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

OGDEN AIR LOGISTICS CENTER HILL AIR FORCE BASE, UTAH and AIR FORCE LOGISTICS COMMAND WRIGHT-PATTERSON AIR FORCE BASE, OHIO Respondents and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO, LOCAL 1592 Charging Party	Case No. 7-CA-80270

Clare A. Jones, Esquire
For the Respondents

Mr. Leonard C. Andriason
For Local 1592

Matthew Jarvinen, Esquire
For the General Counsel

BEFORE: WILLIAM B. DEVANEY
Administrative Law Judge

DECISION

Statement of the Case

This matter, 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 Final Rules

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

and Regulations issued thereunder, 5 C.F.R. § 2423.1 et seq., concerns whether Respondent Ogden Air Logistics Center, Hill Air Force Base, Utah (hereinafter referred to as "Ogden") and/or Respondent Air Force Logistics Command, Wright-Patterson Air Force Base, Ohio (hereinafter referred to as "AFLC") violated §§ 16(a)(5) and (1) of the Statute when Respondent Ogden issued a proposed amended regulation, 00-ALC Regulation 123-4, entitled "Inspection of Government Provided Property" (hereinafter referred to as "ALCR 123-4"), and refused to bargain with American Federation of Government Employees, AFL-CIO, Local 1592 (hereinafter referred to as "Local 1592" or the "Union") on ALCR 123-4. For reasons more fully set forth hereinafter, as Respondent Ogden was changing established conditions of employment, by amending ALCR 123-4, Ogden violated §§ 16(a)(5) and (1), by refusing to bargain, notwithstanding that the Union's request to bargain did not specifically address the changes of ALCR 123-4 made by Ogden.

This case was initiated by a charge filed on February 1, 1988 (G.C. Exh. 1(a)). The Complaint and Notice of Hearing issued on May 25, 1988 (G.C. Exh. 1(b)) and set the hearing for July 13, 1988. By Order dated June 22, 1988 (G.C. Exh. 1(e)), on motion of Local 1592, for good cause shown, the hearing was rescheduled for September 13, 1988, and, subsequently, by Order dated September 7, 1988 (G.C. Exh. 1(f)) was further rescheduled for September 14, 1988, pursuant to which a hearing was duly held on September 14, 1988, in Ogden, Utah, 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 close of the hearing, October 14, 1988, was fixed as the date for mailing post-hearing briefs, which time was subsequently extended, on motion of Respondent, for good cause shown, to November 10, 1988. Respondent and General Counsel each timely mailed a brief, received on, or before, November 14, 1988, which have been carefully considered. Upon the basis of the entire record,2/ including my observation of the

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2/ General Counsel's Motion to Correct Transcript, to which there was no opposition, is granted and the transcript is hereby corrected as follows:

Page	From	To
Page 11, l. 12	Claimant	General Counsel
Page 12, l. 1	Counsel	Council

(footnote continued)

witnesses and their demeanor, I make the following findings and conclusions:

Findings

1. At all times material, Local 1592 has been the exclusive representative of all unit employees at Ogden's facility (G.C. Exhs. 1(b) and 1(c)). Local 1592 is an affiliate and agent of the American Federation of Government Employees, AFL-CIO, Council 214 (hereinafter referred to as "Council 214"), which holds exclusive recognition for a nation-wide unit of AFLC employees. (G.C. Exh. 1(b) and 1(c); Tr. 19). Council 214 and AFLC are parties to a Master Labor Agreement (MLA) applicable to all AFLC unit employees, which became effective October 22, 1986 (G.C. Exh. 2). Local 1592 and Ogden are parties to a Local Supplement Agreement (Local Supplement) which became effective August 6, 1987. Neither the MLA nor the Local Supplement addresses the subject of inspection of government provided property, nor was that subject raised during the negotiation of either agreement. (G.C. Exhs. 2 and 3; Tr. 25, 26).

