GENERAL SERVICES ADMINISTRATION REGION 9, SAN FRANCISCO, CALIFORNIA Respondent	
and NATIONAL FEDERATION OF FEDERAL EMPLOYEES, LOCAL 81 Charging Party	Case No. SF-CA-31276

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. § 2423.26(b).

PLEASE BE ADVISED that the filing of exceptions to the attached Decision is governed by 5 C.F.R. §§ 2423.26(c) through 2423.29, 2429.21 through 2429.25 and 2429.27.

Any such exceptions must be filed on or before **MAY 30, 1995**, and addressed to:

Federal Labor Relations Authority
Office of Case Control
607 14th Street, NW, 4th Floor
Washington, DC 20424-0001

WILLIAM B. DEVANEY
Administrative Law Judge

Dated: April 28, 1995

Washington, DC

MEMORANDUM DATE: April 28 , 1995

TO: The Federal Labor Relations Authority

FROM: WILLIAM B. DEVANEY
Administrative Law Judge

SUBJECT: GENERAL SERVICES ADMINISTRATION
REGION 9, SAN FRANCISCO, CALIFORNIA

Respondent

and Case No. SF-CA-31276

NATIONAL FEDERATION OF FEDERAL
EMPLOYEES, LOCAL 81

Charging Party

Pursuant to section 2423.26(b) of the Rules and Regulations, 5 C.F.R. § 2423.26(b), I am hereby transferring the above case to the Authority. Enclosed are copies of my Decision, the service sheet, and the transmittal form sent to the parties. Also enclosed are the transcript, exhibits and any briefs filed by the parties.

Enclosures

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
OFFICE OF ADMINISTRATIVE LAW JUDGES
WASHINGTON, D.C. 20424-0001

GENERAL SERVICES ADMINISTRATION REGION 9, SAN FRANCISCO, CALIFORNIA Respondent	
and NATIONAL FEDERATION OF FEDERAL EMPLOYEES, LOCAL 81 Charging Party	Case No. SF-CA-31276

Deborah Finch, Esquire
For the Respondent

Matthew L. Jarvinen, Esquire
For the General Counsel

Mr. Fred, Huerta
For the Charging Party

Before: WILLIAM B. DEVANEY
Administrative Law Judge

DECISION

Statement of the Case

This proceeding, under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the United States Code, 5 U.S.C. § 7101, et seq.[1], and the Rules and Regulations issued thereunder, 5 C.F.R. § 2423.1, et seq., concerns whether the temporary move of one employee without bargaining on impact and implementation violated §§ 16(a)(5) (1) of the Statute, Respondent contending that it was "covered by" the Agreement of the parties; and the Union

[1] For convenience of reference, sections of the Statute hereinafter are, also, referred to without inclusion of the initial "71" of the statutory reference, i.e., Section 7116(a)(5) will be referred to, simply, as "16(a)(5)".

asserting that, whether or not notice of the move was covered by the agreement, the agreement required notice and an opportunity to bargain on changes of working conditions and that Respondent violated Act and contract by its unilateral change of working conditions.

This case was initiated by a charge filed on June 23, 1993, which alleged violation of §§ 16(a)(1), (4) and (5) of the Statute (G.C. Exh. 1(a)). The Complaint and Notice of Hearing issued on December 10, 1993 (G.C. Exh. 1(b)) and set the hearing for a date, time and place to be designated later. By Order dated March 23, 1994 (G.C. Exh. 1(d)), this case
was transferred, pursuant to § 2429.2 of the Rules and Regulations, 5 C.F.R. § 2429.2, to the Denver Region; by Order dated July 21, 1994, the case was set for hearing on September 23, 1994, in Tucson, Arizona, at a location to be determined (G.C. Exh. 1(e)); and by Order dated August 19, 1994, the place of hearing was fixed (G.C. Exh. 1(f)), pursuant to which a hearing was duly held on September 23, 1994, in Tucson, Arizona, before the undersigned. All parties were represented at the hearing, were afforded full opportunity to be heard, to introduce evidence bearing on the issues involved, and were afforded the opportunity to present oral argument which each party waived. At the conclusion of the hearing, October 24, 1994, was fixed as the date for mailing post-hearing briefs, which time was subsequently extended, on timely motion of the General Counsel, to which the other parties did not object, for good cause shown, to November 18, 1994. Respondent and General Counsel each timely mailed a brief, received on, or before, November 25, 1994, which have been carefully considered. Upon the basis of the entire record, I make the following findings and conclusions:

Findings

1. The National Federation of Federal Employees (NFFE) is the exclusive representative of a nationwide bargaining unit of General Services Administration (GSA) employees. On December 26, 1991, NFFE and GSA entered into an Agreement which was applicable at all times material (G.C. Exh. 8; Tr. 10). National Federation of Federal Employees, Local 81 (hereinafter "Union") is a constituent part of NFFE and its agent for the representative of bargaining unit employees in Nogales, Sells and Tucson, Arizona (G.C. Exh. 8, Appendix A, p. 79).

2. The Agreement provides, in part, as follows:

Article 22, entitled, "Details, Reassignments, and Voluntary Changes", reads, in part, as follows:

"Section 1. Details

"A. A detail is the temporary assignment of an employee to a different position or to a different set of duties for a specific period, with the employee returning to his/her regular duties at the end of the detail, as the employee continues to be the incumbent of the position from which detailed.

. . .

"Section 2. Reassignments

"A. Reassignment means a change of an employee, while serving continuously within the same agency, from one position to another without promotion or demotion. . . . ." (G.C. Exh. 8, Art. 22, Section 1A; Section 2A).

Article 31, entitled, "Employee Space" provides, in part, as follows:

"Section 3. Space Relocation

"The employer will notify the Union prior to undertaking any move of bargaining unit employees involving a formal organization component or substantial portion thereof. Space relocations will be based upon business principles. . . ." (G.C. Exh. 8, Art. 31, Secton 3)."

3. Ms. Carol Decker has worked for Respondent about 12 years in Tucson, Arizona, approximately the last 10 years in its Area Utilization Office, or its predecessor, as a Property Disposal Technician. The Area Utilization Office (AUO) is responsible for transferring excess federal property from agencies that no longer need it to agencies that do.
The office covers the entire state of Arizona and southern Nevada. Although Ms. Decker is in the bargaining unit and has been represented by the Union, she is not a member (Tr. 45-47). Mr. Gary Analora, Area Utilization Office in Tucson, has been Ms. Decker's immediate supervisor for about fours years and Branch Chief Peggy Lowndes, Ms. Decker's third line supervisor, is located in San Francisco, California
(Tr. 47-48).

4. Ms. Decker's responsibilities at the AUO involved interacting with other federal agencies (GSA's customers) to

explain how they can dispose of excess property or how they can acquire property and how to complete the requisite paperwork. She advises customers what property is available and will attempt to locate property sought by customers. In Mr. Analora's absence, she reviewed the paperwork brought in by customers; she handled mail, Fax transmissions, filing, telephone calls, etc. She filed weekly and monthly reports on GSA Form 2081 summarizing property orders and transfers processed by the AUO (Tr. 51-55).

5. The AUO is located at 450 North Grande Avenue, Tucson, Arizona. The building is an old, one-story structure, the main portion being occupied by the motor pool. The single entrance is into the motor pool office. Attached to the building is a four bay garage, the first bay of which had been converted into an office for the AUO (Tr. 55-76). AUO also has desk space in the main portion of the building where its aircraft specialist sits (Tr. 55). The Fax machine is in the motor pool area. Ms. Decker stated that the break room had been in the motor pool area (Tr. 55-56) but she did not say where it now is located.

6. Ms. Decker is a bellicose person, unhappy in her situation, and, feeling "put upon" by Respondent and "seeing" all co-workers as engaging in harassment of her, from 1991, filed a number of EEO charges against Respondent, alleging, inter alia, reprisal, sex, and age discrimination with respect to promotions, assignment of work outside her job description, denial of accommodation (flex time) for her medical condition, training and sexual harassment by co-workers.[2] (Tr. 33, 77). Hearing was held in August, 1993, and the decision issued on March 28, 1994.

