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

DEFENSE LOGISTICS AGENCY DEFENSE DEPOT TRACY TRACY, CALIFORNIA Respondent	
and	Case Nos. 9-CA-90366 9-CA-90429
LABORERS' INTERNATIONAL UNION, LOCAL 1276, AFL-CIO Charging Party	

Nancy C. Rusch, Esq.
For the Respondent

Lisa L. Katz, Esq.
Susan E. Jelen, Esq.
For the General Counsel

Before: WILLIAM NAIMARK
Administrative Law Judge

DECISION

Statement of the Case

Pursuant to an Order Consolidating Case Nos. 9-CA-90366 and 9-CA-90429, issued on December 4, 1989, a Complaint and Notice of Hearing in Case No. 9-CA-90366 issued on October 30, 1989, and a Complaint and Notice of Hearing in Case No. 9-CA-90429 issued on November 17, 1989, by the Acting Regional Director for Region IX, Federal Labor Relations Authority, a hearing was held before the undersigned on December 12, 1989 at San Francisco, California.

The cases herein arose under the Federal Service Labor-Management Relations Statute, 5 U.S.C. section 7101, et

seq., (herein called the Statute). They are based on a charge filed on April 4, 1989 in Case No. 9-CA-90366; and a charge filed on May 4, 1989 in Case No. 9-CA-90429, by Laborers' International Union, Local 1276, AFL-CIO (herein called the Union) against Defense Logistics Agency, Defense Depot Tracy, Tracy, California (herein called the Respondent).

In respect to Case No. 9-CA-90429 the Complaint alleged, in substance, that (a) effective on or about February 1, 1989 Respondent changed its Employees Assistance Program by contracting out its services for employees, which had been available at the Depot, without notifying the Union and affording it an opportunity to bargain about the impact and implementation of the change; (b) on or about March 7, 1989 the Union submitted bargaining proposals to Respondent related to the Employee Assistance Program, and Respondent has since failed and refused to bargain with the Union with respect thereto; all in violation of section 7116(a)(1) and (5) of the Statute.

Respondent's Answer in Case No. 9-CA-90429 denied the aforesaid allegation, and alleges affirmatively that there was "no or minimal" changes to conditions of employment as a result of the contracting out of the Employee Assistance Program. It also denies the commission of any unfair labor practices.

In respect to Case No. 9-CA-90366 the Complaint alleged, in substance, that Maschhoff, Barr and Associates, Inc., as an agent of Respondent, conducted "Employee Awareness Seminars" on or about March 28 through March 31, 1989 for all Respondent's employees to explain the Employee Assistance Program; that Maschhoff, Barr and Associates, Inc. was under contract with Respondent to provide such a program for Respondent's employees; that such seminars were formal discussions with employees of conditions of employment within the meaning of section 7114(a)(2)(A) of the Statute; and that the Union, as the bargaining agent, was not afforded an opportunity to attend these discussions -- all in violation of sections 7116(a)(1) and (8) of the Statute.

Respondent's Answer in Case No. 9-CA-90366 denied that the Employee Awareness Seminars were formal discussions within section 7114(a)(2)(A) of the Statute; that the Union was not notified of the meetings beforehand and denied that the Union was not afforded an opportunity to be present

thereat.1/ It also denied 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. Briefs were filed which have been duly considered.

Upon the entire record, from my observation of the witnesses and their demeanor, and from all 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, and still is, the certified exclusive representative of an appropriate unit of Respondent's employees at the Defense Depot Tracy, at Tracy, California.

2. Under 5 U.S.C. 7904 Respondent is required to provide programs for prevention, treatment and rehabilitation of employees with problems relating to drug or alcohol abuse.

3. Prior to February 1, 1989, and since about 1982, Respondent conducted an Employee Assistance Program (EAP) which provided in-house assessment and referral services. The program was established by OPM in 1969, and Respondent reported its accomplishments since 1971. In regard to said services, assessment would be made when troubled employees came to management or a counsellor re a problem such as alcohol, drug abuse, marital or child care. Upon assessing the problems, the personnel management specialist, Tita Allala, would refer the employees to community resources which would best treat the problems. Allala took into consideration the employee's financial status and any existing health insurance coverage.