2. ALCR 123-4 had been issued in 1979 (G.C. Exh. 4, Attachment). By letter dated December 21, 1987 (G.C. Exh. 4), Ogden forwarded to Mr. William S. Shoell, President of Local 1592, for review, an amended version of ALCR 123-4. Ogden did not indicate how ALCR 123-4 was to be changed (G.C. Exh. 4, Attachment; Tr. 20) but asserted, ". . . The only change or addition . . . is . . . a reaffirmation of existing policy . . . ." (G.C. Exh. 4). Mr. Shoell testified that he called Mr. Dyer Morse, Labor Relations Specialist, and was told that the change involved adding a last sentence3/ to Paragraph 4 e to read as follows:

2/ (footnote continued)

Page 15, l. 5	depositive	dispositive
Page 18, l. 19	ardinance	ordinance
Page 37, l. 3	for? ground	for ground
Page 41, l. 23	FCIP	FSIP
Page 45, l. 22	Jones	Jarvinen
Page 51, l. 9	Wade	The Witness
Page 52, l. 12	UOP	ULP

3/ The first sentence reads as follows:

> "e. If a private lock is damaged when removed in the absence of the employee, it

(footnote continued)

". . . No replacement or claim is authorized when the employee refuses or otherwise fails to remove the lock after being duly notified of the inspection." (G.C. Exh. 4, Attachment; Tr. 20).

3. By letter dated January 4, 1988, Mr. Shoell demanded to bargain, ". . . over 00-ALC Regulation 123-4 and that you remain status quo until all bargaining is completed . . . ." (G.C. Exh. 5). Mr. Shoell made various proposals including,

" . . .

"4. All inspections of government property will only be done for reasonable cause: if there is a suspected violation of crime or activities, rules or regulations." (G.C. Exh. 5).

4. Ms. Kay Self, Ogden's Labor Relations Officer (Tr. 53), testified that when she received the Union's letter of January 4, 1988, she

". . . took it . . . to mean that they wanted to negotiate the regulation." (Tr. 54).

That is, more accurately, that the Union wanted to negotiate the change, or addition, proposed by Ogden. Ms. Self further testified that in a conversation with Mr. Shoell on January 8, 1988, Mr. Shoell,

". . . said it was union initiated midterm bargaining." (G.C. Exh. 6; Tr. 54).

That is, as Mr. Shoell testified, his demand to bargain did not, ". . . relate to any changes which management made to the Hill Air Force Base Regulation." (Tr. 21, 30).

5. Accordingly, by letter dated January 13, 1988, (G.C. Exh. 6), Ms. Self advised Mr. Shoell,

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3/ (footnote continued)

will be replaced with a comparable lock or the owner advised he can present a claim for its value to Claims Division (JAD)." (G.C. Exh. 4, Attachment).

"Reference the subject letter and our conversation of 8 January 1988 concerning union initiated mid-term bargaining. Before we engage in union initiated mid-term bargaining, procedures must be negotiated. As you are aware, the parties are currently negotiating procedures at the command and council level. Therefore, your proposals are returned without action until such time as procedures are in place." (G.C. Exh. 6).

6. By letter dated March 28, 1988, Mr. Shoell renewed his demand to bargain on ALCR 123-4; stated he had ". . . authority from Council 214 to bargain on this matter"; and concluded with the request that:

"3. If you are not the appropriate person with authority to bargain on behalf of management please forward this letter and all relevant correspondence to the proper person or office." (G.C. Exh. 7).

7. Ms. Self replied by letter dated April 19, 1988, (G.C. Exh. 8) stating that:

"1. I must apologize but I fail to understand the intent of the subject letter. I also fail to see why you would need the authority from Council 214 to bargain on 00-ALCR 123-4.

"2. You were previously advised that procedures for union initiated mid-term bargaining were being negotiated at command level, therefore your proposals were returned to you. My letter did not specifically state but did imply you could resubmit your proposals once the procedures were in place." (G.C. Exh. 8).

8. Ms. Self testified that she was instructed by AFLC not to enter into Union initiated mid-term negotiations until procedures, being negotiated, were in place. (Tr. 55).