7. As her charges moved toward hearing following issuance of a complaint of discrimination on March 26, 1993, Ms. Decker complained to Mr. Fred Huerta, her representative in the EEO proceeding at the time (Tr. 33, 83) and President of the Union, about the stress she was under at 450 North Grande
(Tr. 35, 38, 39) and about the lack of privacy to confer in preparing her case for hearing (Tr. 83). The other employees at 450 North Grande complained to the Union of the stress they were under because of Ms. Decker, "They were all going to psychiatrists." (Tr. 35). Ms. Decker complained of harassment by her supervisor, Mr. Gary Analora (Tr.

2
In addition, she raised and litigated her temporary removal from 450 North Grande Avenue to the Federal Building at 300 West Congress, this being the same move involved in this proceeding (Tr. 78). However, the issue was raised as an EEO matter, not as a grievance under the negotiated grievance procedure.

70-71) and on May 24, 1993, all four of the employees at 450 North Grande, including Mr. Analora and the two motor pool employees, signed a letter to Respondent's Regional Counsel requesting that legal counsel be made available to them asserting, in part, that, "For the past three years we have been increasingly subjected to an extremely stressful and hostile work environment created by a single employee, who has threatened our personal safety and intimidated the entire office. She [Ms. Decker] has filed numerous EEO complaints and requested several IG investigations all with the singular intent of harassing her co-workers. . . ." (Res. Exh. 2).

Mr. Huerta suggested that the AUO be moved to the Federal Building (Tr. 39) where it had been located before being moved to 450 North Grande in 1985 (Tr. 28).

8. On June 16, 1993, Respondent notified Ms. Decker that she would be temporarily assigned to Room 7NA in the Tucson Federal Building (G.C. Exh. 2, Tr. 49-50) and on June 21, 1993, Ms. Decker was moved to the Federal Building (Tr. 48) where she remained until May 5, 1994, when she was moved back to 450 North Grande.

Ms. Decker's performance rating for the period ending March 1994, was "Highly successful", the same as it had been for the preceding year (Tr. 73). She lost no pay or benefits as the result of her temporary relocation to the Federal Building, which was estimated to be a little over a mile
(Tr. 18); or about a mile and one half from 450 North Grande (Tr. 49), where the parking was free (Tr. 65); however, she asserted she had to pay for parking because no free parking was available in the vicinity of the Federal Building (Tr. 68). She stated that parking either was $2.00 per day (Tr. 76), which she paid for most of the period because of the uncertainty of her assignment to the Federal Building (Tr. 65), or $35.00 per month which she utilized for two or three months (Tr. 66). She further stated that from June 21, 1993, to May 5, 1994, she had been on leave 15 days and on official business two days (Tr. 66).

9. By letter dated June 17, 1993, Mr. Huerta notified Respondent, in part, as follows:

> ". . . This Union hereby notifies you that we wish to negotiate as appropriate on this matter as authorized by our current union agreement . . .
>
> ". . . This Union strongly emphasizes that no action should be taken . . . to change Carol Decker's

work location until our negotiations are completed . . . ." (G.C. Exh. 4).

10. Respondent in a memorandum to Mr. Huerta the day before, June 16, 1993, had stated, in part, that,

> "This morning I contacted you about management's intention to relocate Carol Decker's work station to the Tucson Federal Building in response to concerns expressed by you as her representative and by other employees about the level of interpersonal tension at her current work site. I noted that an EEOC hearing . . . is imminent, and that the GSA representative for that proceeding had suggested that providing Mr. Decker a private work station at the federal building would reduce the possibility of confrontations between opposing witnesses and afford Ms. Decker privacy for meetings and telephone calls with you.
>
> "You did not indicate any disagreement with this plan to me. However, later I received a call from Property Management Branch Chief Peggy Lowndes reporting that you had telephoned her and stated that you wanted to negotiate the relocation. . .
>
> " I am not inclined to agree that a temporary, local assignment of one employee gives rise to a bargaining obligation. . . ." (G.C. Exh. 3).

