

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

.....
DEPARTMENT OF HEALTH AND
HUMAN SERVICES, HEALTH CARE
FINANCING ADMINISTRATION
Respondent
and
AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES,
LOCAL 1923, AFL-CIO
Charging Party/Union
.....

Case No. 3-CA-80303

Carolyn J. Dixon, Esquire
For the General Counsel

Barry F. Smith, Esquire
For the Respondent

Alvin S. Levy
For the Charging Party

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 March 11, 1988, by American Federation of Government Employees, Local 1923, AFL-CIO, (hereinafter called the Union), a Complaint and Notice of Hearing was issued on October 26, 1988 by the Regional Director for Region III, Federal Labor Relations Authority, Washington, D.C. The Complaint alleges that the Department of Health and Human Services, Health Care Financing Administration, (hereinafter called the Respondent or HCFA),

violated Sections 7116(a)(1), (5) and (6) of the Federal Service Labor-Management Relations Statute, (hereinafter called the Statute), by virtue of its actions in unilaterally implementing a total ban on smoking in violation of an existing Memorandum of Understanding (MOU) at a time when negotiations over the matter had been impasse and presented to the Federal Service Impasses Panel for resolution. The Complaint also alleges that the Respondent violated Sections 7116(a)(1) and (7) of the Statute by virtue of its action in attempting to negate and/or nullify the terms of the MOU on the basis of a subsequently issued regulation.

A hearing was held in the captioned matter on January 26, 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 March 13, 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^{1/}

The Union is the exclusive collective bargaining representative of Respondent's professional and nonprofessional employees.

During the Fall of 1986, the Union and the Respondent exchanged proposals for the establishment of a ban on smoking in various buildings located in Baltimore, Maryland and Washington, D.C. wherein unit employees were employed. Respondent's Administrator, Dr. William Roper, was opposed to smoking and sought to have Respondent in the forefront of Government Installations with a totally smoke free environment. To this end, in September and October 1986, Respondent presented two sets of proposals calling for a total ban on smoking within three months time. When these proposals were not agreed to, Respondent in November 1986, offered another

^{1/} To the extent that the statement of facts set forth in General Counsel's post-hearing brief agrees with the record evidence and my credibility determinations, I have adopted same.

proposal which called for a total ban on smoking within eighteen months. However, according to the credited testimony of Mr. Phillip Otto and Mr. Joseph Flynn, the Union's negotiators, the Union would not agree to a total ban on smoking nor to a date certain in the future for the institution of a total ban on smoking. As an alternative, the Union proposed a ban on smoking in work areas only. The Union also proposed the establishment of designated smoking areas in the Respondent's buildings located in the Baltimore and Washington areas.

Subsequently an agreement on a smoking policy was reached and the parties on November 21, 1986 executed a Memorandum of Understanding (MOU). The MOU provided, among other things, for the establishment of designated smoking areas in Respondent's buildings and a ban on smoking in the work areas. Section 7 of the MOU contained a reopener provision which stated that "The parties agree that 12 months from the date of this Agreement, either party with a 15-day written advance notice may reopen this Agreement". The MOU further stated in Section 8 that "The policy shall become effective 90 days after the signature of both parties to this agreement, and may be changed/modified only by mutual consent". In accordance with Article 4 of the Master Agreement, the MOU was incorporated into the Master Agreement and became subject to all the terms of the Master Agreement. Pursuant to the MOU, in February 1987 the smoking ban went into effect for the work areas and designated smoking areas were opened up in each of Respondent's buildings.

On October 30, 1987, Respondent notified the Union that pursuant to Section 7 of the MOU on smoking, it was exercising its option to reopen the agreement. Thereafter, on December 9, 1987, the parties executed an agreement on ground rules for the upcoming negotiations. Section 3 of this latter agreement provided as follows:

3. Unresolved Issues

Either party may declare that they are impasse on issue(s) and may present unresolved issues to the Federal Mediation and Conciliation Service and to the Federal Service Impasses Panel for appropriate jurisdiction. In the event the process of mediation/arbitration is utilized to resolve disputes, the

contract provisions for arbitration will be followed.

Resolved issues may be implemented. Either party reserves its rights under law, regulation, and collective bargaining agreement with respect to resolution of matters arising from the proposed change.

