

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

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DEPARTMENT OF THE AIR FORCE
AIR FORCE LOGISTICS COMMAND
SACRAMENTO AIR LOGISTICS
CENTER, McCLELLAN AIR FORCE
BASE, CALIFORNIA
Respondent
and Case No. 9-CA-70399
AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES,
LOCAL 1857, AFL-CIO
Charging Party
.....

Bruce P. Waggoner, Esq.
For the Respondent

R. Timothy Sheils, Esq.
For the General Counsel

Dora M. Solorio
For the Charging Party

Before: WILLIAM NAIMARK
Administrative Law Judge

DECISION

Statement of the Case

Pursuant to a Complaint and Notice of Hearing issued on November 18, 1987 by the Regional Director, Federal Labor Relations Authority, Region IX, a hearing was held by the undersigned on January 12, 1988 at Sacramento, California.

This case arose under the Federal Service Labor-Management Relations Statute, 5 U.S.C. 7101 et seq. (herein called the Statute). It is based on a first amended charge filed on November 16, 1987 by American Federation of

Government Employees, Local 1857, AFL-CIO (herein called the Union), against Department of the Air Force, Air Force Logistics Command, Sacramento Air Logistics Center, McClellan Air Force Base, California (herein called the Respondent).

The Complaint alleged, in substance, that in July, 1987 Respondent changed working conditions of its employees by moving employees in the Indirect Material Section, Electronics Division, Directorate of Maintenance, from Building 640 to Building 616; that Respondent unilaterally implemented the change without first notifying the Union and/or providing it the opportunity to bargain re the impact of such change and/or the procedures to be utilized in implementing said change and thereby refused to bargain with the Union -- all in violation of Section 7116(a)(1) and (5) of the Statute.^{1/}

Respondent's Answer, dated December 11, 1987, admitted the allegations in the Complaint, but it denied that it had engaged in any unfair labor practices. As an affirmative defense, Respondent alleged that there was at most a de minimis violation which did not rise to the level of an unfair labor practice.

All parties were represented at the hearing. Each was afforded full opportunity to be heard, to adduce evidence, and to examine as well as cross-examine witnesses. Thereafter, briefs were filed which have been duly considered.

Upon the entire record herein, from my observation of the witnesses and their demeanor, and from all of the testimony and evidence adduced at the hearing, I make the following findings and conclusions:

Findings of Fact

1. At all times material herein the American Federation of Government Employees, AFL-CIO (AFGE) has been certified as the exclusive representative of an appropriate nationwide consolidated unit of employees of the Air Force Logistics

^{1/} At the hearing General Counsel amended paragraph 6(b) of the Complaint by adding after the last word in the sentence the words "prior to the implementation of said change." He also amended paragraph 7 of the Complaint by deleting the words "and is failing and refusing" therefrom.

Command, including nonsupervisory, non-professional employees at McClellan Air Force Base.^{2/}

2. At all times material herein the Union has been an affiliate of AFGE and its agent to represent unit employees of the Air Force Logistics Command, including employees at Respondent's Sacramento Air Logistics Center, McClellan Air Force Base, California.

3. The Communications and Electronics Division, Directorate of Maintenance at McClellan AFB is the point of repair for communication of electronic equipment ground systems for the Air Force. The Indirect Materials Section in this division orders electronic parts which come in packages and are stored in bins by the supply clerks.^{3/} There are about 1000 mechanics in the division, all of whom could go to the bins for needed items, and approximately 250 mechanics in Building 640 for whom the materials are set aside.

4. In June, 1987 a decision was made to move the Indirect Materials area to make room for the fabrication of a clean room facility to test E-3A^{4/} high voltage power supplies. The E-3A facility had been located in Building 610 which was being converted to a warehouse to support new material. To effect this plan, the Indirect Material storage bins were moved in July from Building 640 to Building 616, and the E-3A area was relocated from Building 610 to the area vacated by the Indirect Materials unit in Building 640. Record facts reflect that it was expected to move the Indirect Materials facility and the storage bins between June and November, 1988 from Building 616 to Building 610.

5. The relocations of the Indirect Materials facility has affected the three supply clerks in several respects. These employees, who service this facility, were relocated to an inventory control area in the same Building 640. In order, however, to perform their duties of unpacking, sorting

^{2/} The nationwide bargaining unit is composed of 70,000 employees, and there are about 11,000 unit employees at McClellan AFB.

^{3/} The supply clerks who order the items, unpack and sort them, as well as place them in bins for this Section are Pearl Asaro, Patricia Love, and Isabel Baker.

^{4/} Also known as AWACS Airborne Surveillance platform.

and placing items in the bin, these clerks must work in Building 616. Record facts reflect that the number of hours each of the supply clerks worked in Building 616 performing her duties were as follows:

Asaro - 5 hours daily during the summer and
2-3 hours each day in the winter

Baker - All but 3 hours each week

Love - average of 3-4 hours daily

6. There are about 5000 different items which are kept and maintained after being ordered for the facility. These are stored in cabinets 3' x 4 or 5' with drawers divided up into bins that are labeled and given a stock number.

