procedures and I indicated that the General Counsel would be held to his statement (Tr. 113). Accordingly, the inspection procedure sheet has only been considered for the purpose of showing the type of work which Hall typically performs during the course of her inspections.

[11] The collective bargaining agreement was not offered into evidence.

[12] The current collective bargaining agreement went into effect some time in 2002. Unlike its predecessor, the current agreement does not provide for local consultation.

Starr that it was, Starr asked if they could discuss it. Ali stated that the decision was final and that there could be no discussion.[13] This had never happened before.

The Union thereupon filed an unfair labor practice charge and the parties eventually entered into an informal settlement agreement (GC Ex. 2). The settlement agreement states, in pertinent part:

[13] Ali was reportedly on sick leave at the time of the hearing and did not testify.

The Agency [USDA] will bargain with the [local]

> Union, if the Union chooses to request bargaining within 15 working days of the date that the Regional Director approves this agreement, over the procedures and appropriate arrangements resulting from the Agency decision to assign bargaining unit employee Patricia Hall the responsibility of inspecting the Targhee Brands plant located in Rexburg, Idaho. If the Union chooses to request bargaining it shall submit its request for bargaining at the next scheduled mid-term nego-tiation sessions as outlined in Article 6 of the Labor Management Agreement (LMA). All requirements and deadlines of Article 6 are applicable for this negotiation. As outlined in the LMA, Union proposals on procedures and appropriate arrange-ments are due no later than five (5) workdays prior to bargaining. . . . The Agency will give retro-active effect to the results of this bargaining as permitted by law, regulation, and the LMA. Retroactivity will be granted where it will not cause disruption or undue hardship to the Agency.
>
> The Agency remains committed to notify the Union that the Agency will, consistent with existing law, notify the Union of changes in conditions of employment, including changes to inspectors' assignments, when required by the Federal Labor Statue and the LMA. The Agency assures the Union that the Agency will continue to notify the National Joint Council of Food Inspectors Locals, pursuant to the Federal Labor Statute and the LMA, of changes in conditions of employment.

The Regional Director approved the settlement agreement on June 30, 2003.

Neither Starr nor any other representative of the Union or AFGE requested bargaining over the addition of the Targhee Brands plant to Hall's assignment. According to Starr, the reason for their failure to request bargaining was that a settlement agreement was already in place and the Respondent had breached the agreement, presumably by the addition of the Golden Valley plant, before they were able to bargain. Consequently, the Union felt that it was

obvious that the Respondent was unwilling to bargain (Tr. 38, 39).

Starr acknowledged that he receives the inspectors' assignment sheets about two weeks before the assignments go into effect and that he reviews them regularly. He also stated that the assignment sheets are not always accurate (Tr. 37, 38). He first learned of the Golden Valley assignment (which went into effect in August of 2003) from Hall on or about July 9, 2003.

There is considerable divergence in testimony as to the frequency of changes to plant assignments. At one point Starr testified that permanent changes are "fairly common" and would occur about every six months. At another point he stated that, after reviewing the pertinent documents produced by the Respondent, there were approximately eight permanent plant assignments between January of 2000 and February of 2002
(Tr. 45, 46).

Dr. Ronald K. Jones, a Veterinary Medical Officer and District Manager for the Respondent, testified that grants of inspection are added or withdrawn at least once a month, thereby necessitating changes to the assignments of at least some inspectors (Tr. 164). Jones' testimony is apparently based upon his general knowledge of the ten-state district, which includes Idaho, for which he is responsible. Furthermore, Jones was including changes to the assignments of nonbargaining unit employees. Starr, on the other hand, was testifying only as to the Boise Circuit.

Dr. Ron C. Nelson has been a Deputy District Manager since 1997. His responsibilities included the State of Idaho from some time in 2002 until around July of 2003. Nelson testified that he made the decision to add the Targhee plant to Hall's assignment and so informed Ali, who was her direct supervisor and who reported directly to him. There had originally been two night shift inspectors assigned to the Targhee plant before one of them retired. At that time the work load at Targhee was extremely low and it was thought that the Targhee plant would fit in well with Hall's assignment. According to Nelson, the addition of the Targhee plant did not change Hall's duties. Such changes in plant assignments are "very common" (Tr. 230-232).

On cross-examination Nelson testified that, prior to

the time when the new collective bargaining agreement went into effect in 2002, the Respondent consulted[14] with the Union at the local level, while bargaining occurred at the national and possibly the regional levels. Local consultation does not occur under the current agreement.