At the first two sessions held on December 14 and 16, 1987 the parties set forth their positions and explored the parameters of bargaining. Respondent's chief negotiator Marie DuLaney,^{2/} Deputy Director of the Office of Management and Budget, explained to Union negotiators Philip Otto and Joseph Flynn that she, as a high level agency official, was serving as chief negotiator to facilitate reaching an agreement with the Union on an ending date for smoking at HCFA. Ms. DuLaney made it clear to the Union that she did not have to get approval or clearance for any kind of deals that might be made since she had full authority to conduct these negotiations. Ms. DuLaney also made it clear to the Union negotiators that she was willing, in order to reach agreement with the Union on date certain to end smoking, to entertain other matters of importance to the Union which were unrelated to the smoking issue. To this end, she told the Union negotiators to come up with a "wish list", i.e., a list of items the Union wanted on matters not related to smoking issues. Ms. DuLaney told the Union that if she could not negotiate an agreement, she was willing to buy one.

According to Mr. Daniel Dugan, Respondent's Labor Relations Officer, Respondent's generous offer to cut deals with the Union on matters outside of the subject area of smoking was made because it realized the Union ". . . had problems with thirty percent of their bargaining unit members who would not be happy with a total ban and not being able to smoke." Respondent's offer was an attempt to show the Union, ". . . that we were willing to try and do something that would help them to make this more palatable to their membership." During the first couple of bargaining sessions, Respondent's chief negotiator, Ms. DuLaney, emphasized how it was important for her to reach an agreement with the Union on an ending date for smoking at HCFA during calendar year

^{2/} Ms. DuLaney's name is misspelled in the record as to "Delaney."

1988. Ms. DuLaney reiterated the known feeling of HCFA Administrator, Dr. Roper, that smoking was a health hazard for employees and that he did not want smoking in Respondent's buildings. Ms. DuLaney said that Dr. Roper wanted to leave Government with a smokeless HCFA. Ms. DuLaney also noted in connection with Respondent's concern over the health and safety of employees that smoke was reaching out of the designated smoking areas and getting into the air duct system. Under these circumstances, Respondent wanted to rid itself of all smoking in its buildings. Ms. DuLaney then referenced a DHHS regulation on smoking and said it put pressure on Respondent to get the matter resolved and get an ending date for smoking.^{3/} At this point, the Union's chief negotiator, Mr. Phillip Otto, asked Ms. DuLaney if she saw the DHHS regulation as overcoming or superseding the parties' negotiated MOU on smoking which predates by ten months the DHHS regulation. Ms. DuLaney said she did not see the DHHS regulation as overriding the parties' negotiated MOU on smoking. Mr. Otto then asked Ms. DuLaney if Respondent would raise as an obstacle to bargaining the issue of compelling need based on the DHHS regulation. Ms. DuLaney replied no, the Respondent would not take that position. Ms. DuLaney added that Respondent had been encouraged by DHHS to do just that but Respondent would not do it.^{4/}

^{3/} On August 25, 1987, DHHS issued General Administration Manual Chapter 1-60, which advised DHHS components of the Agency's policy on smoking. Section 1-60-50 B provides that implementation must be accomplished in accordance with 5 USC Chapter 71 and provisions of negotiated agreements. The purpose of Chapter 1-60 was to eventually do away with all smoking in DHHS Buildings.

^{4/} On direct examination, Ms. DuLaney was asked by Respondent's counsel if she ever told the Union that management would abandon the compelling need argument and she responded as follows:

"Well, I don't know if I said abandon. I said that we were -- the purpose of being there was to find a date for HCFA to stop smoking in the buildings, to implement the spirit of the first agreement. And then I didn't want to tie myself up with the department's compelling need argument if we could avoid it.

Respondent provided the Union with its proposal on the smoking issue. The proposal called for a total ban on smoking by January 1, 1988. A discussion then ensued on several statements allegedly made by the Union in response to Respondent's bargaining submission. Respondent took the position that the Union had agreed at a meeting with Dr. Roper on November 19, 1986, that if the Agency, in 6, 12 or 18 months, came forward with a total ban on smoking, the Union would support it. The Union's negotiators disputed the accuracy of this statement contending that the Union never agreed to any such thing in the meeting of November 19, 1986, with Dr. Roper.^{5/}

At the second bargaining session, the Union presented its bargaining proposals which, in the main, called for a continuation of the designated smoking areas. Ms. DuLaney reiterated her offer to deal with matters of importance to the Union which were not directly connected with smoking and again told the Union to develop its "wish list" because she was willing to buy an agreement containing the wish list items as long as such agreement provided for termination of smoking in calendar year 1988.