4. In connection with these assessment and referral services for troubled employees, management utilized peer counsellors in the Employee Assistance Programs. A counsellor would be assigned to a troubled employee to follow-up his treatment. Allala also assisted an employee

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1/ Respondent also denied that Maschhoff, Barr and Associates, Inc., the contractor, acted as its agent.

in obtaining advance sick leave for treatment, and she helped in arranging a change of duties or a shift for the employee to accommodate the treatment.

5. In 1986 Respondent took under consideration the prospect of contracting out the EAP. On February 1, 1989 a contract for these services was awarded to Maschhoff, Barr and Associates, Inc.[2/] No notification was given to the Union beforehand, and the plan was implemented in March 1989.

6. By letter dated March 7, 1989 Respondent advised Marlin D. Tolbert, Business Manager of the Union, that the Respondent had so awarded a contract for the EAP services on February 1, 1989. Further, that six supervisory orientation meetings would be provided by a representative of Maschhoff-Barr, which are designed to explain the services to supervisors the effective use of EAP in performing their responsibilities. The letter also stated that arrangements were made for Tolbert to send a representative to attend one of these orientation meetings which were scheduled for March 27 and 28, 1989.[3/]

7. Under the contract so awarded it is agreed inter alia, that the contractor will provide counselling services for employee problems relating to drug and alcohol abuse, Aids, and emotional/behavioral factors. Further, it declared that the contractor will provide employee awareness seminars for a maximum of 80 employees; that program counsellors will interview employees to evaluate their problems and type of assistance required; after assessment of a case, advise the employee of appropriate treatment resources; and maintain ongoing contact with the treatment program and the employee. Provision is made for the contractor to appoint a Program Coordinator as part of the program. Allala is the Program Coordinator responsible for monitoring the contractor's performance of EAP. She receives quarterly reports from the contractor, discusses with it any problems emanating from employees, managers, or Union officials. Further, it is provided that counsellor's named by the contractor shall render direct counselling of employees.

2/ Herein called Maschhoff-Barr or contractor.

3/ Unless otherwise specified, all dates hereinafter mentioned occur in 1989.

8. Some aspects of EAP were still handled by Respondent after the assistance program was contracted out to Maschhoff-Barr. Thus, it still was responsible for providing training to the employees and management re the EAP. Peer counsellors still follow up with clients assigned to them prior to the contract. They have not, however, been assigned to new cases since the contracting out of the program. Management representative Allala testified, and I find, that she continues to perform drug awareness and smoking cessation seminars; that she assisted employees who needed to take leave for treatment; that she still provided guidance to supervisors re possible discipline of employees who have drug, alcohol or personal problems; that she follows up with employees and their supervisors to insure that the individuals still received the needed treatment.

9. The primary services rendered by the contractor - which were performed by Respondent prior to contracting out the Employee Assistance Program - involved the assessment and referral[4/] as well as the employee orientation sessions. Initially an employee now calls a toll free number and speaks to someone at the EAP office who calls a counsellor. The latter then arranges to meet with the employee regarding his problem.

10. Under date of March 7, and prior to being informed by Respondent that the EAP was contracted out, Union representative Tolbert sent management a document entitled "Employee Assistance Program." It mentioned at the outset that the Union made the stated proposals[5/] in developing the Depot Employee Assistance Program. Included in the document, and the substance thereof, were the following proposals: (a) the Employer will maintain a current and comprehensive Employee Assistance Program; (b) a joint committee (Employer and the Union) shall be formed to oversee that the Program is properly administered; (c) a Program Administrator appointed shall have the duties outlined in the Program and report to the Committee; (d) employees suffering from

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4/ The contractor sends or refers employees to many of the same counselling services as did Respondent.

5/ Several proposals concerned action by management toward supervisors, which General Counsel does not contend were negotiable.

problems[6/] to receive the same consideration as physically ill employees; (e) the confidential nature of an employee's problem with a disease and any related records shall be processed on the same basis as medical records re physical illness.

