

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

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DEPARTMENT OF THE AIR FORCE .  
9TH COMBAT SUPPORT GROUP .  
BEALE AIR FORCE BASE, .  
CALIFORNIA .

Respondent .

and .

Case No. 89-CA-90644

AMERICAN FEDERATION OF .  
GOVERNMENT EMPLOYEES, .  
LOCAL 2025, AFL-CIO .

Charging Party .  
. . . . .

Susan E. Jelen, Esquire  
For the General Counsel

Major Phillip G. Tidmore  
Captain Miriam L. Sumpter  
For the Respondent

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 September 1, 1989, by  
American Federation of Government Employees (AFL-CIO),  
Local 2025, hereinafter called the Union, a Complaint and  
Notice of Hearing was issued on February 28, 1990, by the  
Regional Director for Region VIII, Federal Labor Relations  
Authority, Los Angeles, California. The Complaint alleges

that the Department of the Air Force, 9th Combat Support Group, Beale Air Force Base, California, hereinafter called the Respondent, violated Sections 7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute, hereinafter called the Statute, by virtue of its actions in unilaterally changing the working conditions of certain unit employees by requiring them "to report directly to the work site rather than the shop, and take their lunch at the work site rather than the shop, without first notifying the Union and providing it with an opportunity to bargain over the impact and implementation of said changes."

A hearing was held in the captioned matter on May 23, 1990, in Sacramento, California. 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 Respondent and General Counsel submitted post-hearing briefs on July 9 and 10, 1990, respectively, 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.

#### Findings of Fact

Since 1986, the Union has been the exclusive representative of a unit composed of all Wage Board and Classification Act employees serviced by the Civilian Personnel Office, Beale Air Force Base, California. This unit includes employees in the Civil Engineering Squadron (CE) which is responsible for the operation and maintenance of all buildings located on Beale AFB which is approximately eighty thousand acres in size. The approximately 140 employees in the CE unit are classified as electricians, carpenters, painters, plumbers, etc. At all times material herein, Colonel Terry Fenstad was the Commander of CE and Major Linda Morey was the Chief of Operations and Maintenance. Under Major Morey in the supervisory hierarchy was Captain Hubbard, Chief of Heavy Repair and Chief Master Sergeant McAllister who was the Deputy Chief of Heavy Repair.

CE "Work Force Policies and Practices, Regulation 11-7" Section 3(a) entitled "assigned duty location," provides "that all CE personnel are expected to report to, be present at, and remain at assigned duty stations as directed by their respective cost center supervisor. . . ."

Section (f)(2), entitled "Reporting to job sites," provides as follows:

(2) If more convenient, and at the discretion of the work center supervisor, personnel may be required to report directly to the job site and leave from the job site at the end of the work day. . . .

According to the testimony of Union president Leroy Bright, Mr. Jim Middleton and Mr. Dale Williams, who have been part of the CE unit for 11, 10 and 24 years, respectively, prior to August 1989 they always reported to their respective areas in the CE compound prior to starting work. At such time they were given their respective daily work assignments. Following receipt of their daily assignments they would pick up a government vehicle and proceed to the areas where their work assignments were to be performed. At lunch time they would return to the CE compound, wash up, and eat their lunch, utilizing tables etc., provided for such purpose.<sup>1/</sup> Following lunch, they would then return to their assigned work areas and remain there until the end of their shift. At the end of the shift they would return to the CE compound, wash up, and leave the premises in their private vehicles.

In August 1989, a number of employees in the CE began working on a renovation project for the Distinguished Visitors Suites (DVS). This project which lasted until November 1989 utilized employees from CE, including, among others, those employees classified as electricians, painters, plumbers and carpenters.

