

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

U.S. DEPARTMENT OF JUSTICE FEDERAL BUREAU OF PRISONS U.S. PENITENTIARY LOMPOC, CALIFORNIA Respondent	
and COUNCIL OF PRISON LOCALS AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO Charging Party	Case No. SF-CA-03-0782

NOTICE OF TRANSMITTAL OF DECISION

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

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

Any such exceptions must be filed on or before **AUGUST 30, 2004**, and addressed to:

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

SUSAN E. JELEN
Administrative Law Judge

Dated: July 27, 2004
Washington, DC

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

MEMORANDUM

DATE: July 27, 2004

TO: The Federal Labor Relations Authority

FROM: SUSAN E. JELEN
Administrative Law Judge

SUBJECT: U.S. DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF PRISONS
U.S. PENITENTIARY
LOMPOC, CALIFORNIA

Respondent

and

Case No. SF-CA-03-0782

COUNCIL OF PRISON LOCALS
AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, 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
WASHINGTON, D.C.

U.S. DEPARTMENT OF JUSTICE FEDERAL BUREAU OF PRISONS U.S. PENITENTIARY LOMPOC, CALIFORNIA <p style="text-align: center;">Respondent</p>	
and COUNCIL OF PRISON LOCALS AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO <p style="text-align: center;">Charging Party</p>	Case No. SF-CA-03-0782

Amita Baman Tracy, Esquire
For the General Counsel

Steven R. Simon, Esquire
Theresa T. Talplacido
For the Respondent

Timothy Debolt
For the Charging Party

Before: SUSAN E. JELEN
Administrative Law Judge

DECISION

Statement of the Case

This case arises out of an unfair labor practice charge filed by the Council of Prison Locals, American Federation of Government Employees, AFL-CIO, (Union) against the U.S. Department of Justice, Federal Bureau of Prisons, U.S.

Penitentiary, Lompoc, California (Respondent),¹ as well as a Complaint and Notice of Hearing issued by the Regional Director of the San Francisco Region of the Federal Labor Relations Authority (FLRA). The complaint alleged that the Respondent violated §7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute, 5 U.S.C. §7101, *et seq.* (Statute). Specifically, the complaint alleged that Respondent violated the Statute by relocating the Business Office or Financial Management Services from the Shared Services Building to inside the U.S. Penitentiary without providing notice and an opportunity to bargain to the Union or its designated agents. (G.C. Ex. 1(c), (g); Tr. 7-8)

Respondent also amended its answer at the hearing, admitting certain allegations but denying the substantive allegations of the complaint. (G.C. Ex. 1(d); Tr. 7-9)

A hearing in this matter was held in Lompoc, California, on March 4, 2004. The parties were represented and afforded a full opportunity to be heard, adduce relevant evidence, examine and cross-examine witnesses and file post-hearing briefs. Both the General Counsel and the Respondent filed timely briefs.

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

Statement of the Facts

The Federal Correctional Complex (FCC) at Lompoc, California is composed of five separate facilities: the United States Penitentiary (USP), the Federal Correctional Institute (FCI), the Camp, the Farm, and the Intensive Confinement Center. (Tr. 17) Warden Al Herrera has been the CEO of USP since December, 2000 (Tr. 147); Cameron Lindsay has been the CEO of the FCI since March 2002. (Tr. 143)

The Union is the exclusive representative of a nationwide consolidated unit of employees of the Federal

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At the hearing, Counsel for the General Counsel and the Respondent entered into the following joint stipulation: "On approximately August 20th, 2003, the Department of Justice, Federal Bureau of Prisons, U.S. Penitentiary Lompoc, California, by Warden Al Herrera, implemented a relocation of Business Office employees working in the Shared Services Building to the USP." (Tr. 7) Counsel for the General Counsel then amended the complaint to reflect that the Respondent is the Department of Justice, Federal Bureau of Prisons, U.S. Penitentiary, Lompoc, California. (G.C. Ex. 1 (g); Tr. 7)

