

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

. . . . .  
DEPARTMENT OF DEFENSE, .  
WARNER ROBINS AIR FORCE .  
LOGISTICS CENTER, ROBINS .  
AIR FORCE BASE, GEORGIA .  
Respondent .  
and . Case No. 4-CA-70463  
AMERICAN FEDERATION OF .  
GOVERNMENT EMPLOYEES, .  
LOCAL 987 .  
Charging Party .  
. . . . .

Michael R. Shutter, Esq.  
and C. W. Swint, Jr., Esq.  
For the Respondent  
  
Nedra T. Bradley  
For the Charging Party  
  
Richard R. Jones, Esq.  
For the General Counsel  
  
Before: SALVATORE J. ARRIGO  
Administrative Law Judge

DECISION

Statement of the Case

This case arose under the Federal Service Labor-  
Management Relations Statute, Chapter 71 of Title 5 of  
the U.S. Code, 5 U.S.C. § 7101, et seq. (herein the Statute).

Upon an unfair labor practice charge having been filed by the captioned Charging Party (herein the Union) against the captioned Respondent, the General Counsel of the Federal Labor Relations Authority (herein the Authority), by the Regional Director for Region IV, issued a Complaint and Notice of Hearing alleging Respondent violated the Statute by changing the color and style of protective clothing worn by various unit employees in the performance of their duties without providing the Union with prior notice and an opportunity to bargain about the substance and/or the impact and implementation of the change.

A hearing on the Complaint was conducted in Warner Robins, Georgia at which all parties were represented and afforded full opportunity to adduce evidence, call, examine and cross-examine witnesses and argue orally. Briefs were filed by counsel for Respondent and counsel for the General Counsel and have been carefully considered.

Upon the entire record in this case, my observation of the witnesses and their demeanor and from my evaluation of the evidence, I make the following:

#### Findings of Fact

At all times material the American Federation of Government Employees (herein AFGE) has been the exclusive representative of certain of Respondent's employees in a command-wide consolidated unit and AFGE Council No. 214 has been an agent of AFGE for the purpose of representing bargaining unit employees. At all times material AFGE, Local 987 (the Union) has been the agent of Council No. 214 for the purpose of representing bargaining unit employees located at Robins Air Force Base, Georgia.

Respondent's facility at Robins Air Force Base includes a Civil Engineering Waste Treatment Division with approximately 45 civilian employees. That Division is made up of one water plant, two sewage treatment plants and two industrial plants. Prior to on or about February 1, 1987 Respondent supplied employees of the Civil Engineering Waste Treatment Division, including unit employees, with white protective coveralls of a particular style which employees were required to wear when working on jobs which might bring them into contact with biological waste or chemicals, which occurs about 75 percent of the time. On or about February 1, 1987 Respondent began supplying these employees with green coveralls, which were styled somewhat differently than the white coveralls, without providing the Union with notice or an opportunity to bargain on the change.

An examination of the garments and testimony reveals that while both white and green coveralls are one piece and made of cotton, various styling difference exist between the two. The white coveralls have a zipper front from crotch to neck; a drawstring to gather in the fabric completely around the waist; velcro bands at the wrists and ankles that can be adjusted to bind tightly; two breast pockets and one back pocket with flaps which adhere closed with velcro, and one open back pocket; and two slash side pockets with adjacent slash openings which allow hand access to clothing under the coveralls. The green coveralls have buttons from crotch to neck; three buttons on either side of the waist with button straps for adjustment; one button and a button strap for ankle closure on each pant leg; one button and two button-holes on each arm for wrist closure; one breast pocket and one back pocket each without a flap; and two slash side pockets. Thus, the white coveralls provide various convenience features absent in the green coveralls by virtue of the zipper front, slash openings to provide access to clothing under the coveralls and velcro fasteners allowing a wide variety of adjustments at wrists and ankles. The white coveralls can also be considered to provide an extra measure of safety due to the waist drawstring gathering all excess fabric and the velcro straps on wrists and ankles which make the garment more form fitting and less likely to get caught on machinery and the like. In addition, the velcro straps binding sleeves tightly to wrists and pants tightly to boots prevent waste material from making contact with undergarments and skin. Velcro secured flaps on white coverall pockets add to the security of carrying items in pockets and improve the safety factor if small tools capable of falling out are placed in pockets when employees are on ladders or otherwise engaged in maintenance activities. Further, white coveralls are substantially cooler than green especially when working outside during the summer months where at least some employees work the majority of the time.