On August 11, 1989, Mr. Dale Williams and Mr. Dave Kessler, both carpenters assigned to the CE, approached Union president Leroy Bright before work and informed him

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<sup>1/</sup> The CE compound area had hot water, soap, showers, vending machines and a refrigerator, all of which were available to the CE employees. The employees were not required to eat in the CE compound area. However, while employees were free to eat wherever they desired, they were not allowed to use government vehicles for transportation to other lunch facilities. The employees, upon returning to the CE compound were allowed 15 minutes before lunch and 15 minutes before the end of their shift for wash up.

that they had been told by Major Morey that beginning Monday, August 14, 1989, they were to report directly to the DVS job site in their private vehicles and that they should also take their lunches at the job site. Inasmuch as this was a change from their normal procedure, i.e., reporting to and leaving from their assigned areas in the CE compound and also taking lunch at the CE compound, the employees complained to Mr. Bright.

Mr. Bright then contacted Major Morey and informed her that the CE employees were upset with the changes in reporting to work, etc. being implemented at DVS, and that he would like to discuss the matter of the changes with her. Major Morey replied that she had read the union contract and that she did not have to talk to him. When Mr. Bright pursued the matter further, Major Morey made it clear that she was of the opinion that she could do as she pleased. On the same day Mr. Bright also contacted Mr. Bill Owens, Respondent's Labor Relations Officer and Ms. Gail Williamson, Civilian Personnel Officer, concerning the change and attempted to bargain thereon. Neither of Respondent's representatives made any meaningful response to Mr. Bright's request for bargaining.

The following week an unspecified number of employees from CE who were assigned work at the DVS were required to report directly to DVS without any prior stop at their respective areas in the CE compound, as was their usual practice.<sup>2/</sup>

At the DV Suites employees did not have the same type of facilities available to them. According to Mr. Dale Williams, who was on the job for the entire time, except for a two week period when he was serving as acting supervisor in the shop, bathroom facilities were not available in the DV Suites after the first two weeks. He tried to keep one of the bathrooms available as long as possible, but because of the rush nature of the job, he was unable to do so beyond the first weeks. After these bathroom facilities were torn up as part of the renovation, the employees used an outside faucet for clean up. Although Respondent eventually made arrangements for use of facilities in adjacent quarters, these facilities were only available when the maids were

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<sup>2/</sup> Mr. Bright who performed painting work at DVS was not ordered to report directly to DVS rather than the CE compound at the beginning of his shift.

present. The CE employees were on the job site at 6:30 a.m., some 2 and 1/2 hours prior to the time the maids were at their assigned locations.

According to Mr. Williams, Major Morey first ordered the employees to remain at the job site during their lunch break. Eventually, however, employees were allowed to leave and take their lunch elsewhere. Due to the location of DVS there wasn't enough time to go anywhere else.<sup>3/</sup> The DV Suites were about a ten minute drive to the CE shop. There was no snack bar near the DV Suites, although the Officers' Club and the golf course were close. Major Morey did make arrangements for the military to eat at the hospital mess hall at the beginning of the job. No lunch arrangements were originally made for the civilian employees. Following employee complaints, Respondent then felt compelled to do something for the civilian employees.

During the project, Major Morey sent a letter to the employees requesting their comments on how everyone liked the job. According to Mr. Williams, the responses were uniformly negative, complaining about the lack of bathroom and clean up facilities and eating facilities. Employees also complained directly to Commander Fenstad when he visited the job site. After these complaints, Major Morey made arrangements for the employees to use the bathroom facilities in the maids quarters. She also arranged to have the lunch wagon come by the project and for the civilians to eat at the hospital. Mr. Williams had heard something about the possibility of eating at the Officers' Club, but Major Morey had never told him that this option was available.

During this same period, Mr. James Middleton, the Union's first vice president, approached Captain Richards, who was filling in for Major Morey as Operations and Maintenance Chief. Mr. Middleton had heard that the military employees working at the DV Suites were allowed to use government vehicles to go to the hospital dining facility, another eating facility not normally available to unit employees. Mr. Middleton thought this same type of accommodation should be worked out for the civilian employees and requested that Captain Richards work out such an arrangement. Captain Richards refused, saying that it could not be done. Captain Richards did not give any reason for this refusal. Captain Richards did not indicate to

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<sup>3/</sup> Employees were only allowed 30 minutes for lunch.

Mr. Middleton that any other arrangements had been made to accommodate the civilian employees while they were working on the DV Suites.