Conclusions

The Union and Respondent agree that Article 31, Section 3, which provides, "The employer will notify the Union prior to undertaking any move of bargaining unit employees involving a formal organizational component or substantial portion thereof. Space relocations will be based upon sound business principles", does not require union notification of a minor move, such as the move of one employee. Thus, Mr. Huerta testified on direct examination as follows:

> "A . . . Article 31, Section 3, space relocation involving a large number of employees. It says there bargaining unit employees that's a substantial move.
>
> "Q Why do you say it's a substantial move?
>
> "A I had an occasion over two years to talk with certain parts of the detail section and actually it was Charles Paidock, which was a former

president who negotiated and I asked him about the details and reassignments, and this came up. He told me, he said -- I asked him, 'What does this mean'. 'Mass deals like when the place has got thousands of employees, you send the whole unit out there'. I said, 'Does it involve minors?' 'No, does not include any minor employees'.

"We had a (sic) quite a discussion on details and this came up. And, he said. 'No, that's a major move', that is the Union's contention that it's only in a major organiza-tional move, not an individual move." (Tr. 26).

On cross-examination, Mr. Huerta testified further, as follows:

"Q . . . And, you testified that according to Mr. Paidock the language on page 70 concerning space relocation concerns only major moves and not minor moves.

"A Only major moves, right.

"Q And, a move of one employee would be a minor move?

"A Yeah, one or two or three would not be -- this would not apply." (Tr. 29).

But there they part company. Mr. Huerta, while conceding that there is no notification obligation under section 3 for moving one employee, nevertheless, asserted, "But there is an obligation under the conditions of employment, though . . . If it involved substantial conditions of employment changes then I think you would have to negotiate." (Tr. 29-30). On the other hand, Respondent asserts: "The Parties bargained and reached agreement on the subject of employee relocations . . . the express language of the provision . . . reasonably encompasses the subject matter sought to be bargained . . . and a reasonable reader would conclude that the provision settles the matter in dispute by specifying that notice is required only for major moves, and that minor moves need only be 'based on sound business principles.'" (Respondent's Brief, pp. 1-2). In addition, Respondent asserts, in part, "At the hearing, the charging party acknowledged that he had not asserted a bargaining right when Ms. Decker was relocated in 1991 . . . (Tr. 30, 31) and no example was offered of bargaining over a minor relocation anywhere in the nationwide unit of more than 4000 employees." (Respondent's Brief, p. 2).

I am aware that Article 31, Section 3, was also relied upon in General Services Administration, Tucson, Arizona and National Federation of Federal Employees, Local 81, Case No. 98-CA-10496, 107 ALJ Dec. Rep., May 28, 1993. In this earlier case, involving the same parties, as material here, during Ms. Decker's absence on detail, Respondent rearranged office space, changed Ms. Decker's desk, moved the break room into the motor pool area and moved an AUO employee from the motor pool area into the AUO space. Judge Oliver in his decision, issued March 1, 1993, stated, in pertinent part, as follows:

> Respondent's position, that Article 31, Section 3 of the parties' agreement waives bargaining on such matters is rejected. This provision, on its face, refers to major moves or relocations and, by implication, would not require notice of minor moves, such as that of a section or unit of employees. It does not, on its face, address the matters involved here, that of changing an office configuration by relocating a break area, obtaining different desks, and changing seating assignments to accommodate an additional employee. No evidence of the bargaining history concerning Article 31, Section 3 was presented which would otherwise demonstrate that these matters were covered by the parties' agreement or the Union clearly and unmistakably waived its interest in the matter. On the contrary, the provisions of the contract that most closely refer to the matters in issue reinforce management's obligation to bargain. Article 31, Section 1, Space Redesigns, provides that, "The Employer will engage in negotiations as appropriate with the Union when redesigning space occupied by employer (sic). . . ." (Slip opinion, pp. 9-10) (Emphasis supplied).

The test no longer is "waiver" but, rather, ". . . whether a contract provision covers a matter in dispute." U.S. Department of Health and Human Services, Social Security Administration, Baltimore, Maryland, 47 FLRA 1004, 1018 (1993) (hereinafter, "HHS-SSA"). Judge Oliver's comment that Article 31, Section 3, ". . . on its face, refers to major moves or relocations and, by implication, would not require notice of minor moves, such as that of a section or unit of employees", while dictum, certainly reflects his view that notice would not be required of a minor move. Nevertheless, Section 3 does specifically require notice to the Union before any move involving, "a formal organizational component or substantial portion thereof."

