

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

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U.S. ENVIRONMENTAL PROTECTION .  
AGENCY, WASHINGTON, D.C. .  
Respondent .  
and .  
NATIONAL FEDERATION OF .  
FEDERAL EMPLOYEES, LOCAL 2050 .  
Charging Party .  
.....

Case No. 3-CA-80612

Hayward C. Reed, Esquire  
For the Respondent  
  
Ana de la Torre, Esquire  
For the General Counsel  
  
Before: WILLIAM NAIMARK  
Administrative Law Judge

DECISION

Statement of the Case

Pursuant to a Complaint and Notice of Hearing issued on January 31, 1989 by the Regional Director, Federal Labor Relations Authority, Region III, a hearing was held before the undersigned on April 21, 1989 at Washington, D.C.

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 charge filed on September 13, 1988 by National Federation of Federal Employees, Local 2050 (herein called the Union) against U.S. Environmental Protection Agency, Washington D.C. (herein called EPA or the Respondent).

The Complaint alleged, in substance, that (a) on or about September 6, 1988 Respondent unlocked the stairwell #2 doors at the Fairchild Building and the said doors have remained unlocked during the hours of 6:30 a.m. - 5:30 p.m.,

Monday through Friday; (b) Respondent did not notify the Union nor afford it the opportunity to bargain over the substance, impact and implementation of said action. The aforesaid conduct constituted a refusal to negotiate in good faith with the Union and violated section 7116(a)(1) and (5) of the Statute.

Respondent's Answer, dated February 23, 1989, denied the foregoing allegations in the Complaint as well as the commission of any unfair labor practices.

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 Union has been the exclusive representative of professional employees employed by Respondent at its Headquarters offices.

2. The Fairchild Building which is owned by Mrs. Fairchild, consists of eight floors and is a multi-tenant building located in Washington, D.C. Respondent is a tenant thereat and occupies the second, third, sixth, seventh and eighth floors as well as part of the fifth floor. About 600 EPA employees work thereat, part of which are in a unit represented by the Union herein.<sup>1/</sup>

3. A main stairwell runs through the floors. At each floor there is a stairwell door which would enable a person to gain entrance to, or leave, the floor. Access to each floor is generally by means of an elevator which starts at the entrance to the building. When an individual arrives at a floor occupied by Respondent, either via the elevator or the stairwell door, he must pass through "Rusco" doors which prevent access to EPA offices by unauthorized persons. This

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<sup>1/</sup> The EPA has been delegated authority for the government leased space from GSA. Other EPA employees work at the Waterside Mall which is six or seven blocks from the Fairchild Building.

is done by inserting an identification card which opens said "Rusco" doors.

4. Visitors to EPA proceed to the third floor and then are directed to the particular office sought by them. There is a guard stationed on this floor between normal business hours, 6:30 a.m. - 7:30 p.m., Monday through Friday. A guard is also on duty thereat between 5:30 p.m. and 7:30 p.m. during the week and on Saturday from 8:00 a.m. to 4:00 p.m.<sup>2/</sup>

5. Record facts show that security is within the office of Administrative Resources Management, which is further delegated to the Director of Facilities Management and Services Division. EPA's security section is part of the latter organization.

6. Under date of March 5-10, 1987 a private contractor prepared a survey report of the Fairchild Building (G.C. Exh. 3) dealing with security involving floors occupied by Respondent thereat. This report recites the building characteristics, risk potential, protection services, and crime incidents. It is stated therein, inter alia, that EPA assumed full responsibility for the operations of the government leased space (Fairchild) to include security responsibility in December 1986.

7. The stairwell doors between EPA occupied floors in the Fairchild Building, which were the subject of a memorandum dated August 30, 1988, were always locked prior thereto. On that date Vincette L. Goerl, Director of Facilities Management and Services Division of EPA, sent a memorandum to all employees which informed them that effective September 6, 1988 the stairwell doors on the second, third, fifth and eighth floors would be unlocked for employee use from 6:30 a.m. - 5:30 p.m., Monday through Friday.<sup>3/</sup> The purpose behind the change was, as stated, to improve the ease of movement between floors. To accomplish this the Facilities Management and Services Division successfully negotiated the use of the stairwells.

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<sup>2/</sup> A private contractor provides the guards for Respondent.

<sup>3/</sup> The stairwell doors on the sixth and seventh floors, which remained locked because of a configuration problem on each floor, were to be unlocked after relocating the doors and walls.

8. As announced in the memorandum, the stairwell doors, which had been locked, were unlocked on the said floors on September 6, 1988. Approval was sought and received from Mrs. Fairchild to do so. No notification was given the Union nor did Respondent attempt to negotiate the change with it.