Bureau of Prisons, Washington, D.C., including those employees at the FCC, Lompoc, California. (G.C. Ex. 1(c), (d), (g)) The American Federation of Government Employees, Local 3048, AFL-CIO (Local 3048), which primarily represents bargaining unit employees who work at USP, and the American Federation of Government Employees, Local 4048, AFL-CIO (Local 4048), which primarily represents bargaining unit employees who work at the FCI, are the designated agents of the Union for certain employees within the FCC, Lompoc, California. (Tr. 40-41, 50-51)

The FCC was created in 1998 and prior to that time both USP and FCI had separate Business Offices (or Financial Management Services), located in each facility. The Business Office for USP was located on the second floor of the Administrative Building, inside the USP. In 1998 the two separate offices were combined to create one Business Office and moved to the Shared Services Building, which is about two (2) miles from either facility. The Business Office had one side of the Shared Services Building; Personnel occupied the other side. (Tr. 20-21) Employees had parking available immediately outside the building. Also the building was air conditioned and most employees had private offices. There were approximately 11 bargaining unit employees in the Business Office. (Tr. 21-22) Both Local 3048 and Local 4048 represent Shared Services employees, such as those at the Business Office. At the time of the consolidation, both Locals agreed to permit bargaining unit employees who work in Shared Services departments to choose whichever local they preferred. (Tr. 41-42, 51) Apparently there have been no problems with this arrangement. Neither local had a steward specifically assigned to the Business Office. (Tr. 48, 70)

Frank Campo, who is a Senior Officer Specialist at USP, has been Local 3048's President for the past two years and is designated to receive notice from management of changes in working conditions for its bargaining unit employees. (Tr. 51, 66-67) Barry Fredieu, who is an Electronic Cable Foreman at USP, has been Local 3048's Chief Steward for the past four years. (Tr. 49-50) Johnny Hudson, who is a Correctional Counselor at the FCI, has been Local 4048's President for the past ten years. He is the designated representative to receive notice from management of changes in working conditions for its bargaining unit employees. (Tr. 40-41, 47)

The Business Office, although part of Shared Services, was under the control of the USP Warden. In March 2003, Tim Burton, the controller and head of the Business Office, was moved from the Shared Services Building to the USP facility. He was moved back to the original controller's office on the

second floor of the Administrative Building. The other employees of the Business Office remained at Shared Services. (Tr. 108)

Apparently, however, there were rumors that the Business Office would be returned to the USP at some time in the future. Doris Fredieu, an accountant in the Business Office, testified that she was told in June 2003 by an FCI employee that the Business Office was going to be moved. She informed her husband, Barry Fredieu of this rumor, and he sent an e-mail titled "Impending Business Office Move" to Assistant Warden Ricardo Rios, Tim Browder, and Local 3048 President Campo on Monday, July 28, 2003. The e-mail states, in part,

Just as a friendly reminder, the Master Agreement calls for notification to the Local Union President on all changes to working conditions or policy changes there of, prior to the change taking place. We are currently aware that a rumor of impending move between the Business Office and Training Department will be occurring soon. The Union is to be notified and given an opportunity to be present during meetings concerning this move.

Feel free to contact our Local President, Frank Campo, or myself on this issue.

(G.C. Ex. 2; Tr. 51-52)

The following day, Tuesday, July 29, AW Rios went to Fredieu's work area to discuss the e-mail. Rios told Fredieu that Local 3048 would be notified of any meetings or discussions of any moves that were going to be occurring with the Business Office and that he would be complying with the terms of the parties' collective bargaining agreement. Fredieu informed Rios that the executive board of Local 3048 would be at a union convention in Las Vegas for two weeks in mid-August 2003. Rios and Fredieu also discussed another unrelated issue and then concluded their conversation. (Tr. 53-54)