What this means may, or may not, be clear to everyone but me; but I should think that the AUO, even though it consists of only three employees, is a formal organizational component; and that the motor pool, which, resumably, consists of only two employees, also is a formal organizational component. It would follow, if this perception were correct, that the number of employees involved is not necessarily controlling, or even material, if a move involves a formal organizational component or a substantial portion thereof. As no party has advanced any such contention and, to the contrary, the Union asserts that Section 3 concerns "Only major moves . . . one or two or three would not be -- this would not apply." (Tr. 29), I shall not pursue this perception.

Obviously, Article 31, which is entitled "Employee Space", covers precisely that and specifically addresses "Space Redesigns" (Sec. 1); "Space Assignment" (Sec. 2); "Space Relocation" (Sec. 3); etc. I conclude, in agreement with Respondent, that Section 3 "covers" the move of one or more employees because the matter of space relocation inseparably encompasses all moves of bargaining unit employees whether or not notice to the Union of the move is required. Contrary to General Counsel's dismissal of Article 22 (General Counsel's Brief, p. 20), it is entirely possible that this was either a detail or a reassignment. Nevertheless, at least as I view it, in determining, ". . . whether a contract provision covers a matter in dispute" (HHS-SSA, supra), the entire contract must be considered. Here, the Union pointed to Article 9, Section 4 subsection C, which provides as follows:

> "C. The Union will be advised at the local level of proposed changes in personnel policies, practices, and working conditions initiated by local managers or initiated at a higher level but only affecting the local level. . . . Negotiations resulting from such changes will be conducted by the Local Parties." (G.C. Exh. 8, Section 4C).

The Union further asserts that because Respondent changed Ms. Decker's conditions of employment it was entitled to notice and an opportunity to negotiate.

Beyond doubt there must be a proper accommodation between an action "covered by" one provision of an agreement and a claimed obligation to bargain under another because of asserted change of conditions of employment lest the latter wholly swallow the former. For example, where the parties have negotiated concerning temporary assignments, an agency has no further obligation to bargain over temporary

assignments whether it is considered a "waiver" because it is specifically addressed in the negotiated agreement, U.S. Department of Transportation, Federal Aviation Administration, Washington, D.C. and Michigan Airway Facilities Sector, Belleville, Michigan, 44 FLRA 482 (1992) (hereinafter, "FAA, Belleville), or whether it is "covered by" the negotiated agreement, HHS-SSA, supra, notwithstanding that the mere temporary assignment is a change of conditions of employment.

Here, notice of the temporary move of Ms. Decker was "covered by" Article 31, Section 3 and, possibly, also by Article 22; but, wholly apart from the move of Ms. Decker, Respondent changed her conditions of employment in various ways, for example, at 450 North Grande she had all of the following equipment and facilities but at the Federal Building she had: no fax machine; no filing cabinet or files; no telephone answering machine; no chairs for visitors (customers); no manuals needed to perform her work; and there was no identification of her presence or location in the Federal Building for benefit of her customers, nor were customers apprised of her new location. Later, she was told she could use the fax machine in the GSA Building Management Office on the second floor; but she was separated from this machine by five floors, which required waiting for a slow elevator or walking five flights of stairs each way, and the Building Management Office did not notify her of the receipt of messages. It is unnecessary to decide whether each had more than a de minimis effect as it is clear that collectively the changes in her conditions of employment were more than de minimis. Department of Transportation, Federal Aviation Administration, Washington, D.C., 20 FLRA 474 (1950); Ogden Air Logistics Center, Hill Air Force Base, Utah and Air Force Logistics Command, Wright-Patterson Air Force Base, Ohio, 41 FLRA 690 (1991).

Because the Agreement specifically covers changes of conditions of employment, Respondent's unilateral action in implementing the changes without completing its obligation to bargain violated §§ 16(a)(5) and (1) of the Statute. But, see U.S. Department of the Air Force, 375th Combat Support Group, Scott Air Force Base, Illinois, 49 FLRA 1444 (1994). In FAA, Belleville, supra, the only changes of conditions of employment resulted from the fact of the detail and details were "covered by" the agreement. Here, the changes of conditions of employment were not solely from the fact of the move. To the contrary, Ms. Decker could have been afforded a fax machine, a telephone answering machine, file cabinets and files, manuals, and her relocation to the Federal Building, temporary though it was, could have been made known to her customers in advance. In

short, the move did not necessitate the changes. I fully agree with General Counsel that inasmuch as Article 9, Section 4E (G.C. Exh. 8, Art. 9, Section 4E) permits the Union ten working days after receipt of notice of a proposed change, Respondent's implementation on Monday, June 21, 1993, after notice to the Union on Wednesday, June 16, 1993 (G.C. Exh. 2), was contrary to the quite specific provisions of the Agreement, deprived the Union of the reasonable and negotiated time to prepare bargaining proposals and Respondent's premature, unilateral implementation relieved the Union of any obligation to submit bargaining proposals after Respondent's unilateral implementation.

