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

U.S. ENVIRONMENTAL PROTECTION AGENCY Respondent and NATIONAL FEDERATION OF FEDERAL EMPLOYEES, LOCAL 2050 Charging Party/Union	Case No. 3-CA-90253

Ana de la Torre, Esquire
Bruce Rosenstein, Esquire
For the General Counsel

Hayward C. Reed, Esquire
For the Respondent

Before: BURTON S. STERNBURG
Administrative Law Judge

DECISION

Statement of the Case

This is a proceeding under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the U.S. Code, 5 U.S.C. Section 7101, et seq., and the Rules and Regulations issued thereunder.

Pursuant to a charge filed on January 27, 1989, by National Federation of Federal Employees, Local 2050, (hereinafter called the Union), a Complaint and Notice of Hearing was issued on April 14, 1989 by the Regional Director for Region III, Federal Labor Relations Authority, Washington, D.C. The Complaint alleges that the U.S. Environmental Protection Agency, (hereinafter called the Respondent or EPA), violated Sections 7116(a)(1) and (5)

of the Federal Service Labor-Management Relations Statute, (hereinafter called the Statute), by virtue of its action in establishing regularly scheduled Sunday hours of operation for the Fairchild Building without giving the Union prior notice and affording it the opportunity to negotiate over the impact and manner of implementation of the regularly scheduled extended Sunday hours of operation.

A hearing was held in the captioned matter on June 13, 1989, in Washington, D.C. All parties were afforded the full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues involved herein. The General Counsel and the Respondent submitted post-hearing briefs on August 11, 1989, which have been duly considered.

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

Finding of Fact

The Union is the recognized exclusive representative of the professional employees employed by Respondent at its Washington, D.C. headquarters office. The aforementioned professional employees are housed in four buildings in the Washington, D.C. area, among which is the Fairchild Building.*/

Prior to January 18, 1989, when a specific program office located in the Fairchild Building desired to have the Fairchild Building opened on a Sunday for the purpose of allowing its personnel to complete a project which had a deadline it would request Respondent's Facilities Management Services Division, which operates the building under "a GSA delegation of authority," to make arrangements for the building to be opened up on a particular Sunday. The Facilities Management Services Division would then contact the building owner, arrange to have the building opened and forward the necessary fees to the owner for the extended hours of operation. The fees paid for opening the building would be charged to the program office making the request.

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*/ The Fairchild Building is a privately owned building which is leased by GSA.

When the building was opened on a Sunday the garage was closed and the employees who desired to work had to sign in at the guard's desk. The guard was one of the services provided on Sundays by the owner of the building. During 1988 the Fairchild Building was opened on Sundays, pursuant to a request from a program office located within the building, approximately nine times. When the Fairchild Building was opened for Sunday hours of work, according to the uncontested testimony of Mr. John Beecher, Deputy Director of the Facilities Management Services Division, the Union was not given prior notice of the Sunday opening.

In early January 1989, the Facilities Management Services Division decided that, instead of waiting for requests from the various program offices to arrange for extended Sunday hours at the Fairchild Building, it would make arrangements with the building owner to have the Fairchild Building opened on a regular basis every Sunday and pay the necessary expenses out of its own funds rather than bill the various program offices for the Sunday hours. In this latter connection, the record reveals that in the past the Facilities Management Services Division had encountered problems with the requesting program offices being without the necessary funds to pay for the costs associated with the opening of the building on a Sunday.

Following the above mentioned decision, the Facilities Management Services Division on January 18, 1989, issued a notice to the employees that starting January 20, 1989, the Fairchild Building would be open every Sunday from 9:00 a.m. to 1:00 p.m.

The record is barren of any evidence indicating that any employee was required to work during the extended Sunday hours. Rather, it appears that those employees who did opt to work on a Sunday, either before or after January 1989, did so voluntarily in order to finish some project which had a deadline.

The Respondent did not give the Union any official notice of its decision to open the Fairchild Building on a regular basis every Sunday.

The record further indicates that the Fairchild Building is located in a marginal area of the city and has been subjected to various criminal activities. The Union, which was concerned about the security of the building, had on January 6, 1989, submitted a security proposal to the Respondent which specifically addressed extended hours of

operation at the Fairchild Building. According to Mr. John Hersey, Union president, he submitted the bargaining proposal on the basis of a rumor that the Fairchild Building was going to be opened up on Sunday. Further, according to Mr. Hersey, the Respondent refused to bargain over the proposals dated January 6, 1989. Respondent offered no evidence to the contrary.

Discussion and Conclusions

The General Counsel takes the position that Respondent violated Sections 7116(a)(1) and (5) of the Statute by virtue of its actions in unilaterally establishing regularly scheduled Sunday hours at the Fairchild Building without affording the Union prior notice and thereafter refusing to negotiate with the Union over the impact and manner of implementation of the newly established extended Sunday hours of operation.

Respondent, on the other hand, takes the position that it was under no obligation to give the Union prior notice of its actions and an opportunity to bargain with respect to the establishment of regularly scheduled Sunday hours since its actions in respect thereto did not constitute a change in the unit employees conditions of employment. To the extent that its actions could be construed as a change in an existing condition of employment, it is Respondent's position that it was not obligated to bargain impact and the manner of implementation since any impact on the unit employees was at best de minimis.

Contrary to the position of the General Counsel and in agreement with the position of the Respondent, I find that the opening of the Fairchild Building on a regular Sunday basis did not constitute a change in the unit employees conditions of employment over which Respondent was obligated to bargain impact and manner of implementation. In this connection the record indicates that opening of the Fairchild Building for Sunday work, pursuant to the request from a program office, was a recognized practice. Respondent's action of January 18, 1989, i.e. opening the building on a regular Sunday basis, which is the gravamen of the instant complaint, merely altered the manner in which the various program offices achieved Sunday access to the Fairchild Building. Thus, they no longer had to submit a request to the Facilities Management Services Division and pay the additional expenses charged by the landlord. Whatever conditions of employment existed with respect to the employees voluntarily working extended Sunday hours prior

to January 18, 1989, appears from the instant record to have remained unchanged. There was no showing that the unit employees were compelled to work the extended Sunday hours or that since the establishment of regularly scheduled Sunday hours the employees worked on Sundays any more than they had in the past.

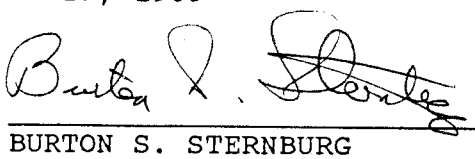
Accordingly, based upon the foregoing, I find that the change effected on January 18, 1989, was one of procedure, i.e. elimination of the need for a program office to request and pay for the opening of the Fairchild Building on Sunday, which did not create a new impact on the existing conditions of employment of the unit employees. Thus, it is further found, that any changes in the employees conditions of employment occasioned by the opening of the Fairchild Building for extended Sunday hours arose at the time that Respondent first arranged for such hours at the request of a program office. Respondent's action in establishing extended Sunday hours on a regularly scheduled basis did not add to or aggravate any changes in conditions of employment which previously existed.

Having concluded that Respondent did not violate the Statute, it is hereby recommended that the Authority adopt the following order dismissing the complaint in its entirety.

ORDER

It is hereby ordered that the complaint should be, and hereby is, dismissed in its entirety.

Issued, Washington, D.C., August 29, 1989



BURTON S. STERNBURG
Administrative Law Judge