Conclusions

The parties assert that the Union's demand to bargain on ALCR 123-4 was a Union initiated mid-term bargaining demand

because the Union's proposal was, principally, that inspections be conducted only for "reasonable cause", which related to Paragraph 1, whereas, Ogden proposed to change only Paragraph 4 of ALCR 123-4. I do not agree.

There is no dispute that Ogden sought to change ALCR 123-4 by adding a new sentence to Paragraph 4 e; that Ogden thereby changed conditions of employment; or that Ogden gave the Union notice of the change of conditions of employment pursuant to Section 33.03 of the Master Labor Agreement (G.C. Exh. 2 and 4). Nor is there any dispute that Ogden initially accepted and considered the Union's demand to bargain as a proper response to its notice of intended change, notwithstanding that the Union's demand included, inter alia, a proposal that inspections be conducted only for "reasonable cause", (Tr. 54); however, in a conversation Mr. Shoell told Ms. Self that his proposal was ". . . union initiated mid-term bargaining" (Tr. 54) and Ms. Self, having been instructed by AFLC not to enter into Union initiated mid-term negotiations until procedures, being negotiated at Command level, were in place, returned the Union's proposals, ". . . until such time as procedures are in place" (G.C. Exhs. 6 and 8).

By returning the Union's proposals without action and by refusing to bargain until "procedures are in place", Ogden violated §§ 16(a)(5) and (1) of the Statute for the reason that the Union's demand to bargain was not a union initiated mid-term bargaining request. To the contrary, Ogden gave notice that it was changing conditions of employment by amending ALCR 123-4. The Union was entitled to respond to the change of ALCR 123-4, Veterans Administration Medical and Regional Office Center, Fargo, North Dakota, 24 FLRA 9, 11 (1986); Veterans Administration, Washington, D.C. and Internal Revenue Service, 17 FLRA 731, 737 (1985); Social Security Administration, Mid-American Service Center, Kansas City, Missouri, 9 FLRA 229, 223, 240-41 (1982); Department of the Air Force, Scott Air Force Base, Illinois, 5 FLRA 9, 10-11 (1981), and Ogden was obligated to bargain over the Union's proposals despite the fact that the changes instituted by Ogden may not have changed the condition of employment set forth in the proposal of the Union with respect to conditioning inspections on "reasonable cause", Social Security Administration (Baltimore, Maryland) and Office of Hearings and Appeals, Region II (New York) and Office of Hearings and Appeals (Syracuse and Buffalo, New York), 21 FLRA 546, 548-549, 568-569 (1986); Social Security Administration, Office of Hearings and Appeals, Region II, New York, New York, 19 FLRA 328, 329, 344-345 (1985);

Veterans Administration, Washington, D.C. and Veterans Administration Medical and Regional Office Center, Fargo, North Dakota and American Federation of Government Employees, AFL-CIO, Case No. 7-CA-70479 (1988), ALJ Decision Reports No. 70 (March 22, 1988),4/ inasmuch as: (a) the Union's proposal on "reasonable cause" was negotiable, National Treasury Employees Union, 24 FLRA 249, 252-254 (Proposal 2, which provided, in part, ". . . management will not inspect these [lockers] without good reason) (1986); (b) the Union's proposals, including its "reasonable cause" proposal [others included: delay of implementation of amendment for 180 days; briefing of employees; right to submit additional proposals after briefing and receipt of employee input] concerned conditions of employment, Social Security Administration, Office of Hearings and Appeals, Region II, New York, New York, supra; Social Security Administration (Baltimore, Maryland) and Office of Hearings and Appeals, Region II (New York, New York) and Office of Hearings and Appeals (Syracuse and Buffalo, New York), supra; and (c) related to the change proposed by Ogden. Thus, Ogden gave notice of intent to amend ALCR 123-4 to provide that ". . . no replacement or claim is authorized when the employee refuses . . . to remove the lock after being duly notified of the inspection." This introduced a new concept to the provisions of the Regulation, namely that a lock would be removed in the presence of the employee and/or that an employee might refuse to remove the lock (subsection I of Paragraph 4, for example, addressed only the absence of the employee, "If private locks are removed in the absence of the employee . . . ."). The Union's proposal about "reasonable cause", while it does, certainly, directly relate to ". . . subject to inspection for any reason . . ." of Paragraph 1, could also directly relate to "refuses or otherwise fails to remove . . . .",5/

4/ Although these cases involved bargaining pursuant to § 6(b)(2) and (3) of the Statute [Impact and Implementation], the duty to bargain is, of course, no different when bargaining includes substance. See, for example, Internal Revenue Service, supra at 737; Social Security Administration, Mid-American Service Center, Kansas City, Missouri, supra.