Rios testified that he spoke to Fredieu after a department head meeting to confirm that the move of the Business Office was feasible. AW Rios testified that he informed Fredieu that the Business Office would be moving and that he would instruct controller Burton to hold a meeting with the Business Office employees to announce the move and invite Local 3048 to that meeting. Rios admits,

however, that he never told Fredieu when the move would be taking place. (Tr. 101-104)

The executive boards of both Local 3048 and 4048, including Presidents Campo and Hudson and Chief Steward Fredieu, attended two union conventions in Las Vegas, Nevada from August 11-22, 2003. (Tr. 42-44, 48, 56, 68) In July 2003 the Locals informed their respective management officials about the upcoming conventions and which officials would be attending. (Tr. 43, 56-58) Some of these employees were on approved administrative leave for the convention, while others were on approved annual leave.

On August 20, while the Locals' representatives were at the union conventions in Las Vegas, the Respondent moved the Business Office employees from the Shared Services Building to the second floor of the USP's Administrative Building. This was the same location that the Business Office had occupied before the move to Shared Services. (Tr. 33-34, 85) Ms. Fredieu testified that she came to work that day, August 20, and was told by other employees that they were to pack up their personal belongings and begin moving to the USP. She had never been informed by management of the move to the USP and had not been given a specific date for the move until the move was to be accomplished. (Tr. 23)

The move of furniture, files, computers, telephones and other equipment and materials was accomplished over a four day period. Inmates assisted in the move. (Tr. 23)

Ms. Fredieu was assigned a room which she shared with another accountant, at least for a time. By the time of the hearing, she was in that office by herself. She complained about the cramped quarters and lack of privacy when employees visited the other accountant to deal with travel issues. Also apparently the floor was uneven and the building was not air conditioned. (Tr. 25) There were not enough telephone lines for all the employees and the computer system was not compatible with the USP LAN system. It took about 2½ weeks for these issues to be resolved. (Tr. 27)

In order to get to the Business Office, employees must go through two grills (sliding barrel doors) and then a locked door. Employees are buzzed in from the Tower. There are two flights of stairs to the new offices. (Tr. 23-24)

When Barry Fredieu returned to work on August 25, he had an e-mail from Tim Burton, dated August 14 with a time of 6:21 pm, informing him of a meeting on August 14 and inviting the union to attend. Fredieu had been in Las Vegas

during this period of time and, of course, did not attend the meeting. (R. Ex. 4; Tr. 58) According to Burton, there was maybe one bargaining unit employee at the meeting in which he announced to employees that the move would be on August 20. (Tr. 115)

Fredieu did send an e-mail to management on September 4, 2003, stating that the Union was still interested in bargaining over the move. He did not receive a response. The e-mail, dated September 4, 2003, was addressed to Benita Spaulding, Christopher A. Hawkins, Ricardo Rios, Frank Karam, Patrick D. Pinnell, Dennis Smith, Frank P. Campo and Tim Browder and was titled "Negotiations". The e-mail stated, in part,

This message concerns the recent movement of the Business Office from the Shared Services building back inside the Penitentiary.

The Union had previously requested that we be notified of the impending move and given the opportunity to Bargain on 7-28-03. The Union once again, I.A.W. the Master Agreement and 5 USC Requests to bargain over this change.

Proper notification did not consist of an e-mail on 8-14-03 from the Business Office Manager to me, with full knowledge that the Union E-Board was at convention. We feel that the move was never required at all, much less when the E-Board was at convention, and we, the Union, nor the employees involved were ever notified, or given a chance to voice opinions or make proposals.

(G.C. Ex. 3; Tr. 59-60)

Johnny Hudson, president of Local 4048, also did not receive notice of the move of the Business Office. (Tr. 42) He heard about the move on the actual day of the move, while he was in Las Vegas attending the annual AFGE and the Council of Prison Locals conventions. (Tr. 42) Hudson had no discussions with either Respondent or FCI regarding the move until the September 2003 labor-management meeting with Local 4048. The Union had placed the move of the Business Office on the agenda. According to Hudson, he asked why the Union had not been notified and was told FCI did not know about the move until it happened. Hudson then asserted that he wanted to bargain. Management at the meeting asked him what the Union's concerns were with regard to the move. Hudson talked about the inconvenience for the FCI employees to go inside the USP to deal with Business Office matters.