The exact frequency of permanent assignments is unclear. Nevertheless, based on the evidence as a whole, I find as a fact that changes to the work assignments, whether temporary[15] or permanent, of at least some inspectors in the bargaining unit, while perhaps not frequent, were not rare and were an accepted aspect of the working conditions of inspectors such as Hall.

It is undisputed that the Respondent may not deny an inspector to a plant that meets certain criteria regarding its level of operations. For example, management at each plant must show that it is fully utilizing its first shift before the Respondent will assign an inspector to a second shift.

The job description for the position of Consumer Safety Inspector (Resp. Ex. 1), as well as the testimony of both Starr and Hall, leaves no doubt that travel between processing plants is an integral part of the function of the inspectors. The job description indicates that a valid driver's license may be required (Resp. Ex. 1 at 4) and that:

> Assignments consist of visits to one or more commercial operations such as meat, poultry, or egg product plants; warehouses; and other related production sites. (Resp. Ex. 1 at 6)

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[14] Although there is no evidence as to the contractual definition of "consultation" under the previous agreement, it was evidently similar to the process described in §7113 (b) of the Statute.

[15] It is undisputed that temporary changes to inspectors' assignments occur because of leave or other absences and are necessary to maintain coverage of the plants. The General Counsel's attempt to discount evidence of the frequency of temporary changes to assignments and of changes to the assignments of nonbargaining unit inspectors is unpersuasive. The evidence indicates that changes in the assignments of all inspectors, whether temporary or permanent, are part of their normal working conditions.

It is also clear that, because of the desirability (or possibly the requirement) of varying the order of plant inspections, the distance which an inspector must travel may vary on a daily basis, regardless of whether there are changes to the number of plants assigned. Hall's testimony indicates that the length of her work day and her driving time and distance would have varied even if the Targhee and Golden Valley plants had not been added to her assignment.

The General Counsel has emphasized the significance of Starr's testimony that no other bargaining unit inspector had ever before been given two permanent additions to his or her assignment in a single year. Assuming that this is so, the evidence indicates that the additions, in themselves, had little or no effect on Hall's working conditions other than possibly to reduce the amount of time she could spend at each plant.[16] She admitted that she had not been reprimanded or counseled because of her failure to complete all of the inspection procedures and also acknowledged that her ratings on the critical elements in her most recent annual performance evaluation had not changed over the past several years.

Discussion and Analysis

There Was No Change to Hall's Conditions of Employment

The Authority has long held that, before implementing a change in conditions of employment, an agency must provide notice to the certified representative of the pertinent bargaining unit and to afford the representative the opportunity to bargain to the extent required by the Statute, *U.S. Penitentiary, Leavenworth, Kansas*, 55 FLRA 704, 715 (1999). Conversely, there is no duty to provide notice or an opportunity to bargain when there is no change to conditions of employment, *United States Department of the Air Force, 6th Support Group, MacDill Air Force Base, Florida, 55 FLRA 146, 152 (1999) (MacDill).*

In determining whether a matter involves a condition of

[16] Hall was not required to spend the same amount of time at each of the plants and could, if she wished, make up for a short visit to an individual plant by spending more time at the plant on subsequent days.

employment the Authority will consider (a) whether it pertains to bargaining unit employees, and (b) whether there is a direct connection between the matter and the work situation of bargaining unit employees, *Antilles Consolidated Education Association and Antilles Consolidated School System*, 22 FLRA 235, 237 (1986) (*Antilles*). Since Hall is undeniably a member of the bargaining unit, the first prong of the *Antilles* test has been satisfied.

In his post-hearing brief the General Counsel has cited two aspects of Hall's work situation in support of the proposition that the Respondent changed her conditions of employment. Each of those factors must be measured against the second prong of the *Antilles* test.

The first of the cited factors is the amount of time that Hall could spend at each plant. Hall testified without contradiction that the addition of the Targhee and Golden Valley plants meant that she had less time to spend at each plant and that she sometimes failed to complete all of the assigned inspection procedures because of a lack of time. There is no evidence either as to how often this occurred or whether it occurred more often after the addition of the two plants.[17] Even if Hall's failure to complete all of the inspection procedures were solely attributable to the addition of the two plants, there is nothing, other than Hall's expressed fears, to show that the addition of the plants caused or is likely to cause her to suffer any adverse personnel action. By Hall's own admission she has never been reprimanded or counseled for that reason. Furthermore, her most recent performance evaluation was identical to those of the previous several years, at least with regard to her rating on the two critical elements.[18]

The General Counsel has emphasized the fact that, when Hall expressed concern to Ali that he would "work her out of a job", Ali told her to hope for the best. According to the

[17] It is by no means inevitable that the addition of the two plants would have affected Hall's ability to complete the assigned inspection procedures. It is equally possible that her ability to do so would depend on the order in which she visits the plants, which is a factor that affects the amount of time that she spends driving from one plant to another.