5/ In view of Mr. Shoell's self-serving insistence that the Union's proposals were union initiated mid-term bargaining proposals, I give no weight to his testimony that the Union's bargaining demand did not relate to any changes which management made to the Hill Air Force Base Regulation (Tr. 21).

i.e., unless the employee for "reasonable cause" refuses, etc. In any event, even if the Union's "reasonable cause" proposal were deemed to relate solely to Paragraph 1 of ALCR 123-4, as part of the same Base Regulation, the Union's proposal related to the change which Ogden sought to make; both Ogden's proposed change of ALCR 123-4 and the Union's proposal engendered thereby were negotiable; both concerned conditions of employment; and Ogden was obligated to bargain on the Union's proposal even if, ". . . the changes instituted by the Respondent did not have any impact on the conditions of employment set forth in the proposals made by the Union." Veterans Administration, Washington, D.C. and Veterans Administration Medical and Regional Office Center, Fargo, North Dakota and American Federation of Government Employees, AFL-CIO, supra.

Because Ogden's decision to change ALCR 123-4 was itself negotiable, the question is whether the statutory obligation to negotiate concerning the change was fulfilled, not the extent of impact, U.S. Army Reserve Components Personnel and Administration Center, St. Louis, Missouri, 19 FLRA 290 (1985), i.e., that whether the impact of the change had more than a de minimis impact on unit employees, Department of Health and Human Services, Social Security Administration, 24 FLRA 403 (1986). Moreover, as no party has raised the issue, it would be inappropriate to consider the degree of impact. Department of Health and Human Services, Social Security Administration, Region V, Chicago, Illinois, 19 FLRA 827, 830 (1985); Veterans Administration, Washington, D.C. and Veterans Administration Medical and Regional Office Center, Fargo, North Dakota, supra.

If it should be determined, contrary to my conclusions set forth above, that the Union's proposal on "reasonable cause" was a union initiated mid-term bargaining proposal, then for the reasons fully set forth in my decision in Department of the Air Force, Ogden Air Logistics Center, Hill Air Force Base, Utah and Air Force Logistics Command, Wright-Patterson Air Force Base, Ohio and American Federation of Government Employees, Local 1592, Case No. 7-CA-70722 (OALJ-89-29), dated January 11, 1989, I would find that Respondent did not violate §§ 16(a)(5) or (1) of the Statute and would have recommended dismissal of the Complaint.

Finally, as to respective responsibility of Ogden and AFLC. The record shows that AFLC instructed Ogden not to enter into Union initiated mid-term negotiations until procedures were in place. On the surface, this appears to have been an order by AFLC to Ogden not to bargain on the