Sharon McMeel, Assistant Warden, agreed that one person could be a liaison for the FCI employees. Also a person from the Business Office remained at Shared Services. (R. Ex. 2; Tr. 44-45, 77, 79, 139-140)

According to management, the Union did not raise any other concerns and they considered the matter closed. Hudson, however, did not consider the matter resolved, even though he had no further contact with management regarding the situation. (Tr. 46, 139)

The Business Office move was also an agenda item on the USP labor-management meeting with Local 3048, for October 28, 2003. (Tr. 60) According to the testimony, Barry Fredieu asked why the Union was not notified of the relocation of Financial Management. Notes of the meeting state: "Ms. Spaulding stated that the relocation of Financial Management has been completed; however, she asked the local to address any impacts that might be caused by the relocation of the Financial Management to be resolved." Fredieu declined to state any concerns, stating that the Union would wait for the unfair labor practice charge to run its course. (R. Ex. 1; Tr. 62, 74-75, 134)

The unfair labor practice (ULP) charge in this matter was filed on September 5, 2003. (G.C. Ex. 1(a); Tr. 60)

Issue

Whether Respondent violated section 7116(a)(1) and (5) of the Statute by unilaterally moving Business Office bargaining unit employees from the Shared Services Building to the U.S. Penitentiary without providing Local 3048 and Local 4048 with notice and an opportunity to bargain.

Positions of the Parties

General Counsel

The General Counsel asserts that there is no dispute that relocating bargaining unit employees from the Shared Services Building to the second floor of the USP's Administrative Building is a change in conditions of employment. *U.S. Department of Health and Human Services, Social Security Administration, Baltimore, Maryland, and Social Security Administration, Fitchburg, Massachusetts District Office, Fitchburg, Massachusetts*, 36 FLRA 655, 668 (1990) (*SSA Baltimore*), citing, *Library of Congress v. Federal Labor Relations Authority*, 699 F.2d 1280, 1286 (D.C. Cir. 1983) Further the General Counsel asserts that the evidence establishes that the change had more than a *de minimis* impact on bargaining unit employees. *Pension Benefit Guaranty Corporation*, 59 FLRA 48 (2003).

The General Counsel further argues that the Respondent failed to provide adequate notice to the union regarding the Business Office move. Notice to the union "must be sufficiently specific or definitive regarding the actual change contemplated so as to adequately provide the union with a reasonable opportunity to request bargaining." *U.S. Air Force, 913th Air Wing, Willow Grove Air Reserve Station, Willow Grove, Pennsylvania*, 57 FLRA 852, 856 (2002) (*Willow Grove Air Reserve Station*). The General Counsel argues that its witnesses credibly testified that neither Local 3048 nor Local 4048 received any such notice. While there may have been rumors regarding the impending move, the General Counsel asserts that the Respondent never provided specific notice of the planned changes, including the timing of the move. Further the Locals did not have actual knowledge that the Business Office was moving and did not waive their right to bargain.

With regard to a remedy in this matter, the General Counsel requests that the Respondent be directed to restore the *status quo ante* by moving the Business Office bargaining unit employees back to the Shared Services Building from their present location, the second floor of the USP. Citing the criteria set forth in *Federal Correctional Institution*, 8 FLRA 604 (1982) (*FCI*), the General Counsel argues that a *status quo ante* remedy is necessary in order to remedy the unilateral change in this case and that Respondent has failed to show that a *status quo ante* remedy would disrupt or impair the efficiency or effectiveness of agency operations.