7. The conditions existing in Building 640, where the three clerks performed their duties before July 1987, were different from those in Building 616, the site of the Indirect Materials bins where the clerks and mechanics have spent their time after that date. The record indicates as follows:5/

- (a) Building 640 is a regular building with walls and insulation. Building 616 is a huge metal shed, similar to a warehouse or storage shed, with no insulation.6/
- (b) Building 640 has a toilet and sink whereas Building 616 does not.
- (c) There is water leakage during rain in Building 616 while there is no water leak in Building 640.

5/ The differences in working conditions at Building 640 and 614, as set forth infra, represent the credited versions thereof as testified to by supply clerk Pearl Asaro. The parties stipulated that the other two clerks, Love and Baker, would testify similarly with respect thereto.

6/ Respondent's Exhibits 2 through 14 show the different Buildings as well as the storage bins and other accessories.

- (d) Building 640 has a regular door for employees and a push-button door for deliveries. At Building 616 there is a heavy metal door (15' x 12') which slides open with difficulty.
- (e) In the cooler weather the temperature in Building 616 is about 40° during much of the time. Management attempted to heat the facility by means of a generator, but it was unsuccessful. The temperature in Building 640 is generally about 75° in the winter months.

During the summer the temperature in Building 616 has reached 110, and a swamp cooler has not had a marked effect on the temperature at various locations, including the location of the bins. The inside of Building 640 has been comfortable during summer months.

- (f) The lack of insulation in Building 616 has resulted in its being noisy due to planes and motor equipment. This is not true within Building 640.
- (g) The lighting in Building 616 is poor since the lights are placed high and not close to the bins. The supply clerks have resorted to using flashlights to read the labels in the bins. It was satisfactory in Building 640.
- (h) In Building 640 the supply clerks did their unpacking and sorting at individual desks. In Building 616 they do it together at a table 3' x 4' which cannot accommodate all three employees. They use shopping carts in which they put the materials.
- (i) Building 616 requires that security measures be taken, and these clerks are required to lock up the cage where materials are placed after unpacking.

- (j) Prior to the move the supply clerks could perform their duties in Building 640 without leaving it. Now they must walk about 70 feet to Building 616 where they take care of the materials.

8. Apart from the relocation of the work sites for the supply clerks and the different conditions at each building, there was no change in their working hours or pay of these employees.^{7/}

Conclusions

It is conceded herein by Respondent that the relocation of the Indirect Materials Division, which required the three supply clerks to perform their duties in the new location, was undertaken without notice to the Union or bargaining with it beforehand. While admitting that the environment and working conditions prevailing at Building 616 (the new location of the Division) were different from those existing at Building 640 (the former location), Respondent contends the change was de minimis. Hence, it argues, no obligation to bargain arose re the impact and implementation thereof.

In 1984 the Authority declared that the standard it would use in determining whether the impact of changes required bargaining was that the impact be more than de minimis. Department of Health and Human Services, Social Security Administration, Region V, Chicago, Illinois, 15 FLRA 922. Several factors were identified which the Authority indicated it would consider in deciding if a particular change was more than de minimis. That standard was revised by the Authority in Department of Health and Human Services, Social Security Administration, 24 FLRA 403. It concluded therein that in determining whether a change in conditions of employment requires bargaining the pertinent facts and circumstances in each case would be examined. Emphasis would be placed on the nature and extent of the effect, or reasonably foreseeable effect, of the changed conditions of bargaining unit employees. As to the number of employees, this factor would not be a controlling

^{7/} The record also reflects that several hundred mechanics in Building 640 use the bins since they come to pick up their materials thereat. They were required to go to Building 616 for the materials after the relocation.

consideration and would be applied to expand rather than limit the number of situations where bargaining would be required.^{8/} Regarding the size of the unit, that factor is no longer applicable.

Respondent has placed especial emphasis on certain factors in support of its contention that the new location of the work for the supply clerk effected changes which were de minimis. Thus, it adverts to the fact that these employees suffered no change in pay, grade, hours, or promotion material. Further, that the relocation is temporary, and the move involved only a moderate change in the physical environment.

