

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

.....
DEFENSE MAPPING AGENCY .
AEROSPACE CENTER .
ST. LOUIS, MISSOURI .
Respondent .
and .
NATIONAL FEDERATION OF .
FEDERAL EMPLOYEES, LOCAL 1827 .
Charging Party .
.....

Case No. 57-CA-00084

Langston C. Davis, Esq.
For the Respondent

Susanne S. Matlin, Esq.
For the General Counsel

Before: WILLIAM NAIMARK
Administrative Law Judge

DECISION

Statement of the Case

Pursuant to a Complaint and Notice of Hearing issued on February 27, 1990 by the Regional Director for Region V, Federal Labor Relations Authority, a hearing was held before the undersigned on June 12, 1990 at St. Louis, Missouri.

This case arises under the Federal Service Labor-Management Relations Statute, 5 U.S.C. section 7101, et seq., (herein called the Statute). It is based on a charge filed on November 29, 1989 by National Federation of Federal Employees, Local 1827 (herein called the Union) against Defense Mapping Agency Aerospace Center, St. Louis, Missouri (herein called the Respondent).

The Complaint alleged, in substance, that on or about October 27, 1989 Respondent removed the Class A telephone service from the Graphic Arts Negative Engraving Division (GAN) without notifying the Union, or affording it an opportunity to negotiate as to the substance, and/or impact and implementation of its conduct - all constituting a refusal to bargain and violative of section 7116(a)(1) and (5) of the Statute.

Respondent's Answer, dated March 23, 1990, admits that it changed the Class A telephone service to Class C on October 27, 1989; that it advised the Union that such change was non-negotiable; and denies that it engaged in unfair labor practices as alleged.

All parties were represented at the hearing. Each was afforded full opportunity to be heard, to adduce evidence, and to examine as well as cross-examine witnesses. Thereafter briefs^{1/} were filed which have been duly considered.^{2/}

Upon the entire record herein, from my observation of the witnesses and their demeanor, and from all of the testimony and evidence adduced at the hearing, I make the following findings and conclusions:

Findings of Fact

1. At all times material herein the Union has been, and still is, the exclusive representative of a unit of all non-professional employees of the Defense Mapping Agency, Aerospace Center in St. Louis, Missouri, excluding professional employees, management officials, supervisors and employees described in 5 U.S.C. 7112(b)(2), (6) and (7).

^{1/} On August 20, 1990 Respondent submitted corrected pages to its brief concerning typographical or punctuation errors on pages 3, 5, 13 and 14 thereof. It requested that said corrected pages be substituted for the original ones. No objection being interposed, the request is granted, and pages 3, 5, 13 and 14 submitted on the above-named date are substituted for those original numbered pages.

^{2/} General Counsel filed a Motion To Correct Record citing certain errors in the transcript. No objection being interposed, and it appearing that such proposed corrections are proper, the said motion is granted as requested.

2. At all times since August 21, 1986 Respondent and the Union have been parties to a written collective bargaining agreement covering the aforesaid unit employees.

3. Respondent operates at two locations in St. Louis, 3200 S. 2nd Street and 8900 S. Broadway which are about 50 blocks apart from each other. The Graphic Arts (GA) division is now located at 8900 S. Broadway. Within GA are several branches which include a plate room, finishing area, bindery, warehouse, and a negative engraving preparation section (GAN).

4. About 200 employees work in the GA department which occupies half of a large warehouse building. About one-third of the building is in a secured area at the east end, and about one-sixth of such area is utilized by GAN. The entire length of the organization (east to west) is somewhat over 100 yards.^{3/} Within GAN are: the Division Chief, Richard Siefert, who is the second level supervisor; four branch chiefs (supervisors); and 12 inspectors who are part of a total of approximately 54 bargaining unit employees.

5. Siefert's office was formerly within the GAN work area. It is now in the unsecured area toward the middle of the building. The office of the Chief of GA, Otto Stoessel, is located in the middle of the secured area of the building. Stoessel is Siefert's supervisor.