Respondent

Respondent asserts that it provided actual notice to the Charging Party regarding the Business Office relocation, citing to Assistant Warden Rios' discussion with Chief Steward Fredieu on July 28, 2003. Also Union President Frank Campo approached Executive Assistant Joe Henderson regarding the impending move in late July and was referred to the department head Mike Burton. (Tr. 83) *Willow Grove Air Reserve Station*, 57 FLRA 852. Respondent argues that the pending move was common knowledge in the Shared Services area. Respondent further argues that it should not be punished because the primary representatives of both Locals were out of town for two weeks for union conventions during the time that the move occurred and did not appoint anyone to conduct labor-management business during their absence.

Respondent asserts that despite its knowledge of the pending move of the Business Office, the Union, either Local 3048 or Local 4048, did not make any request to bargain or provide any proposals on the matter.

Further, after the move was accomplished, the Respondent requested post-implementation bargaining with each Local. Respondent bargained and reached agreement with Local 4048 at the September labor-management meeting, but Local 3048 refused to bargain.

If a violation of the Statute is found, Respondent asserts that the special security concerns in a correctional workplace and the disruption of another move precludes a *status quo ante* remedy. The Respondent asserts that it needs the Business Office staff inside the secured perimeter of the USP to serve as a secondary response team to respond to emergencies, disturbances and/or fill in for correctional officers called out for prisoner escort or other security duties and to facilitate its critical correctional operations. *Willow Grove Air Reserve Station*. Further, the disruption inherent in yet another office move is another critical reason why a *status quo ante* remedy is not appropriate. *Air Force Materiel Command, Warner Robbins Air Logistics Center, Robins Air Force Base, Georgia*, 53 FLRA 1092, 1109 (1998); *U.S. Department of Health and Human Services, Social Security Administration*, 50 FLRA 296, 307 (1995). Therefore, under the case analysis established by *FCI*, 8 FLRA 604, 606, the potential disruption of Respondent's operations establishes that a *status quo ante* remedy is not appropriate in this case.

Analysis

Prior to implementing a change in conditions of employment, an agency must provide the exclusive representative with notice of the change and an opportunity to bargain over those aspects of the change that are within the duty to bargain under the Statute. *United States Penitentiary, Leavenworth, Kansas*, 55 FLRA 704, 715 (1999). When, as here, an agency exercises a reserved management right and the substance of the decision is not itself subject to negotiation, the agency nonetheless has an obligation to bargain over the procedures to implement that decision and appropriate arrangements for unit employees adversely affected by that decision, if the resulting change has more than a *de minimis* effect on conditions of employment. See *Department of Health and Human Services, Social Security Administration*, 24 FLRA 403, 407-08 (1986).

Counsel for the General Counsel asserts that the Respondent violated section 7116(a)(1) and (5) of the Statute by unilaterally moving Business Office bargaining unit employees from the Shared Services Building to the U.S. Penitentiary without providing Local 3048 and Local 4048 with notice and an opportunity to bargain. The General Counsel does not dispute that the decision to move bargaining unit employees is an exercise of a management right under §7106 of the Statute, but asserts that an agency is nonetheless obligated to bargain over the impact and implementation of the change, if it has more than a *de minimis* effect on conditions of employment. *Federal Bureau of Prisons, Federal Correctional Institution, Bastrop, Texas*, 55 FLRA 848, 852 (1999) (*FCI Bastrop*).

While the evidence does not reflect a specific date when the Respondent began contemplating moving the Business Office inside the prison, its first actual action in that regard was moving the controller Mike Burton in March 2003. After that time there were rumors among the staff and discussions with management regarding the impending move, but the actual decision to move was apparently not made until August 2003, after a planned program review. (Tr. 84, 108-109) Mike Burton, the controller, was informed the week before the move.² Some of the Business Office staff were informed of the move in a meeting on August 14, while at least one of the staff did not know of the move until the actual day of the move.

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Interestingly, FCI Lompoc, whose employees were also serviced by the Business Office, was not informed by Respondent about the move away from the Shared Services Building and only learned of the move when the employees were actually moved.