Included in the proposals is one concerning an employee whom the immediate supervisor notices may be intoxicated and/or unable to perform his duties or operate a motor vehicle while on duty. If the security-investigator concludes the employee is under the influence, the supervisor shall offer, but not require, the employee to take one of the following tests: breathalyzer, blood withdrawal, or urinalysis.

11. In reply to Tolbert's letter of March 7, Respondent wrote Tolbert on March 20 that the Depot was ready to meet and discuss his EAP proposals as well as provisions for determining whether an employee is under the influence. A date of April 5 was suggested.

12. Under date of March 27, Tolbert wrote Labor Relations Officer Carol Shaffer requesting clarification of her March 20 letter. He inquired whether the employer proposed to consolidate both "the employee under the influence and the employee assistance program in conjunction with one another and bargain on these subjects."

13. No response was made in writing by management to Tolbert's inquiry of March 27. Shaffer testified she told the Union agent that Respondent objected to joining these two issues; that the issue of employees under the influence had already been considered. No specific negotiations took place re Tolbert's proposals concerning EAP. Shaffer testified she was willing to negotiate on the subjects of joint committee and program administrator; however, they were never discussed because Tolbert always mentioned "employees under the influence."

14. Tolbert's testimony reflects that the "under the influence" issue arose prior to the EAP; that it was a separate issue from the assistance program and not encompassed by EAP. He included his proposal re "under the

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6/ The term "problems" has apparent reference to stressed situations and emotional reactions confronting employees.

influence" with proposals dealing with EAP, and he asked Shaffer if both issues would be consolidated and resolved into one document. Shaffer testified she refused to join these issues since "under the influence" had been thoroughly considered in the past, and that she so told Tolbert.7/

15. In regard to the impact of the contracting out of EAP upon employees, record facts show; (a) unit employee Arthur F. Silva attempted to reach the Program on October 20 re a stress problem, but nobody answered the phone; (b) Alberto Capo, a unit employee, called the contractor in July to get some counselling due to a problem he had with management. He reached an answering service, explained his problem, and was told someone would contact him. Despite Capo having called back twice, no person contacted him, and he was unable to obtain any feedback. Allala testified that very few complaints were made by employees after the contracting out concerning difficulties in the Program; that there were some compliments from employees on the change.

16. Under date of March 7, Shaffer wrote Tolbert and informed him that a contract was awarded on February 1 to Maschhoff-Barr and Associates, Inc. to provide the EAP services. Further, that six supervisory orientation meetings will be provided by Maschhoff-Barr to explain the services and assist supervisors and managers in effective use of EAP. Shaffer stated that arrangements were made for Tolbert to send a representative and requested he submit the name of such individual.

17. Tolbert replied on March 8 requesting that he and all stewards be allowed to attend the scheduled supervisory sessions which had been set forth in Shaffer's letter.

18. By letter dated March 13, Shaffer wrote Tolbert and confirmed that either Tolbert or a Union representative could attend one of the supervisory meetings. She also advised Tolbert that each employee would be given an orientation by Maschhoff-Barr and "your stewards will attend one of those meetings."

7/ Tolbert testified that Shaffer said she did not have authority to negotiate the EAP proposals submitted by the Union. I credit Shaffer's denial that she made this statement. Note is taken that Shaffer wrote Tolbert and agreed to meet and discuss these proposals, and her refusal to negotiate concerned the "under the influence" issue.

19. On March 30 Tolbert met with Shaffer and Doug Harness, counsel for Respondent, in his office. Tolbert told Harness that, as Business Manager of the Union, he was the responsible person to, and should, attend the orientation meetings of employees re the EAP. Harness informed Tolbert that since the stewards would attend these meetings, it was not necessary for Tolbert to be invited or attend. Record facts reflect that the stewards would attend as employees and not as Union representatives.