6. In 1984 the GAN area was organized into GA. Previously, GAN had the responsibility to contact and work with contractors. Its duties required the use of commercial telephone lines, but after 1984 GA handled such work.

7. The Kansas City Field Office of Respondent existed for over 10 years. Around 1984 GA started to get work from the Kansas City office which was handled by the GAN division.

8. There are two types of telephone lines or service at the facilities: Class A and Class C. The Class A line allows the caller to phone inside or outside the agency, whereas Class C phones are utilized only for in-house calls - within the agency itself. Class A phones are used generally for transacting official government business. It is available primarily for commercial calls.

^{3/} See Respondent's Exhibit 6.

9. At GAN the Class A line was intended to be used for telephone calls to the Kansas City Field Office. These calls were mostly made, during the existence of that office, by 12 inspectors (unit employees) and the supervisors at GAN. They were made to discuss manuscript problems and specific features. In recent years, the record reflects, the amount of calls to Kansas City dwindled and not much usage of them was made for that purpose. The contracting office of Respondent now uses the Class A line to call contractors.

10. The record reflects that for at least five years the Class A phones were used, with management's sanction and permission, by employees to make personal calls. The employees used these phones, which were in the GAN work area and placed on the desks of supervisors, for such purposes as calling home, arranging for car repairs, making doctor's appointments, and the like. They also utilized this Class A line to call the Union and contact a representative thereat. No employee had been reprimanded by management for the continued use or any abuse of this privilege.

11. On September 30, 1989 Defense Mapping Agency issued a General Order disestablishing the Kansas City Field Office as of that date. The mission and functions of that field office were thereby transferred to the Respondent Aerospace Center in St. Louis, Missouri.

12. Under date of October 25, 1989 Elmer Hacker, President of the Union, wrote Sharon A. McSpadden, Chief, Employee and Labor Relations of Respondent, stating he learned that management plans to discontinue Class A telephones in the GAN work area. Further, he described this as an employee benefit of long-standing and requested it not be changed until after bargaining re the change is completed. Hacker also requested negotiations over the change.

13. On October 27, 1989 Class A line service was removed from the GAN working area. Siefert's office was relocated outside that area to an unsecured site about 69 yards from the GAN work area. There is a Class A phone on Siefert's desk as well as one on the desk of his secretary. No outgoing calls may be made from GAN on a Class A phone any longer.

14. Prior to October 27, 1989 Respondent removed Class A telephone lines from certain divisions in GA department. Such lines were removed from the finishing and the photo plate sections due to waste, abuse, and that no need existed

for commercial calls to be made from these areas. The record reflects that the existence of such Class A lines was mission-related.

15. Up until October 27, 1989 there were two Class A lines in GAN. During that month an employee complained that another employee spent too long a time on that commercial phone. Siefert spoke to Chief Stoessel re the complaint. Whereupon Stoessel asked if the continued use of that phone could be justified. Siefert stated that since the Class A line was for the purpose of calling Kansas City, and that office had been closed, there was no justification for its existence in GAN.

16. McSpadden replied to the Union's request to negotiate in a letter dated November 14, 1989 wherein she stated that there was no reason to continue the Class A phone in GAN. She mentioned that the said line was intended to conduct business with the Kansas City Field Office; that since that Office was abolished, the Class A phone in GAN was unnecessary. Further, McSpadden wrote that the telephones are instruments used in the performance of official duties - i.e. part of the methods/procedures of work and thus the issue is not negotiable.

17. Record facts reflect that there are still Class A lines within the GA department. The phones are located on the desks of supervisors in an enclosed office and there is a Class A phone in Stoessel's office. All of these phones are several hundred feet away from GAN's work area, and they are locked up after hours.

18. There are also two pay telephones which are located about 69 yards from the GAN work site. One is outside Siefert's new office and the other is nearby at the lunch or break room. There is an emergency phone which GAN employees may use, which is about 108 yards away from their work area. All 200 employees in GA are free to use these phones. A Class A line was installed in December 1989 as the emergency phone.