On or about December 18, 1987, the parties met again and began serious bargaining on the smoking issue. There was much discussion and further refinement of the "wish list" developed by the Union negotiators. On the Union's wish list were, among other things, items involving quarterly meetings with the Administrator or Deputy Administrator of HCFA, resolution of grievance and EEO complaints of Union Steward Diana Ayres, formulation of a committee for on-site day care and increased training time for union stewards. On the issue of smoking, the parties discussed a May 15, 1988 target date for a total ban on smoking. It was tentatively agreed that the Union would be given the first opportunity in January 1988 to communicate with its unit members on this issue in order to sell the smoking ban. The parties also discussed the mechanics of how the smoking ban would operate and particular matters associated with employee access to areas outside the buildings for smoking. In several subsequent sessions, on or about December 27, 1987, January 6, January 25 and February 25, 1988, the hard bargaining continued. During these sessions, Respondent changed its

^{5/} Mr. Flynn, who was present at the meeting, denied the existence of any such agreement. I credit his denial.

position on which items on the Union's "wish list" it could agree to.^{6/}

Subsequently, Federal Mediator Leo Gant of the Federal Mediation and Conciliation Service (FMCS) was called in by the parties to assist with the bargaining. Mr. Gant met with the parties several times (January 6, 25 and February 25, 1988) but to no avail. On March 8, 1988, Gant declared the parties at impasse. At that time (March 8, 1988), the Union informed Respondent that it intended to invoke the services of the Federal Service Impasses Panel (Panel). When the Union asked Respondent if it wanted to join in the Union's request for assistance to the Panel, Respondent indicated that it would submit its own separate request to the Panel. That same day, the Union prepared a request for Panel services and served it on Respondent.

By memorandum dated March 9, 1988, to all employees, Administrator Roper announced that effective March 15th he was implementing a total ban on smoking in all HCFA - occupied buildings and that the designated smoking areas would be "permanently" closed on that date. Dr. Roper's March 9 memorandum noted the health concerns over smoking and further referenced the parties' November 1986 MOU on smoking. Dr. Roper's March 9 memorandum, however, did not mention that the issue of a total smoking ban had been negotiated to impasse by the Union and Respondent and that the Union had invoked the services of the Panel.

The Union did not receive a copy of Roper's March 9 memorandum. No mention of this memorandum or of the planned unilateral implementation of a total smoking ban effective March 15 was made by Respondent at the parties' March 8th bargaining session.^{7/} The Union only learned of Dr. Roper's

^{6/} For example, Mr. Dan Dugan testified that at the December 18th session Respondent would not agree to a day care committee, increased training time for stewards, quarterly meetings with the Administrator, settlement of Diana Ayres grievance and EEO complaint, etc. However, subsequently, Respondent altered its position on day care and training time for stewards.

^{7/} According to Mr. Dan Dugan, the only notice the Union received from Respondent about the implementation of a total smoking ban was a reference in Respondent's second set of bargaining proposals which called for a March 15, 1988 date for a total ban on smoking.

memorandum from unit employees who were upset with the closure of the smoking areas.

By letter dated March 11, 1988, to Respondent and the Union, the Impasses Panel acknowledged the Union's request for assistance. On March 11, the Union filed the subject unfair labor practice charge.

On March 15, Respondent, as announced, implemented its total smoking ban in HCFA occupied buildings. The designated smoking areas which had been established as a result of the parties' November 1986 MOU were dismantled. At the present time, employees who want to smoke are now required to leave the buildings and go outside.

On March 17, Respondent requested that the Panel decline jurisdiction over the parties' bargaining impasse. Respondent's March 17 letter to the Panel noted that the parties "had been certified at impasse on March 8, 1988, by the FMCS's" but argued that the Panel should stay out of the impasse because of management's compelling need to implement its smoking policy. Noting that smoking is a national health problem, Respondent took the position that to continue to tolerate and perpetuate such a harmful practice would be inconsistent with the HCFA's mission. Respondent's March 17 letter to the Panel also raised for the first time the claim that its no-smoking policy was "mandated by the compelling need to implement" the August 25, 1987 DHHS policy issuance on smoking.