While there is evidence that rumors of the move had reached the Union, the evidence is clear that the Respondent never gave the Union specific notice regarding the details of the move. It is well established that prior to implementation of a change in conditions of employment of bargaining unit employees, an agency must provide the exclusive representative with notice of the change and an opportunity to bargain over those aspects of the change that are within the duty to bargain. *U.S. Army Corps of Engineers, Memphis District, Memphis, Tennessee*, 53 FLRA 79, 82 (1997) (*Corps of Engineers*).

Further, notice of a proposed change in conditions of employment must be sufficiently specific and definitive to adequately provide the exclusive representative with a reasonable opportunity to request bargaining. *Ogden Air Logistics Center, Hill Air Force Base, Utah, and Air Force Logistics Command, Wright-Patterson Air Force Base, Ohio*, 41 FLRA 690, 698 (1991) (*Hill AFB*); *U.S. Department of the Army, Lexington-Blue Grass Army Depot, Lexington, Kentucky*, 38 FLRA 647, 661 (1990). For example, the notice must apprise the exclusive representative of the scope and nature of the proposed change in conditions of employment, the certainty of the change, and the planned timing of the change. See *Hill AFB* at 699 (notice of a furlough that did not specify either the number of employees to be furloughed or the expected date of the action was inadequate). *Corps of Engineers*; 53 at 82.

I do not find that AW Rios' discussion with Fredieu was adequate notice to the Union regarding the move.³ At the time of the discussion, July 29, the actual date of the move had not been settled, and Union was not informed of any details regarding the scope and nature of the move, apparently because there were none to give. The Union reaffirmed its interest in the move and cannot be faulted for not requesting bargaining when it was never given adequate notice.⁴ Further, I do not find Henderson's discussion with Frank Campo to be adequate notice of the

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I credit Fredieu's version of this conversation over AW Rios', finding Fredieu's version more detailed and complete.

⁴

While it is correct there were rumors about a pending move, rumors are not adequate notice and do not create an obligation on the part of the Union to request bargaining. *U.S. Geological Survey, Caribbean District Office, San Juan, Puerto Rico*, 53 FLRA 1006 (1997) (*U.S. Geological Survey*). That obligation is triggered once the Union receives adequate notice of an impending change.

impending move, since he gave him no details and merely referred him to Mike Burton. (Tr. 83)

The Respondent appears to argue that it should not be held responsible for not giving the Union actual notice of the move in August 2003, because most of the Union officials from both Locals were out of town at union conventions in Las Vegas. The Respondent ignores the fact that the Union had informed it of the absences and that participants were either on approved official time or annual leave for that two week period. Further, there is no evidence at all that the move of the Business Office was any type of emergency that had to be done at a specific time or had any bearing on Respondent's ability to perform its mission. Since the Respondent had apparently been discussing the idea for several months, the Union's absence on the week before it decided to implement the move, does not relieve the Respondent of its statutory obligations. See *U.S. Geological Survey*, 53 FLRA 1006, 1043.

Finally the Respondent argues that its post-implementation conduct satisfied its statutory obligations regarding the move of the Business Office. In this regard it notes that it discussed the concerns raised by Local 4048 in the September 2003 labor-management meeting and reached a verbal agreement with the Union on those matters. Although asked for its concerns at the October 2003 labor-management meeting, Local 3048 refused post-implementation bargaining, deciding instead to litigate the issue through the Authority's unfair labor practice procedure. Respondent cites no case law in support of its theory that its post-implementation conduct relieved it of its statutory responsibilities. The Authority, however, specifically dealt with this issue in *Air Force Accounting and Finance Center, Denver, Colorado*, 42 FLRA 1196 (1991), stating:

"In agreement with the Judge, we find that, coupled with the Respondent's failure to provide the Union with advance notice of the issuance of the duty rosters, **the belated offers to bargain concerning the impact and implementation of the new duty rosters after they were implemented did not satisfy the Respondent's obligation to bargain under the Statute.** See *U.S. Department of Transportation and Federal Aviation Administration*, 40 FLRA 690, 705 (1991). The Union was under no obligation to respond to the Respondent's belated offers to bargain and did not waive its right to bargain by failing to accept those offers. See *United States Information Agency, Voice of America*, 33 FLRA 549, 562-63 (1988), remanded as

to other matters sub nom. *United States Information Agency, Voice of America v. FLRA*, 895 F.2d 1449 (D.C. Cir. 1990), decision and order on remand, 37 FLRA 849 (1990)." (Emphasis added)

Therefore the Respondent's arguments regarding its post-implementation conduct are rejected.

The Respondent does not argue that the move of the Business Office had a *de minimis* impact on the bargaining unit employees. The evidence is clear that the move resulted in differences in parking, access (since now located in a security area), office space, and other amenities, as well as the impact of the technical aspects of hooking up telephone and computer equipment.

Therefore, after careful consideration of the record evidence, I conclude that the Respondent committed an unfair labor practice in violation of section 7116(a)(1) and (5) of the Statute by unilaterally moving Business Office bargaining unit employees from the Shared Services Building to the U.S. Penitentiary without providing Local 3048 and Local 4048 with notice and an opportunity to bargain over the impact and implementation of the change.

Remedy

The General Counsel maintains that *status quo ante* relief is appropriate in this matter, while the Respondent asserts that the potential disruption to Respondent's operations renders such a remedy inappropriate. Where an agency has failed to bargain over the impact and implementation of a management decision, the Authority evaluates the appropriateness of a *status quo ante* remedy using the factors set forth in *FCI*, 8 FLRA at 606. The *FCI* factors are: (1) whether and when notice was given to the union by the agency concerning the change; (2) whether and when the union requested bargaining; (3) the willfulness of the agency's conduct in failing to discharge its bargaining obligation; (4) the nature and extent of the adverse impact on unit employees; and (5) whether and to what degree a *status quo ante* remedy would disrupt the efficiency and effectiveness of the agency's operations. *United States Department of Energy, Western Area Power Administration, Golden, Colorado*, 56 FLRA 9, 13 (2000). With regard to the fifth factor, the Authority has held that a conclusion that a *status quo ante* remedy would be disruptive to the operations of an agency must be "based on record evidence." *Id.* at 13; see also *Pension Benefit Guaranty Corporation*, 59 FLRA 48 (2003).

The General Counsel requests that the Respondent be directed to return the Business Office bargaining unit employees from the USP to the Shared Services Building. Factors one and two favor a return to the *status quo ante*. In that regard, the record evidence establishes that the Respondent failed to give adequate advance notice of the move to the Union; that the Union had expressed concerns regarding the move; that the Union requested to bargain after the move had been implemented; and that the Respondent's post-implementation conduct did not relieve it of its Statutory burden. I further find that the evidence shows that the Respondent willfully failed to discharge its bargaining obligation. Therefore factor three also favors a return to the *status quo ante*. While a return to the Shared Services Building will have an impact on bargaining unit employees, there is no evidence of any undue burden on the employees. The primary factor to be considered in this matter relates to factor five and whether a *status quo ante* remedy would be disruptive to the operations of the Respondent. As stated above, Respondent cites to the disruption of services as a result of moving the Business Office back to the Shared Services Building. However, there appears to be little record evidence in support of this theory. Respondent argues that the primary disruption would occur in the Business Office's separate function of serving as backup for the correctional officers within the prison in case of emergencies. Although I am aware that the Authority has noted that the prison system has unique security issues, I do not find the evidence sufficient to establish such a disruption of the efficiency and effectiveness of the Respondent's operations. I note that the Business Office personnel will still be available for support and relief as needed. Under these circumstances, I will recommend that the Respondent be ordered to grant *status quo ante* relief and that the Business Office be returned to the Shared Services Building.