20. Twenty-seven employee orientation sessions were held in April at a warehouse training room of Respondent. The meetings with Respondent's employees, each of which lasted about one-half hour, were conducted by a representative of the contractor. The number attending varied from 11 to 121 at any one meeting and attendance was compulsory. The contractor's representative discussed the counselling services for such problems as alcohol, drugs, child abuse and gambling.8/ A question and answer period followed each session after the presentation. Respondent's official, Allala, attended each meeting except one Saturday session. She participated at the meetings by introducing the contractor's representative, taking a head count, and answering questions or clarifying matters. Supervisory contract specialist, Carol Croxton, employed by Respondent, attended two of the meetings.

Conclusions

Case No. 9-CA-90429

Two issues are presented for determination in this case: (1) whether Respondent failed and refused to notify the Union of its decision to contract out the Employee Assistance Plan and afford the Union an opportunity to bargain concerning the impact and implementation of the change;9/ and (2) whether Respondent failed and refused to bargain over the Union's proposals concerning the EAP, made on March 7 subsequent to its being contracted out - all in violation of section 7116(a)(1) and (5) of the Statute.

8/ The briefing by the contractor followed the outline of topic's set forth in Joint Exhibit 3(a).

9/ General Counsel agrees that the decision to contract out the EAP was a management right under section 7106 of the Statute.

(1) Respondent takes the position that no change took place when the EAP was contracted out to Maschhoff-Barr. Further, that any change effected was de minimis in nature so that no bargaining obligation existed on its part. With respect to the proposals by the Union re the EAP, it is contended that Respondent attempted to discuss them but that the Union insisted on discussing the "under the influence" proposal (requiring supervisors to offer an employee an opportunity to take a breathalyzer, blood, or urinalysis test if the security investigator determines the employee is under the influence) which had been discussed previously.

While Respondent concedes that the EAP is a condition of employment, it does not agree that its action constituted a change in conditions. This argument is rejected. The assistance program, prior to February 1989 was an in-house one which was handled by Respondent's coordinators and peer counsellors. After contractual arrangements were made with Maschhoff-Barr, the employee contacted the contractor directly. Referrals to community services to assist troubled employees, which were handled by Respondent directly, are now a function of the contractor. In essence, it is no longer an in-house operation, and as such the new arrangement constitutes a change in a condition of employment. By virtue of its conduct the Respondent also did not afford the Union an opportunity to negotiate as to the impact and implementation thereof.

Whether or not a change, as herein, may be termed de minimis will depend upon the particular circumstances in each case. The Authority, in Department of Health and Human Services, Social Security Administration, 24 FLRA 403 reassessed and modified the standards used to determine whether a change may be so termed. It declared that principal emphasis would be placed on such general areas of consideration as the nature and extent of the effect or reasonably foreseeable effect of the change on the employees' working conditions. The number of employees involved is no longer a controlling consideration, nor is the size of the bargaining unit a factor in this determination.

Turning to the case herein, I am not persuaded that the nature and extent of the effect of the change on the employees' working conditions warrants finding an obligation to bargain re the impact and implementation of the change. Although contracting out the Program altered the arrangement for assistance to employees, the foreseeable effect of contracting out the EAP to Maschhoff-Barr appears to be de minimis in nature. The employees who need help for their

problems (drug related, alcohol abuse, personal stress) are still referred to the same community services by the contractor as was done by Respondent. The latter's representative, Allala, still acts as the Program Coordinator, and she actively monitors the assistance rendered to the employees. Although no peer counsellor is assigned to an individual, the counsellor is called upon to follow up the individual who is afforded treatment by the community service.

Little loss of benefits to the employees resulted from contracting out the EAP. Allala continues to perform seminars for drug awareness and smoking; she assists the employees in obtaining approval of leave taken for treatment; and she continues to confer with the community services who offer treatment for the employees with such problems. General Counsel adduced testimony by two employees who attempted to contact the contractor and had difficulty in communicating with Maschhoff-Barr. In view of the number of employees involved in the Program, this evidence reflects a limited impact resulting from the change. The EAP remains substantially the same since it was contracted out, and the services afforded employees has scarcely changed in any material respect.

Accordingly, I conclude the change effected by having Maschhoff-Barr run the Program, along with the active participation by Respondent, was de minimis; and that Respondent did not violate section 7116(a)(1) and (5) by its failure to bargain re its impact and implementation.