9. The record contains data concerning the number of crime incidents before and after the unlocking of the stairwell doors on September 6, 1988. For the year 1988 there were 11 such incidents. While there were about 17 incidents of crime after unlocking the doors and until March 28, 1989, about six of them occurred on the sixth and seventh floors where the stairwells were locked.<sup>4/</sup>

#### Conclusions

The ultimate question for determination is whether Respondent was obliged to negotiate with the Union concerning its decision to unlock the stairwell doors at its Fairchild Building in Washington, D.C.

In denying that it incurred any such duty Respondent's principal contentions are that: (1) the decision to open the stairwells did not pertain to conditions of employment of bargaining unit employees; (2) EPA has the management right under section 7106(a)(1) of the Statute to determine its internal security practices; (3) the decision to unlock the stairwell doors involved its right to determine the technology, methods and/or means of performing its work under section 7106(b)(1); (4) opening the stairwells did not result in any foreseeable impact on the employees' conditions of employment.

(1) While the Respondent argues to the contrary, it seems apparent that the status of the stairwell doors does relate to, and involve, working conditions of Respondent's employees. The daily activity of EPA employees requires continual travel between floors. In the course of their works these individuals are required to exchange information, communicate with fellow employees, and perform tasks at the

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<sup>4/</sup> G.C. Exh. 4 shows the type of articles stolen during 1988 and 1989 from the various buildings occupied by EPA. At the hearing Respondent's counsel, while he objected to their introduction in evidence based on relevancy, did not contest their accuracy. Respondent's exhibits re the value of the articles stolen were also received in evidence.

different floor levels in the Fairchild Building. This constant communication and interchange, which call for performing their duties on various floors, are working conditions since they concern the means of access to each such area. Location of employment areas, as well as access thereto, are conditions of employment. See Department of Labor, 27 FLRA 363; Library of Congress, 7 FLRA 578, 586.

Respondent insists, however, that the stairwells may not be deemed conditions of employment under section 7103(a)(14) of the Statute. It stresses the requirement that a subject matter must (a) pertain to bargaining unit employees, and (b) have an effect on working conditions of those employees. In this respect it cites American Federation of Government Employees, AFL-CIO, Local 3006 and Idaho Army and Air National Guard, 32 FLRA 785, 787.

While it is true that the open stairwells were accessible to employees who were employed by private firms, the action taken by Respondent was focused on EPA employees. It was designed to accommodate the movement between floors of bargaining unit employees. The fact that it may have had some impact upon nonbargaining unit employees does not preclude a finding that opening stairwells becomes a condition of employment. See Association of Civilian Technicians, Pennsylvania State Council and Pennsylvania Army and Air National Guard, 14 FLRA 38. Moreover, the impact of such action upon unit employees is evident since there is a direct connection between the opening of the stairwell doors and the work situation of the EPA employees. It impinges on work performance directly and the means of communication since use of the stairwells determines access to work areas.

Respondent also adverts to the fact that the Fairchild Building is owned by Fairchild Industries. It insists that only Mrs. Fairchild had the authority to open the stairwells since EPA does not lease this part of the building. To the extent that Respondent attempts to absolve itself from any responsibility to bargain over the action taken on the basis that it lacks control of the stairwells, this argument is rejected. The Authority has declared that, except where otherwise provided by law or regulation, an agency must bargain as to a matter which is within its discretion. This would cover instances where the agency may recommend changes. National Treasury Employees Union, Chapter 6 and Internal Revenue Services, New Orleans District, 3 FLRA 748.

(2) Under section 7106(a)(1) of the Statute management has the right to determine the internal security practices of the agency. The Authority has held that an agency's

right to determine its internal security practices includes the right to (a) determine policies and actions necessary to secure or safeguard its physical property against internal or external risks, (b) prevent improper or unauthorized disclosure of information, or (c) prevent the disruption of the agency's activities or operations. See National Association of Government Employees and Department of the Army, Fort Eustis, Virginia, 29 FLRA 966.

Respondent maintains it has, under the aforesaid statutory provision, the right to determine the agency's internal security practices. Accordingly, it contends that unlocking the EPA stairwell doors in the Fairchild Building was an integral part of internal security. Security considerations are alleged to have entered into its decision to open these doors.

While Respondent correctly states the principle of law re the right to determine security practices, I am persuaded that its action herein was not related to, or concerned with, security. The record establishes that the purpose in unlocking the stairwell doors was to facilitate movement by its employees between floors. By removing the locks thereat Respondent enabled its personnel to avoid using the elevators and thus have easier and more direct access to other areas of EPA. It was not undertaken to secure or safeguard its physical property, to prevent disclosure of information, nor to prevent disruption of its operations. The action taken by EPA herein was not designed to secure either property or personnel against risks. Had Respondent locked the stairwell doors with a view toward protecting its employees or operations, such conduct would indeed be a measure involving internal security and constituted nonnegotiable matter. See and compare American Federation of Government Employees, AFL-CIO, Local 987, 24 FLRA 940.