The record indicates that GAN employees are reluctant to use the pay phones due to the distance from their work area. Further, these phones are in booths which are not well lit and are dirty. Apart from the fact that the employees are compelled to be away from their GAN work area and lose production time, the pay phones are used by many other individuals, delivery people or contractors, and are not readily available for use. Calls which they would make

on GA Class A lines during emergencies do not afford privacy. Contact with the Union by employees is made more difficult in using the pay phones.

19. In a subsequent letter to Hacker, dated December 11, 1989, McSpadden stated that management is willing to meet and conduct impact bargaining; that Hacker should contact her if the Union agrees to such meeting.

20. Union representative Hacker testified that management came to the Union in December 1989 with a list of 29 phones and where they were situated. Further, he testified he did not recall whether the Union was offered the opportunity to negotiate it. McSpadden testified that management met with the Union to see if it had any proposals that the agency felt were negotiable. She further testified that the Union proposal was to go back to status quo; that management made such recommendations in terms of what they would be willing to provide the Union - some additional information re the location of phones.^{4/}

Conclusions

The central issue is whether the removal by Respondent of the Class A telephone service at the GAN division without notification to the Union, and affording it an opportunity to bargain concerning the change and/or its impact and implementation, was violative of section 7116(a)(1) and (5) of the Statute.

While conceding that it unilaterally removed that service, Respondent contends it was part of a change in the technology, methods and means of performing work and only negotiable at the election of the agency. Further, Respondent elected not to negotiate the removal. It is also contended that any impact or reasonably foreseeable impact of removing Class A service was de minimis. Finally, Respondent argues that since the primary purpose for which this service was instituted - communicating with the Kansas

^{4/} While McSpadden testified she believed the Union rejected those recommendations, she also stated that she was not present at the sessions regarding the telephones. The record does not contain any other details concerning proposals made at this session, nor is there any evidence re negotiations as to the impact of the removal of Class A lines from the GAN work area.

City Field Office - no longer existed (in view of the closing of such office), it was entitled to remove such service.

At the outset, it is quite clear that GAN employees were permitted the use of Class A phones for personal calls for at least five years prior to October 1987. It is undisputed that the unit employees in GAN utilized such telephones to call home, arrange for doctor's appointments, take care of repairs to their cars, and the like. These calls, which were known to management and supervisors, were outgoing though not long distance in nature. As such, I conclude that such use of Class A phone service by GAN employees constituted an established practice at this division of Respondent's operations.

It must also be determined whether this practice was a condition of employment at the time of the dispute herein. Basic considerations for this determination were set forth by the Authority in Antilles Consolidated Education Association and Antilles Consolidated School System, 22 FLRA 235. Whether a matter involved a condition of employment rested on the following tests: (1) if it pertained to bargaining unit employees, and (2) the nature and extent of the effect, of the matter proposed, on working conditions of those employees.

No question exists as to the first consideration. The practice of allowing GAN employees to use Class A phones for personal calls involved all bargaining unit employees in such division. This is not disputed and thus the practice clearly pertains to bargaining unit employees.

With respect to the second test, I conclude that this practice had a direct effect upon the working condition of these employees. Telephone calls to the Union for either obtaining a representative or to handle a complaint/grievance would bear on their work problems and their conditions of employment. As reflected in the record, GAN employees would, on occasion, use the Class A phone to call home and notify families if the individuals were required to work overtime. At other times this phone was used by them to call a doctor or arrange for car repairs. Since the foregoing telephone calls could quite obviously have an impact upon their continuation at work and the performance of their duties, the use of such Class A service for personal calls could necessarily affect working conditions. Accordingly, I conclude that the past practice of allowing GAN employees to use Class A telephones for personal calls

while at work was a condition of employment and existent on October 27, 1987.^{5/}

Consideration is now given to Respondent's principal contention herein: that the telephone usage by GAN employees of Class A phones concerned the technology, methods, and means of performing work under section 7106(b)(1) of the Statute. Further, that Respondent might elect to negotiate the discontinuance of this privilege but was not required to do so.