(2) General Counsel concedes that, with respect to the Union's proposals re EAP, several concern matters outside the duty to bargain. Those proposals dealing with subjects alien to the Program, or its own relationship with supervisors, are not deemed negotiable. Those which it proposed, and which I find would be negotiable, involve the maintenance of the EAP, are not inconsistent with management's rights under section 7106 of the Statute, and do not transgress any law, rule or regulation. They either concern an obligation already imposed upon Respondent by the Statute, provide for the continuance of EAP as required, or provide for non-discriminatory application. In most instances these proposals are admittedly negotiable, and I so find as to the following:

> (a) The Employer will maintain a current and comprehensive Employee Assistance Program.

(b) Formation of a joint committed (Employer and Union) to oversee that the Program is properly administered.

(c) A Program Coordinator shall have the duties outlined in the Program and report to the Committee.

(d) Employees suffering from problems shall receive the same consideration as physically ill employees.

(e) The confidential nature of an employee's problem with this disease and any records related thereto shall be preserved on the same basis as medical records concerning physical illness.

In determining whether an employer has failed and refused to bargain in good faith, it is necessary to review and examine the entire course of conduct between the parties. Although these proposals, as submitted to management by the Union on March 7, were negotiable, I am not persuaded that General Counsel has established a prima facie case of a refusal to bargain in regard thereto. While the parties communicated re the proposals, the failure to engage in negotiations over them did not, in my opinion, arise from a refusal to do so on the part of Respondent.

Initially, Respondent agreed to meet on April 5 to discuss the EAP proposals and in Shaffer's letter of March 20 she asked Tolbert to advise if the date was convenient. In his reply of March 27 Tolbert requested that Shaffer advise if Respondent intended to consolidate the EAP with "under the influence" and bargain on both subjects. Although Shaffer did not reply in writing, record facts reveal she told Tolbert that management did not want to join the two issues for negotiation. Apart from the fact that Shaffer did not cancel the proposed April 5 meeting with the Union, Shaffer testified she informed Tolbert that Respondent was always willing to negotiate the subjects of joint committee and program administrator as proposed by the Union.

While negotiations did not take place with respect to the Union's EAP proposals, this failure would appear to result from factors other than a refusal by Respondent to bargain thereon. There is merit to management's concerns that Tolbert wanted to discuss another issue along with the EAP, and this factor at least delayed the meeting between

the parties. The confusion as to whether the "under the influence" subject would be negotiated with the EAP proposals seems to have contributed to the fact that negotiations re these proposals never occurred. This is somewhat apparent from Tolbert's letter of May 10 requesting Shaffer to make a counter offer in regard to the "influence policy." No reason is seen as to why the April 5 meeting was not rescheduled, and I am reluctant to infer, based on the facts herein, that it was due to a refusal to meet on the part of Respondent. In sum, I conclude that General Counsel has failed to establish by a preponderance of the evidence that Respondent failed and refused to bargain with the Union re its EAP proposals in violation of sections 7116(a)(1) and (5) of the Statute.

Accordingly, and in view of the foregoing it is recommended that the Complaint in Case No. 9-CA-90429 be dismissed.

Case No. 9-CA-90366

The issue for determination is whether the employee orientation meetings conducted by the contractor were formal discussions under section 7114(a)(2)(A) of the Statute, and if so, whether the Union was denied representation thereat in violation of section 7116(a)(1) and (8) of the Statute.

In contending that no violation occurred as alleged in this case, Respondent maintains that (a) no high level management official of Respondent was present at these sessions; (b) no true "discussions" were held at these orientation sessions, and they could not be termed meeting since no minutes or comments were transcribed - all of which belie the conclusions that the sessions conducted by the contractor with the employees were formal discussions under section 7114(a)(2)(A). It is further argued that, assuming arguendo the sessions were formal meetings, the Union did not request permission to attend or send a representative so that Respondent may not be faulted for the Union's failure to be represented thereat.