Union's proposals and that Ogden's refusal to bargain was a ministerial act required by direction of higher authority. On the other hand, Ogden did not initially consider the Union's proposals within the proscription, i.e., were accepted as a response to Ogden's proposed change, but when the Union insisted that it was making a "Union initiated mid-term bargaining demand", Ogden then acquiesced and rejected the Union's proposals, in accordance with the instruction of AFLC, as union initiated mid-term bargaining proposals. Accordingly, with full recognition of the reluctance of the Authority to find a violation when an activity acts ministerially and without discretion, Veterans Administration, Washington, D.C. and Veterans Administration Medical Center, Veterans Administration, New Orleans, Louisiana, 29 FLRA 55, 57 (1987), Ogden did not act without discretion and I conclude that it, as well as AFLC, violated §§ 16(a)(5) and (1). Thus, it was Ogden who acquiesced with the Union's assertion that its proposals were Union initiated mid-term bargaining proposals, although Ogden had initially reached a contrary conclusion. Because Ogden appears to have had some discretion, its decision to refuse to bargain was a violation of §§ 16(a)(5) and (1) of the Statute. AFLC by instructing Ogden not to ". . . enter into mid-term negotiations until those procedures are in place, Union initiated mid-term negotiation" (Tr. 55), if it did not instruct Ogden to refuse to negotiate, nevertheless interfered with Ogden's bargaining obligation by issuing ambiguous instructions which, as Construed by Ogden, encompassed as Union initiated mid-term negotiations any union proposal which did not impact on the change instituted by Ogden. Therefore, to remove any doubt and to avoid possible re-interpretation of instructions given, a violation by AFLC will also be found since the order of AFLC was a contributing cause of the refusal to bargain.

Having found that Ogden Air Logistics Center, Hill Air Force Base, Utah and Air Force Logistics Command, Wright-Patterson Air Force Base, Ohio, violated §§ 16(a)(5) and (1), it is recommended that the Authority issue 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, the Authority hereby orders that the Air Force Logistics Command, Wright-Patterson Air Force Base, Ohio, and Ogden Air Logistics Center, Hill Air Force Base, Utah, shall:

1. Cease and desist from:

(a) Refusing to bargain in good faith with the American Federation of Government Employees, AFL-CIO, Local 1592 (hereinafter referred to as the "Union"), the agent of the exclusive bargaining representative of their employees, concerning the Union's response to Respondent Ogden Air Logistics Center's (hereinafter referred to as "Hill AFB") proposed amendment of its Regulation, ALCR 123-4, including the Union proposal on "reasonable cause" for inspections.

(b) Air Force Logistics Command (hereinafter referred to as "AFLC") instructing Hill AFB to fail or refuse to bargain with the Union mid-term concerning responses to Hill AFB proposed amendment of Base Regulations even if Union proposals in response to proposed changes of Base Regulations do not impact on the changes instituted by Hill AFB.

(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 bargain in good faith with the Union concerning its proposals in response to Hill AFB's proposed amendment of AFLC 123-4, including the Union's proposal on "reasonable cause" for inspection.

(b) AFLC will inform Hill AFB and the Union, in writing, that Hill AFB is free to negotiate with the Union concerning any Union response to any mid-term Hill AFB proposal to amend Base regulations, even if Union proposals do not impact on changes instituted by Hill AFB.

(c) Post at their facilities at Ogden Air Logistics Center, Hill Air Force Base, Utah, 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 respective Commanding Officers 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 § 2423.30 of the Authority's Rules and Regulations, 5 C.F.R. § 2423.30, notify the Regional Director, Region VII, Federal Labor Relations Authority, Suite 310, 535 - 16th Street, Denver, Colorado 80202, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

William B Devaney

WILLIAM B. DEVANEY
Administrative Law Judge

Dated: March 7, 1989
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 refuse to bargain in good faith with the American Federation of Government Employees, AFL-CIO, Local 1592 (hereinafter referred to as the "Union"), the agent of the exclusive bargaining representative of our employees, concerning the Union's response to Respondent Ogden Air Logistics Center's (hereinafter referred to as "Hill AFB") proposed amendment of its Regulation, ALCR 123-4, including the Union's proposal on "reasonable cause" for inspections.

WE, Air Force Logistics Command, will instruct Hill AFB, in writing, with a copy to the Union, that it is free to negotiate with the Union concerning any Union response to any mid-term Hill AFB proposal to amend Base regulations, even if Union proposals do not impact on changes instituted by Hill AFB.

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, bargain in good faith with the Union concerning the Union's response to Hill AFB's proposed amendment of ALCR 123-4, including the Union's proposal on "reasonable cause" for inspections.

_____
(Agency)

Dated: _____ By: _____
(Signature) (Title)

_____
(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 VII, whose address is: Suite 310, 535 - 16th Street, Denver, Colorado 80202, and whose telephone number is: (303) 837-5224.