#### Discussion and Conclusions

The General Counsel alleges Respondent violated the Statue when green coveralls were substituted for the white coveralls employees were provided when performing duties in the Civil Engineering Waste Treatment Division without affording the Union notice and an opportunity to bargain on the decision to change and impact and implementation of the change. Respondent contends the change does not involve a "condition of employment" over which management is required to negotiate with the Union and the furnishing of coveralls constitutes the methods and means by which Respondent's

operations are conducted. Respondent further contends that the change resulted in an impact which was no more than de minimis and therefore no violation of the Statute should be found.

While the Statute imposes upon an agency the obligation to negotiate in good faith with the employees' exclusive collective bargaining representative, Section 7106(a) of the Statute sets forth certain "management rights" which are deemed matters outside of management's duty to bargain with the bargaining representative. Section 7106(b) further provides:

"(b) Nothing in this section shall preclude any agency and any labor organization from negotiating --

"(1) at the election of the agency, on the numbers types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;

"(2) procedures which management officials of the agency will observe in exercising any authority under this section; or

"(3) appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such management officials."

Accordingly, if the use of coveralls herein is a "methods, and means of performing work", then Respondent would, if it so decided, be privileged in failing to notify and bargain with the Union over the change. However, Respondent would still be obligated to notify the Union and give the Union an opportunity to bargain on the impact and implementation of the change as required by Section 7106(b)(2) and (3) of the Statute unless the impact of the change was de minimis. Cf. Department of Health and Human Services, Social Security Administration, 24 FLRA 403 (1986) and Department of Health and Human Services, Social Security Administration, Baltimore, Maryland, 19 FLRA 1085 (1985).

The record establishes that employees were required to wear coveralls for protection approximately 75 percent of the time while working and the change from white to green

coveralls affected employees' safety and comfort as well as convenience in use. In these circumstances I conclude the change from white coveralls to green protective coveralls clearly concerned a condition of employment of bargaining unit employees within the meaning of the Statute. Accordingly, I conclude Respondent was required to notify and bargain with the Union concerning the decision to change the color and style of coveralls prior to implementation. See Long Beach Naval Shipyard, Long Beach, California, 17 FLRA 511 (1985).

Respondent relies on Antilles Consolidated Education Association, 22 FLRA 235 (1986) to support its position that the effect on working conditions in changing the type of coveralls used was so minimal that it may be concluded no change in condition of employment occurred. I disagree. In Antilles the Authority held that in deciding whether a bargaining proposal involves a condition of employment of bargaining unit employees, it would consider two factors: (1) whether the matter proposed pertains to bargaining unit employees, and; (2) the nature and extent of the effect of the matter proposed on working conditions of unit employees. The Authority explained that with regard to the second factor, "the question is whether the record establishes that there is a direct connection between the proposal and the work situation or employment relationship of bargaining unit employees." The relationship between uniforms and the work situation within Waste Treatment Division beyond doubt establishes the "direct connection" required by Antilles.

I further conclude that the matter at issue herein, i.e. the type of coveralls worn by employees, does not involve the method and means by which Respondent's operations are conducted. The Authority previously treated the issue of the negotiability of an agency's decision concerning the type of protective clothing to be worn by employees in Long Beach Naval Shipyard, Long Beach, California, supra. In that case the Authority held the substantive decision was negotiable and within the agency's duty to bargain notwithstanding a claim by the agency that bargaining on the matter would interfere with the technology or means of performing work. In Long Beach Naval Shipyard, as herein, the agency failed to show that the particular type of protective safety clothing worn by employees, as distinguished from the wearing of safety clothing per se, was a technical method of performing work and the Authority found the matter negotiable. Accordingly I reject Respondent's contention that the type of coveralls worn by employees concerns the methods and means of performing work within the meaning of the Statute.

I also find without merit Respondent's position that the case should be dismissed since the change in type of coveralls used herein was de minimis. As the substantive decision to change the type of coveralls used by Respondent's employees is negotiable, the impact on employees, substantial, de minimis or otherwise, is irrelevant. Thus, in Department of Health and Human Services, Social Security Administration, Baltimore, Maryland, 19 FLRA 1085 (1985) at 1088 the Authority stated:

"In the Authority's view, the Judge erred in raising the question of whether the change resulted in a "substantial impact" upon bargaining unit employees. Where an agency effectuates a change in working conditions by exercising one of its reserved rights and its duty to bargain is limited to the impact and implementation of that change, the degree of impact or reasonably foreseeable impact is relevant. But where, as here, the decision to make a change was itself negotiable, the question is whether the statutory obligation to notify and negotiate with the exclusive representative concerning the change was fulfilled, not the extent of impact of any unilateral change in conditions of employment upon the unit employees. This latter inquiry is appropriate when the bargaining obligation of management is limited to procedures and appropriate arrangements pursuant to section 7106(b)(2) and (3) of the Statute."  
(Footnotes omitted. Emphasis in the original).