Under section 7114(a)(2)(A) of the Statute an exclusive representative is given the right to be represented at--

> ". . . any formal discussion between one or more representative of the agency and one or more employee in the unit or their representatives concerning any grievance

or any personnel policy or practices or other general condition of employment."

Respondent argues that the person who appeared at the orientation sessions, Allala, was not a "representative" of management within the meaning of section 7114(a)(2)(A) so as to bind it and require the agency to assure that the Union be present at these sessions. It thus suggests that since the contractor conducted these sessions, no responsibility attaches to Respondent under the Statute. Such an argument might have some merit if the contractor were meeting with its employees. However, the sessions were with Respondent's employees, and the agency was responsible for their taking place by virtue of the arrangements made by it.

The record shows that these orientation sessions were held to accomplish the same services re EAP which Respondent was required to furnish employees. An agenda was prepared and submitted to Respondent in advance; the meetings were scheduled (27) for particular dates; they were held at Respondent's training room; and the sponsoring organization for the orientation, as indicated on the "Training Attendance and Rating Record" (G.C. Exhibit 9), was the Respondent. In addition to the foregoing, Respondent maintained sufficient control over these sessions so that it cannot disentangle itself from the actions of Maschhoff-Barr. Its representative, who had been in charge of the EAP and still monitors the Program, introduced the contractor's representative at the sessions; she took head count and participated thereat by answering questions posed by employees as well as clarifying matters pertaining to the EAP.

These factors suffice to conclude that Maschhoff-Barr acted as the agent[10/] or representative[11/] of Respondent when it conducted the twenty-seven orientation seminars with the employees. Having made attendance by its employees to be mandatory, as well as retaining control over arrangements for the sessions, Respondent can scarcely relieve itself of any responsibility for any obligations ensuing as a result of holding these orientation seminars. To hold otherwise would create the anomalous situation whereby an employer

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10/ See Streamway Division of Scott & Fetzer Co., 249 NLRB 396.

11/ See and compare Department of Defense, Defense Criminal Investigative Service, DLA, et al., 28 FLRA 1125.

would contract out all actions involving employees - including negotiations re working conditions - and then refuse to negotiate with the bargaining representative on the ground that a third party is handling labor relations.

Contrary to Respondent's contention, I conclude that the orientation sessions conducted by the contractor were "discussions" within the meaning of section 7114(a)(2)(A) of the Statute. The various meetings with the employees were held to explain the EAP - a condition of employment - and to answer questions concerning the Program. As stated by the Authority, the legislative history with respect to this section of the Statute supports the conclusion that Congress intended to treat "discussion" as synonymous with "meeting." It is not necessary that a debate or argument take place before a meeting may be deemed a formal discussion, nor is it a prerequisite that a dialogue occur between management and employees during a meeting. Department of Defense, National Guard Bureau, Texas Adjutant General's Department, 149th TAC Fighter Group (ANG)(TAC), Kelly Air Force Base, 15 FLRA 529. Moreover, orientation sessions with employees to discuss working conditions with questions and answers taking place at such meetings have been held to be discussions under section 7114(a)(2)(A). Department of Health and Human Services, Social Security Administration, 16 FLRA 232.

The Authority has delineated factors which it considers relevant in determining whether a discussion is "formal" within the meaning of section 7114(a)(2)(A). In U.S. Department of Labor, Office of the Assistant Secretary for Administration and Management, Chicago, Illinois, 32 FLRA 465, it has enumerated them, stating that other factors may also be applied as appropriate in a particular case.

In the instant case, I conclude that the 27 orientation sessions or meetings held by Respondent's representative, Maschhoff-Barr, with the employees between March 28 and April 1 were formal discussions. Applying the criteria spelled out in the cited case, note is taken that the meetings were pre-arranged with an outline of topics to be covered, and an agenda was prescribed in advance. Employees were told to attend by their supervisors and attendance was mandatory. While notes may not have been taken, during the meetings employees were permitted to and did ask questions which were responded to by management's representatives. The meetings, each of which lasted one-half hour, were conducted away from employees' desks at a training room suitable for a large attendance.