By letter dated March 21, 1988, the Union responded to Respondent's March 17 letter and informed the Panel that Respondent had never raised compelling need during the parties' bargaining which resulted in impasse. The Union further advised the Panel that the August 25, 1987 DHHS policy issuance specifically provided that it was to be implemented "consistent with the requirements of 5 USC Chapter 71 and provisions of negotiated agreements."

By letter dated March 30, Respondent wrote the Panel and while not disputing the Union's description of the parties' bargaining history on the smoking ban, refined its compelling need arguments initially raised in its March 17 letter to the Panel. Instead of arguing "compelling need" to implement a smoking ban, Respondent now argued that its March 15 total smoking ban was based on the DHHS August 25, 1987 policy issuance which is an agency-wide regulation for which a compelling need exists. Accordingly, Respondent was

now raising a "threshold question of nonnegotiability." Respondent's March 30 letter reminded the Panel that it could not decide negotiability disputes and that it must decline jurisdiction over the issue.

On March 31, 1988, the Panel declined jurisdiction. To date, the parties' bargaining impasse has been left unresolved and currently unit employees who want to smoke must go outside the buildings.

Discussion and Conclusion

The General Counsel takes the position that Respondent violated Sections 7116(a)(1), (5) and (6) of the Statute by virtue of its actions in unilaterally changing the provisions of the 1986 MOU which allowed smoking in designated areas of the various buildings located in Baltimore and Washington, D.C., and by effecting such change at a time when the impasse negotiations were pending before the Federal Service Impasses Panel for resolution. The General Counsel further contends that Respondent also violated Section 7116(a)(7) of the Statute when it relied upon the newly issued DHHS regulation as a basis for its action in unilaterally changing the terms of the existing MOU. To the extent that Respondent raises "compelling need" for the regulation in its submission to the Federal Service Impasses Panel, the General Counsel points out that in Department of Health and Human Services, Family Support Administration and Headquarters Office, 33 FLRA No. 8, the Authority considered the identical regulation and the identical position of Respondent and concluded that there was no compelling need for the regulation and that the Union's bargaining proposals presented in such case on the issue of smoking were negotiable.

The Respondent takes the position that it was under no obligation to bargain with the Union over the change in smoking policy since the 1986 MOU made it clear that there would be a smoke free environment in all HCFA building space. In such circumstances, according to Respondent, inasmuch as the parties negotiations were confined to the so-called wish list and impasse solely over such items and not the impact and manner of implementation of the no smoking policy, the Respondent was free to institute the no smoking policy since there had been no impasse over the impact and manner of implementation of the policy which would have given the Impasses Panel jurisdiction. Absent jurisdiction, it appears to be Respondent's position that it was free to

institute the change in the smoking policy despite the fact that the Union has asked the Impasses Panel for assistance. According to Respondent, only "wish list" items were before the Panel and not smoking issues.

With respect to the alleged Section 7116(a)(7) violation, it is Respondent's position that it never relied on the HHS regulation relative to a smoke free environment for which a compelling need exists as justification for its actions in changing the terms of the MOU. Again, Respondent takes the position that the change in the smoking policy was in accordance with the terms of the 1986 MOU and not based upon the newly issued HHS regulation.

The parties do not appear to have any dispute with respect to the current state of the law. Thus, they are in agreement (1) that the unilateral repudiation of an MOU or Master Collective Bargaining Agreement by an Agency is violative of Sections 7116(a)(1) and (5) of the Statute,^{8/} (2) that the failure to maintain the status quo on items at impasse which have been submitted to the Impasses Panel for resolution is violative of Section 7116(a)(1) and (6) of the Statute,^{9/} and (3) that reliance on subsequently issued rules and regulations as grounds for nullifying an existing collective bargaining agreement is violative of Sections 7116(a)(1) and (7) of the Statute.^{10/}

Respondent, however, as noted above, justifies its actions on the ground that it was under no obligation to bargain with the Union on the total ban on smoking since the parties in both the MOU and the negotiations leading up to the execution of the MOU had already agreed to have a smoke free environment. In such circumstances, and since the Union had opted not to submit any impact and implementation proposals it, the Respondent, was free to implement a total ban on smoking irrespective of the fact that the Union had invoked the services of the Impasses Panel. According to Respondent, since the impassed items submitted to the Panel

^{8/} Rolla Research Center, U.S. Bureau of Mines, 29 FLRA 107, 115.