Applying the revised standard enunciated by the Authority to the case at hand, I am persuaded that the change in working conditions of the three supply clerks effected by relocating the Indirect Materials Division was more than de minimis. The entire environment and conditions prevailing at their new work location differed significantly from the former worksite. The former location at Building 640 was well insulated, whereas Building 616 where they now worked was a metal warehouse with no insulation. No toilet facilities or sink was provided at the changed location; water leakage occurred thereat when it rained; and the lighting was so poor in Building 616 that the supply clerks needed to use flashlights to read labels on the bins. Contrariwise, in Building 640 a toilet and sink were provided, there was no water leakage, and the lighting was satisfactory. The poor insulation and holes in the metal warehouse at Building 616 allowed the temperature to drop to 40° in the colder months and to rise to 110° during the summer. This was a marked change in the environment. Moreover, the metal structure without insulation resulted in considerable noise from the planes and motor equipment. In performing their duties of unpacking and sorting in Building 616 the clerks did not work at separate desks as in Building 640. They were required to work at a common table which was too small for all of them, and they were required to use shopping carts in which to place materials. While these employees performed their tasks within Building 640 in the past, now they must walk about 70 feet to Building 616 to handle the materials. Due to the type of building at the new work location, security measures were required, and the employees must lock up the cages where materials are stored.

^{8/} The number of employees affected or foreseeably affected by a change was one of the factors previously considered.

While the relocated site of the clerks' work place was expected to be of a temporary nature, it still continued to be at Building 616 at the time of the hearing. Although the hours and pay of the supply clerks were not altered, there was considerable change in their working conditions which adversely affected them. In much the same view the Authority was impressed that a more than de minimis change in relocation was involved when a new environment differed materially from the old one in Environmental Protection Agency and Environmental Protection Agency Region II, 25 FLRA 787. In the cited case it was deemed material that (a) the employees worked in smaller rooms than previously; (b) available space for storing documents and files was much less; (c) the relocation resulted in cramped working conditions; (d) there was much more noise in the new location.

Based on the foregoing, I conclude that the change in the workplace of the three supply clerks was more than de minimis; that the failure to notify the Union beforehand re the contemplated change and afford it an opportunity to bargain as to its impact and implementation was violative of Section 7114(a)(1) and (5) of the Statute.

Having concluded that Respondent violated the Statute as aforesaid, it is recommended that the Authority issue the following order to effectuate the purposes and policies of the Statute.

ORDER

Pursuant to section 2423.29 of the Federal Labor Relations Authority Rules and Regulations and Section 7118 of the Statute, it is hereby ordered that the Department of the Air Force, Air Force Logistics Command, Sacramento Air Logistics Center, McClellan Air Force Base, California, shall:

1. Cease and desist from:

(a) Failing and refusing to negotiate in good faith with the American Federation of Government Employees, Local 1857, AFL-CIO, the exclusive representative of its employees, concerning procedures and appropriate arrangements for employees adversely affected by the relocation of its Indirect Materials Section and the work area of unit employees.

(b) Relocating its unit employees without first notifying the American Federation of Government Employees, Local 1857, AFL-CIO, the exclusive representative of its

employees, and affording it the opportunity to negotiate concerning the procedures and appropriate arrangements for employees adversely affected by such relocation of unit employees.

(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 Federal Service Labor-Management Relations Statute:

(a) Upon request, negotiate in good faith with the American Federation of Government Employees, Local 1857, AFL-CIO, the exclusive representative of its employees, concerning procedures and appropriate arrangements for employees adversely affected by the relocation of its Indirect Materials Section and the work area of unit employees.

(b) Notify the American Federation of Government Employees, Local 1857, AFL-CIO, the exclusive representative of its employees, of any intention to relocate its unit employees, and afford it the opportunity to negotiate concerning the procedures and appropriate arrangements for employees adversely affected by such relocation of its employees.

(c) Post at its facilities at the Air Force Logistics Command, McClellan Air Force Base, California, 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 a senior official 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.

(d) Pursuant to section 2423.30 of the Authority's Rules and Regulations, notify the Regional Director, Region IX, Federal Labor Relations Authority, 901 Market Street, Suite 220, San Francisco, California 94103, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

Issued, Washington, D.C., November 3, 1988



WILLIAM NAIMARK
Administrative Law Judge

NOTICE TO ALL EMPLOYEES

AS ORDER BY THE

FEDERAL LABOR RELATIONS AUTHORITY

AND IN ORDER TO EFFECTUATE THE POLICIES OF
FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS STATUTE

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT refuse to negotiate in good faith with the American Federation of Government Employees, Local 1857, AFL-CIO, the exclusive representative of our employees, concerning procedures and appropriate arrangements for employees adversely affected by the relocation of our Indirect Materials Section and the work area of unit employees.

WE WILL NOT relocate our unit employees without first notifying the American Federation of Government Employees, Local 1857, AFL-CIO, the exclusive representative of our employees, and affording it the opportunity to negotiate concerning the procedures and appropriate arrangements for employees adversely affected by such relocation of unit employees.

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, upon request, negotiate in good faith with the American Federation of Government Employees, Local 1857, AFL-CIO, the exclusive representative of our employees, concerning the procedures and appropriate arrangements for employees adversely affected by the relocation from Indirect Materials Section and the work area of unit employees.

(Agency or Activity)

Dated: _____ By: _____
(Signature)

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 IX, whose address is: 901 Market Street, Suite 220, San Francisco, California 94103, and whose telephone number is: (415) 995-5000.