REMEDY

As noted above, Ms. Decker was moved back to 450 North Grande on May 5, 1994, and, as a remedy, in addition to a cease and desist order and posting, General Counsel seeks reimbursement of Ms. Decker for parking fees she incurred in the amount of $385.00 (General Counsel's Brief, p. 24 and attached calculations). For the reasons set forth hereinafter, General Counsel's request for reimbursement of parking fees is denied.

General Counsel cites no authority to support his request for reimbursement of parking. Respondent asserts, inter alia, that, ". . . it is well-established under decisions of the Comptroller General that parking incidental to commuting is a personal expense." (Respondent's Brief, p. 3). Not only have I found no decision supporting General Counsel's request, but the decisions and statutory provisions appear to be contrary to General Counsel's request.

First, § 5596(b) of the Back Pay Act, 5 U.S.C. § 5596 (b), provides, in relevant part, as follows:

> "(b)(1) An employee . . . who . . . is found . . . to have been affected by an unjustified or unwarranted personnel action which has resulted in the withdrawal or reduction of all or part of the pay, allowances, or differentials of the employee--
>
> (A) is entitled, on correction of the personnel action, to receive . . .
>
> (i) an amount equal to all or any part of the pay, allowances, or differentials, as applicable which the

> employee normally would have earned or received during the period if the personnel action had not occurred. . ."

Parking was not part of Ms. Decker's pay, allowances, or differentials. It was not a negotiated benefit. Indeed, she stated it was simply happenstance because North Grande is,
" . . . a huge parking lot." (Tr. 65).

Second, the Authority, while holding that backpay may be in ordered where status quo ante relief is denied, Federal Aviation Administration, 42 FLRA 82 (1991), has made it clear that,

> ". . . backpay is ordered 'only where it is clear that the violation has resulted in a loss of some pay, allowance or differentials[.]' U.S. Department of Health and Human Services, Social Security Administration, Baltimore, Maryland and U.S. Department of Health and Human Services, Social Security Administration, Hartford District Office, Hartford, Connecticut, 37 FLRA 278, 292 (1990)
> . . . ." Portsmouth Naval Shipyard Portsmouth, New Hampshire, 49 FLRA 1522, 1533 (1994).

Consequently, although the Authority has ordered monetary reimbursement for losses not covered by the Back Pay Act, ". . . when losses resulted from the agency's unlawful action and when such reimbursement was not shown to be inconsistent with another law." Department of the Army, U.S. Army Enlisted Records and Evaluation Center, Fort Benjamin Harrison, Indiana and Finance and Accounting Office for the Secretary of the Army, St. Louis, Missouri, 41 FLRA 885, 899 (1991); American Federation of Government Employees, SSA Council 220 v. FLRA, 840 F.2d 925, 930 (D.C. Cir. 1988), reimbursement for parking under the circumstances of this case would be contrary to the Back Pay Act.

Third, Ms. Decker's parking expenses were wholly related to her home-to-work travel and the Authority has held that reimbursement for such home-to-work travel expenses is prohibited. U.S. Department of the Treasury, Internal Revenue Service, Indianapolis District and National Treasury Employees Union, Chapter 49, 49 FLRA 55, 58, 59 (1994); American Federation of Government Employees, Local 3006 and U.S. Department of Defense, National Guard Bureau, State of Idaho, Office of the Adjutant General, 47 FLRA 155, 160 (1993).