^{9/} Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 18 FLRA 466, 469.

^{10/} Cf. National Treasury Employees Union, 13 FLRA 554.

were unrelated to the smoking ban, it was within its rights in implementing the no smoking policy. Had the impact and implementation proposals submitted to the Panel been related to the no smoking policy, Respondent appears to acknowledge that the Panel would then have had jurisdiction over the matter and Respondent would have been precluded from implementing the total ban on smoking until such time as the Panel relinquished jurisdiction. With respect to the alleged 7116(a)(7) violation, Respondent denies that it ever relied on the DHHS regulation as justification for its actions.

Contrary to Respondent and in agreement with the General Counsel, I find that Respondent violated Sections 7116(a)(1), (5) and (6) of the Statute when it unilaterally instituted the total ban on smoking within its buildings located in Baltimore, Maryland and Washington, D.C. at a time when the impasse in negotiations on the matter had been submitted to the Impasses Panel for resolution.

In reaching the above conclusion, I credit the testimony of the Union negotiators to the effect that while they were amenable to a total ban on smoking in the future they had never agreed on a date certain for the ban. Moreover, the wording of the MOU to the effect that the parties will immediately and over the coming months initiate efforts designed to provide a smoke free environment supports this conclusion since no specific date for a ban on smoking is set forth in the MOU. All the MOU provides for is the opportunity for either party to reopen the MOU for further negotiations some 12 months after the execution of the agreement. Inasmuch as the MOU became a part of the National Collective Bargaining Agreement, it remained in force pending any final agreement on an amendment thereto. In view of the foregoing, I find that the Respondent, prior to implementing any change in the smoking policy contained in the MOU, was under an obligation to bargain with the Union until agreement and/or impasse was reached.

The record indicates that Respondent recognized this obligation since prior to effecting a change in the smoking policy by doing away with the designated smoking areas it solicited from the Union the so-called "wish list" as a trade-off for the Union's agreement on a total ban on smoking within Respondent's building.

The record further indicates that the Union, in response to Respondent's notice of its intent to reopen the MOU, submitted various proposals to the Respondent, among which,

were proposals concerning the continuation of the designated areas for smoking. Subsequently, when Respondent made it clear that it had no intention of retaining the smoking areas and backed away from the proposals contained in the "wish list" submitted by the Union pursuant to Respondent's request for same, the Union submitted the matters at impasse to the Impasses Panel. Among the matters submitted to the Panel were the Union's proposals dealing with designated smoking areas. Despite the fact that the matter was before the Panel, Respondent on March 15, 1988 implemented its no smoking ban and closed the designated smoking areas which were established by the 1986 MOU.

Inasmuch as I have credited the testimony of the Union's negotiators to the effect that they had never agreed upon a date certain for a total ban on smoking and have also found that a literal reading of the MOU makes no provision for a total ban on smoking, I find that Respondent's action in implementing on March 15, 1988 a total ban on smoking constituted a total repudiation of the terms of the MOU in violation of Section 7116(a)(1) and (5) of the Statute. Rolla Research Center, supra. I further find that the Respondent violated Sections 7116(a)(1) and (6) of the Statute by virtue of the aforementioned action since it occurred at a time when the matter was before the Federal Service Impasses Panel for resolution. Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, supra.

Turning now to the final allegation of the Complaint involving reliance upon a subsequently issued regulation as a defense to the agency's action in unilaterally changing the terms of an existing memorandum of understanding, I find that the Respondent, contrary to its expressed position, did in fact rely on the August 25, 1987, DHHS regulation Chapter 1-60 as the basis for its decision to implement the no smoking ban which was tantamount to a complete repudiation of the existing MOU. Thus, in its response to the Union's presentation to the Impasses Panel, Respondent specifically stated "The Policy is also mandated by the compelling need to implement the Department of Health and Human Services' (DHHS) General Administration Manual (GAM) Chapter 1-60 which requires the establishment of a smoke free environment in all DHHS buildings." Accordingly based primarily on the foregoing, I find that by relying on the aforesaid DHHS Regulation, Respondent violated Section 7116(a)(1) and (7) of the Statute.