[18] There is no evidence that either Hall or the Union complained that the Respondent was assigning her an excessive number of test procedures each day.

General Counsel "there was little reason for such hope" since the Respondent added the Golden Valley plant to her assignment in August of 2003 (GC brief at 7). The General Counsel has not explained why Hall should have been disturbed by this development since its obvious effect was to afford her an increased measure of job security (which apparently was her main concern) to offset the reassignment of the Heinz plant to another inspector and the expected sale of the King B plant.

The second factor cited by the General Counsel is the effect of the additions on Hall's hours of work and driving time. By Hall's own admission, regardless of which plant she planned to visit first, she begins each work day at 2:30 p.m. when she leaves her home. The time of her arrival home may, but need not, depend on the location of the last plant that she visits each day. It is unclear whether she is required or simply encouraged to vary the order of her daily inspections. Even if the variance in the order of plant visits is required, Hall still has the option of adjusting the amount of time which she spends in each plant so as to ensure that she arrives home at about the same time each day. That was true before as well as after the two plants were added to her assignment. Hall testified that the addition of the Targhee plant has added about 54 miles and 1½ hours of driving time to her daily routine. This is allegedly because the Targhee plant is 39 miles from her home.[19] However, even before the addition of the two plants Hall was inspecting the Heinz plant which is 53 miles from her home.

The substance of this evidence is that the nature of Hall's work, which has not been shown to be different than that of other inspectors in the Boise Circuit, involves a fluctuating schedule with daily changes, both in the amount of time that she spends driving and the distance which she drives. The length of her workday is controlled, not only by the order in which she visits the plants, but by the amount of time she spends in each plant; that would be true regardless of the number of plants which she is assigned to inspect.

The Respondent has not compelled Hall to spend a

[19] According to the General Counsel the addition of the Golden Valley plant did not significantly change Hall's driving time or distance because the plant is only 13 miles from her home.

specific amount of time in an individual plant or to spend a minimum amount of time in all of her assigned plants so long as she makes daily visits to each plant. Her driving time between the plants is as much a part of her workday as the time she spends conducting inspections. Hall's concern that she is not spending enough time performing inspections may be the result of a commendable desire to maintain safety standards in the plants. However, the fact remains that the General Counsel has not met his burden of proof, as required by §2423.32 of the Rules and Regulations of the Authority, that the Respondent changed Hall's work situation within the meaning of the second prong of the *Antilles* test. Therefore, in accordance with the Authority's holding in *MacDill*, the Respondent was not obligated to provide the Union either with advance notice or with an opportunity to bargain.

The Respondent Did Not Violate the Settlement Agreement

The settlement agreement imposed two obligations on the Respondent. The first was to bargain on request over the addition of the Targhee plant to Hall's assignment if the Union made such a request within a specified time period. It is undisputed that, for whatever reason, the Union did not request bargaining over the addition of the Targhee plant. Therefore, the Respondent cannot be held to have breached that obligation.

The second obligation was, to the extent required by the Statute and the collective bargaining agreement, to provide the Union with advance notification and the opportunity to bargain before making changes to conditions of employment, including inspectors' assignments. That language added nothing to the duties of the Respondent or to the rights of the Union. As shown above, the Respondent did not fail to fulfill its statutory duty as to notification and bargaining because it had no such duty.

Starr testified that the collective bargaining agreement states the intent of the parties to attempt to resolve disputes at the lowest level possible and that the parties always discussed assignment changes before they occurred. It is significant to note that there is no evidence as to whether this practice continued after the effective date of the current collective bargaining agreement that eliminated the requirement of local consultation. In any event, neither the statement of intent

nor the practice enlarges the duty of either party to bargain, especially since the level of recognition and the duty to bargain on any subject are solely on the national level. Accordingly, the Respondent has not violated the settlement agreement.

For the foregoing reasons I have concluded that the Respondent did not commit unfair labor practices in violation of §7116(a)(1) and (5) of the Statute by unilaterally adding two plants to Patricia Hall's work assignment without providing the Union with advance notice and an opportunity to bargain. Accordingly, I recommend that the Authority adopt the following Order:

ORDER

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

Dated: June 8, 2004, Washington, DC

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PAUL B. LANG
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of this **DECISION** issued by PAUL B. LANG, Administrative Law Judge, in Case Nos. SF-CA-03-0350 and SF-CA-03-0717, were sent to the following parties:

_____

CERTIFIED MAIL & RETURN RECEIPT **CERTIFIED NOS:**

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