The Authority has had occasion to discuss the use of telephones by employees on the job as well as such usage by union officials. As to the latter, the Authority has held that telephone use by such officials in conducting labor-management relations activities does not involve the technology of performing work under section 7106(b)(1) of the Statute. Contrariwise, the use of telephones by employees in the performance of official duties does involve such technology under that section of the Statute. See American Federation of Government Employees, Council 214, AFL-CIO and Department of the Air Force, Air Force Logistics Command, 31 FLRA 1259.

Turning to the case herein, note is taken that the employees who were GAN inspectors used the Class A telephones to call the Kansas City Field Office prior to the closing of that office on September 30, 1989. To the extent that such employees made such calls in performing their official duties they were, in accordance with the holdings laid down by the Authority, engaged in activity involving the technology of performing work under section 7106(b)(1). Therefore, any proposals by the Union in regard to the use, or discontinued use, by the inspectors of Class A telephones for that purpose were not negotiable. Irrespective of whether the Kansas City Field Office remained open or not, the use by those particular employees of such phones would have been in the performance of their duties when they called that field office, and Respondent would not be bound to negotiate such continued usage by them.

The present case, however, concerns the elimination of a past practice and a different condition of employment involving employees in GAN. All of the unit employees at

^{5/} Nothing in the record indicates, in any event, that Respondent challenges this conclusion.

GAN, including the inspectors, had been granted the privilege of using Class A phones for personal reasons, albiet problems which impinge upon their work, but not to conduct agency business. The usage of such Class A service by GAN employees to call home, or arrange for medical and other assistance, was not related to the existence of the Kansas City Field Office. Thus, providing GAN employees access to such service would not relate to the technology of performing work under section 7106(b)(1) of the Statute. Further, unless otherwise excepted by law or regulations, Respondent would be required to negotiate the elimination of such service with the Union.

Although not raised as a defense herein, attention is given to 41 CFR 201-38.007.1 and its applicability to this case.^{6/} That section provides, under (a) hereof, that the use of Government telephone systems shall be limited to the conduct of official business. However, it is also provided, under (b) thereof, that the "use of Government telephone systems may properly be authorized as being necessary in the interest of the Government . . ." Subdivision (c) refers to examples of circumstances which may constitute authorized use in an accompanied chart, and these include the following:

- Calls to notify family, doctor, etc. when an employee is injured on the job.
- An employee is required to work overtime without advance notice and calls . . . to advise his or her family of the change in schedule or to make alternate transportation or child care arrangements.
- An employee makes a brief daily call . . . to speak to spouse or minor children . . . to see how they are.
- An employee makes brief calls to locations . . . that can be reached only during working hours, such as a local government agency or physicians.

^{6/} The Authority has concluded that it is a government-wide regulation within the meaning of section 7117 of the Statute National Federation of Federal Employees and General Services Administration, 24 FLRA 430.

- An employee makes brief calls . . . to arrange for emergency repairs to his or her residence or automobile.

Subdivision (d) thereof provides that personal calls that must be made during working hours may be made over the commercial long-distance network if consistent with the criteria in 201-38.007-1(b).

In view of the provisions in the foregoing regulation, I conclude that the agency is not precluded from negotiating on the continued usage by GAN employees of Class A phones for personal calls; that the said usage does not run counter to the regulation so as to constitute a defense herein.

It is therefore concluded that the use by GAN employees of Class A phones for the personal reasons, as specified, was not related to the technology, methods and means of performing work under section 7106(b)(1) of the Statute. Accordingly, Respondent was obliged to bargain with the Union concerning the removal of this service and the discontinuance of the practice which was a condition of employment on October 27, 1989. Having failed and refused to negotiate over the change, Respondent violated section 7116(a)(1) and (5) of the Statute.^{7/}

Remedy

The General Counsel seeks a status quo ante remedy. Such a remedy has been deemed appropriate where, as here, management has unilaterally changed a negotiable condition of employment. Effectuations of the purposes and policies of the Statute require a return to the status quo ante in order not to render meaningless the obligation to bargain. See Department of Health and Human Services, Public Health Service, Health Resources and Services Administration, et al., 31 FLRA 498. Accordingly, I shall recommend that the Class A phone service at Respondent's GAN division be restored until bargaining with the Union is completed.