See also Department of Defense Dependents Schools, Mediterranean Region (Madrid, Spain); and Zaragoza High School, (Zaragoza, Spain), 19 FLRA 395 (1985) and U.S. Army Reserve Components Personnel and Administration Center, St. Louis, Missouri, 19 FLRA 290 (1985).

Similarly, as I have concluded Respondent's decision to change the type of coveralls worn by unit employees in the Waste Treatment Division was negotiable, and no special circumstances are present herein, I shall order the imposition of a status quo ante remedy. See Long Beach Naval Shipyard, supra, and Veterans Administration, West Los Angeles Medical Center, Los Angeles, California, 23 FLRA 278 (1986).

Accordingly, in view of the entire foregoing I conclude Respondent, by the conduct described herein, violated section 7116(a)(1) and (5) of the Statute and recommend the Authority issue the following:

ORDER

Pursuant to section 2423.29 of the Federal Labor Relations Authority's Rules and Regulations and section 7118 of the Federal Service Labor-Management Relations Statute, it is hereby ordered that the Department of Defense, Warner Robins Air Logistics Center, Robins Air Force Base, Georgia shall:

1. Cease and desist from:

(a) Unilaterally instituting any changes in policy regarding the color and style of protective coveralls to be used by employees in the Civil Engineering Waste Treatment Division without first notifying the American Federation of Government Employees, Local 987, AFL-CIO, the agent of the exclusive representative of its employees, and providing it with an opportunity to negotiate concerning the above changes.

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

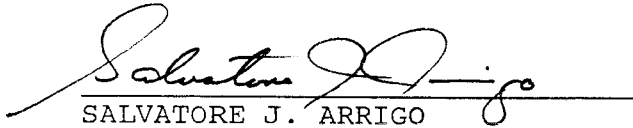
2. Take the following affirmative action in order to effectuate the purposes and policies of the Federal Service Labor-Management Relations Statute:

(a) Rescind the change in policy effectuated on or about February 1, 1987 regarding the color and style of protective coveralls to be used by unit employees and restore the previously existing policy which involved the use of white coveralls.

(b) Notify and, upon request, negotiate with the American Federation of Government, Local 987, AFL-CIO, or any other exclusive representative of the employees in the Civil Engineering Waste Treatment Division concerning any further change in the color and style of protective coveralls to be used by unit employees.

(d) Post at its facility at Robins Air Force Base, Georgia, 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 Commanding Officer or a designee, and shall be posted and maintained for 60 consecutive days thereafter, in conspicuous places, including all bulletin boards and other places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that such Notices are not altered, defaced, or covered by any other material.

(e) Pursuant to section 2423.30 of the Federal Labor Relations Authority's Rules and Regulations, notify the Regional Director, Region IV, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply.

  
SALVATORE J. ARRIGO  
Administrative Law Judge

Dated: June 16, 1988  
Washington, D.C.



NOTICE TO ALL EMPLOYEES  
PURSUANT TO  
A DECISION AND ORDER OF THE  
FEDERAL LABOR RELATIONS AUTHORITY  
AND IN ORDER TO EFFECTUATE THE POLICIES OF  
CHAPTER 71 OF TITLE 5 OF THE  
UNITED STATES CODE  
FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS STATUTE  
WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT unilaterally institute any changes in policy regarding the color and style of protective coveralls to be used by employees in the Civil Engineering Waste Treatment Division without first notifying the American Federation of Government Employees, Local 987, AFL-CIO, the agent of the exclusive representative of our employees, and providing it with an opportunity to negotiate concerning the above changes.

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

WE WILL rescind the change in policy effectuated on or about February 1, 1987 regarding the color and style of protective coveralls to be used by unit employees and restore the previously existing policy which involved the use of white coveralls.

WE WILL notify and, upon request, negotiate with the American Federation of Government Employees, Local 987, AFL-CIO, or any other exclusive representative of the employees in the Civil Engineering Waste Treatment Division concerning any further change in the color and style of protective coveralls to be used by unit employees.

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
(Signature) (Title)  
(Activity)

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, Region IV, whose address is:  
1371 Peachtree Street, N.E., Suite 736, Atlanta, Georgia 30367, and whose telephone number is: (404) 347-2324.