The meetings with employees concerned a vital subject, employee assistance, and a condition of employment. Attendance by the Respondent's personnel management specialist as well as Respondent's contract specialist connote the significance of the sessions. The elements of formality seem self-evident and I so conclude.

Finally, Respondent insists that, even if it be determined that a formal discussion with employees occurred, the Union was informed that its stewards could attend the orientation sessions on the EAP. Further, that the Union never responded nor asked to designate another representative.

The facts disclose that in her letter of March 7, Shaffer did apprise Tolbert of the forthcoming orientation session with employees. She also stated that "stewards will attend one of these meetings." When Tolbert met with Shaffer and Harness, Respondent's counsel, on March 30 Tolbert said that he was the responsible person who should attend these sessions; that the stewards would attend the supervisory sessions since the supervisors and the stewards are the first to recognize employees' problems. In reply thereto Harness remarked it was not necessary for Tolbert to be invited or to attend; that it was sufficient if the stewards attended. Tolbert's testimony, however, reflects that the stewards would be attending these meetings as employees and not in their capacity as Union representatives.

In Department of the Air Force, Sacramento Air Logistics Center, McClellan Air Force Base, California, 29 FLRA 594, 605, the Authority declared that the intent of section 7114(a)(2)(A) of the Statute is to allow a union to designate its own representative to attend a formal discussion. This right, as the Authority stated, is of considerable practical importance to the union. While the Respondent herein declares otherwise, I do not believe it afforded the Union an opportunity to designate its representative. Tolbert, as Business Manager, did request that he be the Union's representative at the orientation sessions. This request was rejected by management when Harness said the stewards would be attending. Apart from the fact that these individuals would be at the sessions as employees and not as Union representatives, the Union was entitled to designate its own representative. Accordingly, I conclude the Union was not afforded an opportunity to be represented at the employee orientation meetings - the formal discussions - held between March 28 and April 1.

Based on the foregoing, I conclude that the said orientation meetings with employees were formal discussions, and that Respondent failed to provide the Union with an opportunity to be represented. Its failure to comply with the requirements of section 7114(a)(2)(A) violated section 7116(a)(1) and (8) of the Statute.

Having concluded in Case No. 9-CA-90429 that Respondent did not violate section 7116(a)(1) and (8) of the Statute by (1) failing and refusing to negotiate with the Union re the impact and implementation of the change in regard to the EAP, (2) failing and refusing to negotiate as to the Union's proposals re the EAP, it is recommended that the Complaint in that case be dismissed.

Having concluded in Case No. 9-CA-90366 that Respondent violated the Statute as aforesaid, I recommend the Authority issue the following Order designed to effectuate the policies thereof:

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 Defense Logistics Agency, Defense Depot Tracy, Tracy, California, shall:

1. Cease and desist from:

(a) Conducting formal discussions with its employees in the bargaining unit exclusively represented by the Laborers' International Union, Local 1276, AFL-CIO, concerning personnel policies or practices or other general conditions of employment, without affording the Laborers' International Union, Local 1276, AFL-CIO prior notice of and the opportunity to be represented at the formal discussions.

(b) In any like or related manner interfere with, restrain or coerce our employees in the exercise of rights assured them 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) Post at its Tracy, California facility where employees in the bargaining unit are located, 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 of the Depot, and shall be posted and maintained by him 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.

(b) Pursuant to section 2423.30 of the Authority's Rules and Regulations, notify the Regional Director, Region IX, Federal Labor Relations Authority, San Francisco, California, 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., August 8, 1990

William Naimark

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 NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT conduct formal discussions with our employees in the bargaining unit exclusively represented by the Laborers' International Union, Local 1276, AFL-CIO, concerning personnel policies or practices or other general conditions of employment, without affording the Laborers' International Union, Local 1276, AFL-CIO prior notice of and the opportunity to be represented at the formal discussions.

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

_____
(Agency or 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 its provisions, they may communicate directly with the Regional Director for the Federal Labor Relations Authority whose address is: 901 Market Street, Suite 220, San Francisco, CA 94103, and whose telephone number is: 415-484-4000.