Having concluded that Respondent violated section 7116(a)(1) and (5) by reason of the unilateral change as

^{7/} In view of my conclusions that Respondent was required to bargain re the substance of the change herein, it is not necessary to pass upon the contention by Respondent that the impact of the change upon employees was de minimis.

aforesaid, it is recommended that the Authority issue the following Order:

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 Mapping Agency Aerospace Center, St. Louis, Missouri, shall:

1. Cease and desist from:

(a) Removing the Class A telephone service from its Graphic Arts Negative Engraving Division (GAN) and unilaterally changing the policy whereby GAN employees are allowed to use such telephones to make personal and union-related telephone calls, without notifying the National Federation of Federal Employees, Local 1827, the exclusive representative of its employees and affording it an opportunity to bargain, to the extent consistent with law and regulations, on the decision to make such change.

(b) In any like or related manner interfering with, restraining or coercing its employees in the exercise of their rights assured by the Federal Service Labor-Management Relations Statute.

2. Take the following affirmative action in order to effectuate the purposes and policies of the Federal Service Labor-Management Relations Statute:

(a) Restore the Class A telephone service in the Graphic Arts Negative Engraving Division (GAN).

(b) Reinstate the policy whereby GAN employees are allowed to use the Class A telephones within GAN to make personal and union-related telephone calls.

(c) Notify the National Federation of Federal Employees, Local 1827, the exclusive representative of its employees, of any intention to change the policy at the Graphic Arts Negative Engraving Division and, upon request, bargain with said Union to the extent consistent with law and regulations on any decision to make such change.

(d) Post at its facilities at 8900 S. Broadway, St. Louis, Missouri, 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

Area Director 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.

(e) Pursuant to section 2423.30 of the Authority's Rules and Regulations, notify the Regional Director, Region V, Federal Labor Relations Authority, 175 West Jackson Boulevard, Suite 1359-A, Chicago, IL 60604, 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., October 26, 1990.

A handwritten signature in cursive script, reading "William Naimark". The signature is written in dark ink and is positioned above a horizontal line.

WILLIAM NAIMARK
Administrative Law Judge

NOTICE TO ALL EMPLOYEES

AS ORDERED BY THE FEDERAL LABOR RELATIONS AUTHORITY
AND TO EFFECTUATE THE POLICIES OF THE
FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS STATUTE

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT remove the Class A telephone service from our Graphic Arts Negative Engraving Division (GAN) and unilaterally change the policy whereby GAN employees are allowed to use such telephones to make personal and union-related telephone calls, without notifying the National Federation of Federal Employees, Local 1827, the exclusive representative of our employees and affording it an opportunity to bargain, to the extent consistent with law and regulation, on the decision to make such change.

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

WE WILL restore the Class A telephone service in the Graphic Arts Negative Engraving Division (GAN).

WE WILL reinstate the policy whereby GAN employees are allowed to use the Class A telephones within GAN to make personal and union-related telephone calls.

WE WILL notify the National Federation of Federal Employees, Local 1827, the exclusive representative of our employees, of any intention to change the policy at the Graphic Arts Negative Engraving Division and, upon request, bargain with said Union to the extent consistent with law and regulations on any decision to make such change.

(Activity)

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

This Notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material.

If employees have any questions concerning this Notice or compliance with any of its provisions, they may communicate directly with the Regional Director of the Federal Labor Relations Authority, Region 5, whose address is: 175 West Jackson Boulevard, Suite 1359-A, Chicago, IL 60604, and whose telephone number is: (312) 353-6306.