(3) Section 7106(b)(1) provides, inter alia, that an agency may, at its election, negotiate with a union on the technology methods and means of performing work. Respondent insists that it was not obligated to bargain re the opening of the stairwell doors since the use of this equipment fell within the foregoing terms. I disagree.

The Authority in the Library of Congress case, supra, amplified to some extent its understanding of the phrase "the technology . . . of performing work." It construed that term to mean the authority of an agency to determine the technical method to be used in accomplishing or furthering the performance of its work. In the case at hand the use of the stairwell doors and their availability is by

no means a part of the work performed by the EPA employees. Such use is neither a method nor a means of performing work since it does not directly relate to the agency's work but is incidental thereto. Permitting full access between floors by employees is not concerned with the methods utilized by them to perform their tasks. As was stated in Library of Congress, supra, ". . . a proposal focusing on particular equipment or facilities which do not constitute part of the technical method used by the Agency for accomplishing or furthering the performance of its work . . . would be within the duty to bargain . . ." (underscoring supplied).

In sum, I conclude that Respondent was under a duty to bargain with the Union concerning its decision to change the existing policy as to the stairwell doors at the Fairchild Building. Further, that the decision to unlock those doors was a negotiable condition of employment which required Respondent to notify the Union and thereafter, upon the latter's request to bargain thereon. Having failed to do so, I conclude Respondent has violated section 7116(a)(1) and (5) of the Statute.<sup>5/</sup>

#### Remedy

The Authority has recognized that a status quo ante remedy is appropriate where, as here, an agency has unilaterally changed a negotiable condition of employment. Effectuation of the purposes and policies of the Statute require such remedy in order not to render meaningless the obligation to bargain. Department of the Navy, Naval Underwater Systems Center, Newport, Rhode Island, 30 FLRA 697.

The General Counsel has, in its brief, requested that Respondent seek approval from the owners of the Fairchild Building to relock the stairwell doors. Accordingly, the undersigned will recommend the status quo ante remedy but in conformity with the said request by the General Counsel.

In view of the foregoing findings and conclusions the undersigned recommends that the Authority issue the following:

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<sup>5/</sup> In view of the conclusion herein that Respondent was under a duty to negotiate the decision to effect the change and failed to do so, the contention that the change was de minimis has not been discussed herein.

ORDER

Pursuant to section 2423.29 of the Federal Labor Relations Authority's Rules and Regulations and section 7118 of the Statute, it is hereby ordered that the U.S. Environmental Protection Agency, Washington, D.C., shall:

1. Cease and desist from:

(a) Unilaterally changing a condition of employment by unlocking its stairwell doors on the leased floors at the Fairchild Building, Washington, D.C., without first notifying the National Federation of Federal Employees, Local 2050, the exclusive representative of its professional employees, and affording it the opportunity to negotiate with respect to such change.

(b) In any like or related manner interfering with, restraining or coercing its employees in the exercise of 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) Request approval from the owners or management of the Fairchild Building, Washington, D.C., and upon receipt of such approval, relock the stairwell doors on the floors leased by it in such building.

(b) Notify the National Federation of Federal Employees, Local 2050, the exclusive representative of its professional employees, of any intention to change a condition of employment by unlocking the stairwell doors on the floors leased by it at the Fairchild Building, Washington, D.C., and afford the Union an opportunity to negotiate with respect to such change.

(c) Post at its facility in Washington, D.C. 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 Director, Facility Management and Service Division, 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 insure 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 III, Federal Labor Relations Authority, 1111 - 18th Street, N.W., P.O. Box 33758, Washington, D.C. 20033-0758, 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., March 29, 1990.

  
WILLIAM NAIMARK  
Administrative Law Judge

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 unilaterally change a condition of employment by unlocking our stairwell doors on the leased floors at the Fairchild Building, Washington, D.C., without first notifying the National Federation of Federal Employees, Local 2050, the exclusive representative of our professional employees, and affording it the opportunity to negotiate with respect to such change.

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 request approval from the owners or management of the Fairchild Building, Washington, D.C., and upon receipt of such approval, relock the stairwell doors on the leased floors in such building.

WE WILL notify the National Federation of Federal Employees, Local 2050, the exclusive representative of our professional employees, of any intention to change a condition of employment by unlocking the stairwell doors on the leased floors at the Fairchild Building, Washington, D.C., and afford the Union an opportunity to negotiate with respect to such change.

\_\_\_\_\_  
(Activity)

Dated: \_\_\_\_\_ 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, Region III, whose address is:  
1111 - 18th Street, N.W., P.O. Box 33758, Washington, D.C.  
20033-0758, and whose telephone number is: (202) 653-8500.