In reaching this conclusion I am not unmindful of the fact that "compelling need" determinations are the sole

province of the Federal Labor Relations Authority and that when "compelling need" is raised as defense to a refusal to bargain over a change in a condition of employment no further action may be taken by an Administrative Law Judge on the merits of the change until such time as the Authority makes a "compelling need" determination. However, inasmuch as the Authority in a prior case has already ruled that there is no compelling need for the DHHS regulation involved herein, I find that the issue has already been decided by the Authority and that I am not estopped from considering the merits of the change irrespective of the fact that Respondent has again raised "compelling need" as justification for its action.

Having concluded that Respondent violated Section 7116(a) (1), (5), (6), and (7) of the Statute by virtue of its actions in unilaterally changing the terms of the MOU at a time when the matter was before the Impasses Panel and attempting to justify or defend its actions in this regard on the basis of a subsequently issued regulation, it is hereby recommended that the Federal Labor Relations Authority adopt the following order designed to effectuate the purposes and policies of the Statute.

ORDER

Pursuant to Section 2423.29 of the Authority's Rules and Regulations and Section 7118 of the Federal Service Labor-Management Relations Statute, the Department of Health and Human Services, Health Care Financing Administration, shall:

1. Cease and desist from:

(a) Unilaterally changing conditions of employment established by the 1986 MOU by banning all smoking within the Department of Health and Human Services, Health Care Financing Administration buildings located in Washington, D.C. and Baltimore, Maryland.

(b) Effecting any changes in designated smoking areas or other conditions of employment at a time when an impasse in negotiations concerning such conditions of employment is pending before the Federal Service Impasses Panel.

(c) Attempting to nullify the terms of an existing collective bargaining agreement on the basis of a subsequently issued regulation.

(d) 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 actions in order to effectuate the purposes and policies of the Statute.

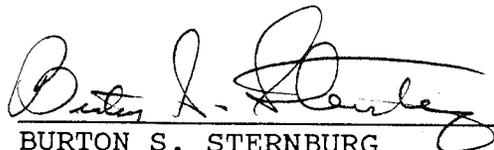
(a) Reinstate the designated smoking areas in the Department of Health and Human Services, Health Care Financing Administration buildings located in Washington, D.C. and Baltimore, Maryland which were established pursuant to the MOU dated November 21, 1986.

(b) Maintain the conditions of employment established by the MOU dated November 21, 1986, until such time as the parties complete negotiations and/or the matter is resolved upon the basis of a submission to the Federal Service Impasses Panel.

(c) Post at its offices where unit employees are employed copies of the attached Notice of forms to be furnished by the Federal Labor Relations Authority. Upon receipt of such forms, they shall be signed by the Administrator of the Department of Health and Human Services, Health Care Financing Administration, and they 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 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., June 22, 1989


BURTON S. STERNBURG
Administrative Law Judge

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

WE HEREBY NOTIFY OUR EMPLOYEE THAT:

WE WILL NOT unilaterally change conditions of employment established by the 1986 MOU by banning all smoking within the Department of Health and Human Services, Health Care Financing Administration buildings located in Washington, D.C. and Baltimore, Maryland.

WE WILL NOT effect any changes in designated smoking areas or other conditions of employment at a time when an impasse in negotiations with the American Federation Of Government Employees, Local 1923, AFL-CIO, the certified exclusive representative of our employees, is pending before the Federal Service Impasses Panel for resolution.

WE WILL NOT attempt to nullify the terms of an existing collective bargaining agreement on the basis of a subsequently issued regulation.

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 reinstate the designated smoking areas in the Department of Health of Human Services, Health Care Financing Administration buildings located in Washington, D.C., and Baltimore, Maryland, which were established pursuant to the MOU dated November 21, 1986.

WE WILL maintain the conditions of employment established by the MOU dated November 21, 1986, until such time as the

parties negotiate and reach agreement on any proposed change therein and/or the matter of the proposed change is resolved upon the basis of a submission to the Federal Service Impasses Panel.

(Activity)

Dated: _____

By: _____
(Signature) (Title)