Accordingly, having found that the Respondent violated section 7116(a)(1) and (5) of the Statute, I recommend that the Authority adopt the following Order:

Order

Pursuant to §2423.41(c) of the Authority's Rules and Regulations and §7118 of the Federal Service Labor-Management Relations Statute, the U.S. Department of Justice, Federal Bureau of Prisons, U.S. Penitentiary, Lompoc, California, shall:

1. Cease and desist from:

(a) Failing and refusing to give adequate notice to, and upon request, bargain with the Council of Prison Locals, American Federation of Government Employees, AFL-CIO, the exclusive representative of its employees, or its designated agents, American Federation of Government Employees, AFL-CIO, Local 3048 and Local 4048, over the impact and implementation of relocating the Business Office at the Federal Correctional Complex, Lompoc, California.

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

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

(a) Return the Business Office bargaining unit employees back to the offices they occupied prior to the move of the Business Office to the U.S. Penitentiary.

(b) Post at its facilities copies of the attached Notice on forms to be furnished by the Federal Labor Relations Authority. Upon receipt of such forms, they shall be signed by the Warden of the U.S. Penitentiary, Lompoc, California, 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, throughout the Federal Correctional Complex, Lompoc, California. Reasonable steps shall be taken to ensure that such Notices are not altered, defaced, or covered by any other material.

(c) Pursuant to §2423.41(e) the Authority's Rules and Regulations, notify the Regional Director, San Francisco Region, Federal Labor Relations Authority, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply.

Issued at Washington, DC, July 27, 2004

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SUSAN E. JELEN
Administrative Law Judge

NOTICE TO ALL EMPLOYEES
POSTED BY ORDER OF THE
FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the U.S. Department of Justice, Federal Bureau of Prisons, U.S. Penitentiary, Lompoc, California, violated the Federal Service Labor-Management Relations Statute and has ordered us to post and abide by this notice.

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT fail or refuse to give adequate notice to, and upon request, bargain with the Council of Prison Locals, American Federation of Government Employees, AFL-CIO, the exclusive representative of our employees, or our designated agents, American Federation of Government Employees, AFL-CIO, Local 3048 and Local 4048, over the impact and implementation of relocating the Business Office at the Federal Correctional Complex, Lompoc, California.

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

WE WILL return the Business Office bargaining unit employees back to the offices they occupied prior to the move of the Business Office to the U.S. Penitentiary.

(Activity)

Date: _____ By: _____
(Signature) (Title)

This Notice must remain posted for 60 consecutive days from the date of the 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, San Francisco Region, Federal Labor Relations Authority, whose address is: 901 Market Street, Suite 220, San Francisco, California 94103, and whose telephone is: 415-356-5000.

CERTIFICATE OF SERVICE

I hereby certify that copies of the **DECISION** issued by SUSAN E. JELEN, Administrative Law Judge, in Case No. SF-CA-03-0782, were sent to the following parties:

CERTIFIED MAIL & RETURN RECEIPT

CERTIFIED NOS:

Amita Baman Tracy, Esquire

7000 1670 0000 1175

4175

Federal Labor Relations Authority
901 Market Street, Suite 220
San Francisco, CA 94103-1791

Steven R. Simon, Esquire

7000 1670 0000 1175 4182

Federal Bureau of Prisons
522 N. Central Avenue, Room 243
Phoenix, AZ 85004

Theresa T. Talplacido

7000 1670 0000 1175

4199

Department of Justice
Federal Bureau of Prisons
Federal Correctional Complex
3801 Klein Boulevard
Lompoc, CA 93436

Timothy Debolt

7000 1670 0000 1175 4205

Western Regional Vice-President
AFGE, Council of Prison Locals
200 Southwest Manzanita Street
McMinnville, OR 97128

REGULAR MAIL:

President
AFGE
80 F Street, NW
Washington, DC 20001

DATED: July 27, 2004
Washington, DC