Fourth, while Ms. Decker incurred parking expenses, it was not shown that Respondent's failure to complete bargaining on I&I [". . . General Counsel would concede that the June 21 relocation of Decker involved the exercise of a management right under Section 7106(a) of the Statute. . . ." (General Counsel's Brief, p. 14)] required such expense. Thus, as Respondent asserts (Respondent's Brief, p. 3), Ms. Decker could have continued to park at 450 North Grande and taken public transportation to the Federal Building. Indeed, the Union did not consider parking an issue when it proposed that the entire AUO - not just Ms. Decker - be moved to the Federal Building (Tr. 19).

Having found that Respondent violated §§ 16(a)(5) and (1) of the Statute, it is recommended that the Authority adopt the following:

ORDER

Pursuant to § 2423.29 of the Rules and Regulations, 5 C.F.R. § 2423.29, and § 18 of the Statute, 5 U.S.C. § 7118, it is hereby ordered that the General Services Administration, Region 9, San Francisco, California, shall:

1. Cease and desist from:

(a) Failing and refusing to bargain in good faith with the National Federation of Federal Employees, Local 81, (hereinafter, "Union"), the representative of bargaining unit employees in Nogales, Sells and Tucson, Arizona, before implementing changes in personnel policies, practices and working conditions, including the move of one or more employees if, apart from the move, conditions of employment are changed.

(b) Failing and refusing to comply with Article 9, Section 4 of the National Agreement of the General Services Administration and the National Federation of Federal Employees, executed December 26, 1991, and specifically including, but not limited to, failing to afford the Union not less than ten working days after receipt of notice of a proposal change to submit written proposals.

(c) In any like or related manner, interfering with, restraining or coercing its employees in the exercise of their rights assured by the Statute.

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

(a) Post at its facilities in Nogales, Sells and Tucson, Arizona, 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, Administrator of Region 9, San Francisco, California, and shall be posted and maintained for 60 consecutive days thereafter, at Nogales, Sells and Tucson, Arizona, in conspicuous places, including all bulletin boards and other places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that such Notices are not altered, defaced, or covered by any other material.

(b) Pursuant to section 2423.30 of the Rules and Regulations, 5 C.F.R. § 2423.30, notify the Regional Director of the Denver Region, Federal Labor Relations Authority, 1244 Speer Boulevard, Suite 100, Denver, Colorado 80204-3581, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

WILLIAM B. DEVANEY
Administrative Law Judge

Dated: April 28, 1995
Washington, DC,

NOTICE TO ALL EMPLOYEES

AS ORDERED BY THE FEDERAL LABOR RELATIONS AUTHORITY

AND TO EFFECTUATE THE POLICIES OF THE

FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS STATUTE

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT fail or refuse to bargain in good faith with the National Federation of Federal Employees, Local 81 (hereinafter, "Union") the representative of certain of our employees in Nogales, Sells and Tucson, Arizona, before implementing changes in personnel policies, practices and working conditions, including the move of one or more employees if, apart from the move, conditions of employment are changed.

WE WILL NOT fail or refuse to comply with Article 9, Section 4 of our National Agreement, executed December 26, 1991, and specifically including, but not limited to, failing to afford the Union not less than ten working days after receipt of notice of a proposed change to submit written proposals.

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

(Activity)

Date: By:
(Signature) (Title)

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

If employees have any questions concerning this Notice or compliance with any of its provisions, they may communicate directly with the Regional Director of the Federal Labor Relations Authority, Denver Region, whose address is: 1244 Speer Boulevard, Suite 100, Denver, Colorado 80204-3581, and whose telephone number is: (303) 844-5224.

CERTIFICATE OF SERVICE

I hereby certify that copies of this DECISION issued by WILLIAM B. DEVANEY, Administrative Law Judge, in Case No. SF-CA-31276, were sent to the following parties in the manner indicated:

CERTIFIED MAIL:

Deborah Finch, Esquire
General Services Administration
Region 9
525 Market Street
San Francisco, 94105-2799

Matthew L. Jarvinen, Esquire
Federal Labor Relations Authority
1244 Speer Boulevard, Suite 100
Denver, CO 80204-3581

Fred Huerta, President
National Federation of Federal
Employees, Local 81
936 N. Alder Avenue
Tucson, AZ 85705

REGULAR MAIL:

National Federation of Federal
Employees
1016 16th Street, NW, Suite 400
Washington, DC 20036

Dated: April 28, 1995
Washington, DC