Contrary to the foregoing mutually corroborated and credited testimony of Messrs. Bright, Middleton and Williams, Respondent's witnesses, Mr. Everett Burkard, Deputy Chief Engineer, and Mr. Robert Demeyer, Deputy Chief of Operations for Beale Air Force Base, testified that "the majority of time, 75 to 80% of the time, the [CE] employees report directly to their shop in the morning . . . and then the rest of the time they report directly to the job site." Reporting to the job site is at the discretion of their respective supervisors. When questioned as to what job sites as opposed to reporting to the CE compound that the employees were ordered to report directly to, the supervisors cited such locations as the base hospital, the self help store, Building 1086, the base landfill and a re-roofing job which occurred in the mid-1980's. Other than the re-roofing job, it appears that the other sites which were cited by the supervisors employed CE employees on a permanent daily basis for extended periods of time. The CE employees assigned to such permanent sites, unlike the other CE employees, do not get different job assignments every day and go to different locations. With respect to the re-roofing job, Mr. Dale Williams, who worked on the job, denied that he reported directly to the job site rather than the CE compound at the beginning of his shift.

Both Mr. Burkard and Mr. Demeyer deny that the CE employees were forced to take their lunch break at the DVS.

#### Discussion and Conclusions

The General Counsel, who urges a credibility determination in favor of its witnesses, takes the position that the Respondent violated Sections 7116(a)(1) and (5) of the Statute by virtue of its actions in unilaterally changing a condition of employment without first giving the Union the opportunity to bargain over the procedures to be utilized in implementing the change and appropriate arrangements for employees adversely affected by the change. Thus, it is the position of the General Counsel that it was an established practice for the employees to report to the CE compound at the beginning of their respective shifts prior to proceeding to their assigned work sites in government vehicles, and that such practice was adhered to even when an employee was assigned to a long term project. Additionally, the General Counsel contends that

the CE employees routinely returned to the CE shop prior to lunch and enjoyed a fifteen minute clean up period both before lunch and the end of the shift. Although the employees generally ate lunch in the CE compound, there was no requirement that they do so. Inasmuch as the aforementioned practices had been consistently exercised over a substantial period of time with the consent of agency management, it is the General Counsel's position that they became a condition of employment which could not be changed without first giving the Union prior notice and the opportunity to bargain over the impact and manner of implementation of any change.

Respondent, on the other hand, takes the position that it did not change any condition of employment. According to Respondent, which urges a credibility determination in favor of its witnesses, the practice of having employees report directly to their work sites has been followed for years and there was never any restrictions upon where the employees could eat lunch. In such circumstances, Respondent was under no obligation to bargain with the Union.

Having credited the testimony of Messrs. Bright, Middleton and Williams, I find that it was the established practice (1) for the employees to report to the CE compound at the beginning of the shift and then to proceed to their assigned work areas in government vehicles, irrespective of the length of the work assignment; (2) for the employees to routinely return to their shop in the CE compound some fifteen minutes prior to their scheduled lunch hour and the end of their shift for purposes of cleaning up; and (3) for the employees to take their lunch either in the shop at the CE compound or at a place of their choosing. I further find that the above practices, having been consistently exercised over a substantial period of time with the knowledge and consent of Respondent management, have become established terms and conditions of employment. See, Marine Corps Logistics Base, Barstow, California, 33 FLRA 196; Social Security Administration, Mid America Service Center, Kansas City, Missouri, 9 FLRA 229.

In view of the above findings concerning the practice of the CE unit employees in reporting to their respective shops in the CE compound prior to starting work at other areas on the Base and being free to take fifteen minutes for clean up time prior to the commencement of their luncheon break at a place of their choosing, I conclude that Respondent's action in changing the conditions of employment of the CE unit employees by (1) having them report directly to the DVS

rather than their respective shops in the CE compound (2) restricting the place where the CE unit employees could take their lunch break to the DVS, and (3) depriving the CE employees of a fifteen-minute wash up period before lunch and the end of the shift, without first notifying the Union and affording it the opportunity to bargain with respect to the impact and manner of implementation of the above described changes in conditions of employment violated Sections 7116(a)(1) and (5) of the Statute. See Marine Corps Logistics Base, Barstow, California, supra; U.S. Government Printing Office, 13 FLRA 203, 204.<sup>4/</sup>

Having concluded that Respondent violated Sections 7116(a)(1) and (5) of the Statute by virtue of its action in unilaterally changing the conditions of employment of various CE unit employees, it 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 Federal Labor Relations Authority's Rules and Regulations and Section 7118 of the Statute, it is hereby ordered that the Department of the Air Force, 9th Combat Support Group, Beale Air Force Base, California, shall:

1. Cease and desist from:

(a) Unilaterally changing working conditions of bargaining unit employees by (1) requiring certain employees attached to the Civil Engineering Squadron to report directly to a job site instead of reporting to their shops located in the Civil Engineering Squadron Compound, (2) requiring certain employees attached to the Civil Engineering Squadron to take their lunch break at the job site rather than at their respective shops in the Civil Engineering Squadron Compound or other places of their choosing, (3) denying certain employees attached to the Civil Engineering Squadron the opportunity to return to the

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<sup>4/</sup> Inasmuch as it appears that all parties concede that Respondent was exercising a Section 7106(a) management right when it made the changes which are the subject matter of the instant complaint, Respondent was only obligated to bargain over the impact and manner of implementation of the changes.



shops located in the Civil Engineering Squadron Compound fifteen minutes prior to lunch or the end of their shift in order to wash up.

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

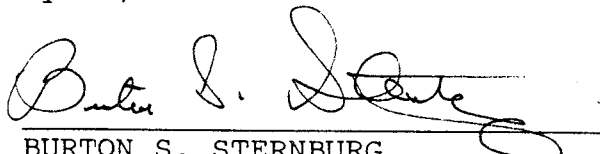
2. Take the following affirmative action in order to effectuate the purposes and policies of the Federal Service Labor-Management Relations Statute:

(a) Notify the Union and, upon request, negotiate over the impact and manner of implementation of any intended change which would require the employees attached to the Civil Engineering Squadron to report directly to the job site and/or take their lunch only at the job site, and/or forgo the opportunity to return to the shops located in the Civil Engineering Squadron compound fifteen minutes prior to lunch or the end of their shift in order to wash up.

(b) Post at all locations on Beale Air Force Base where unit employees are employed, 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 Commander, Beale Air Force Base, 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.

(c) Pursuant to section 2423.30 of the Authority's Rules and Regulations, notify the Regional Director, Region IX, Federal Labor Relations Authority, 901 Market Street, Suite 220, San Francisco, CA 94103 in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

Issued, Washington, DC, February 22, 1991.

  
BURTON S. STERNBURG  
Administrative Law Judge

NOTICE TO ALL EMPLOYEES

AS ORDERED BY THE FEDERAL LABOR RELATIONS AUTHORITY

AND TO EFFECTUATE THE POLICIES OF THE

FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS STATUTE

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT unilaterally change the working conditions of bargaining unit employees by requiring certain employees to report directly to a job site instead of reporting to their shop, by requiring these employees to take their lunch at the job site rather than at the shops located in the Civil Engineering Squadron Compound or other places of their choosing, and by requiring these employees to forgo the opportunity to return to the Civil Engineering Squadron Compound fifteen minutes prior to lunch and/or the end of their shift in order to wash up, without first notifying the American Federation of Government Employees, Local 2025, AFL-CIO, herein called the Union, the exclusive representative of certain of our employees, and providing the Union an opportunity to bargain over the impact and manner of implementation of such a charge.

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 notify the Union and, upon request, negotiate over the impact and manner of implementation of any intended change requiring employees to report directly to the job site and/or take their lunch at the job site and/or to forgo the opportunity to return to their respective shops in the Civil Engineering Squadron Compound fifteen minutes before lunch or the end of their shift in order to wash up.

\_\_\_\_\_  
(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 IX, whose address is: 901 Market Street, Suite 220, San Francisco, CA 94103, and whose telephone number is: (415) 744-4000.