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

VOICE OF AMERICA Respondent and	
NATIONAL FEDERATION OF FEDERAL EMPLOYEES, LOCAL 1418 Charging Party	Case No. 3-CA-90614

Carol B. Epstein, Esq.
For the Respondent

Robert Williams and
Gary A. Marco
For the Charging Party

Ana de la Torre, Esq.
For the General Counsel

Before: SALVATORE J. ARRIGO
Administrative Law Judge

DECISION

Statement of the Case

This case arose 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. (herein the Statute).

Upon an unfair labor practice charge having been filed by the captioned Charging Party (herein the Union) against the captioned Respondent, the General Counsel of the Federal Labor Relations Authority (herein the Authority), by the Regional Director for Region III, issued a Complaint and Notice of Hearing alleging Respondent violated the Statute by refusing to bargain with the Union on two proposals it

submitted for negotiation relative to a Respondent imposed ban on employees eating and drinking in newly refurbished broadcast studios.

A hearing on the Complaint was conducted in Washington, D.C. at which all parties were afforded full opportunity to adduce evidence, call, examine and cross-examine witnesses and argue orally. Briefs were filed by Respondent and the General Counsel and have been carefully considered.

Upon the entire record in this case, my observation of the witnesses and their demeanor, and from my evaluation of the evidence, I make the following:

Findings of Fact

At all times material the Union has been the exclusive collective bargaining representative of various of Respondent's employees including radio broadcast technicians located in Washington, D.C. The Voice of America (VOA) describes itself as follows:

> The Voice of America is the global radio network of the United States Government. VOA's parent organization, United States Information Agency, seeks to promote understanding abroad for the United States, its people, culture and institutions. VOA's long-established policy of broadcasting objectives, comprehensive news reports and providing a balanced view of American society was affirmed by the U.S. Congress on July 12, 1976, when it passed into law what is known as the VOA Charter. . . .

The approximately 70 radio broadcast technicians (herein technicians) assigned to VOA studios in Washington, D.C. operate broadcasting equipment in support of VOA programs during on-air broadcast or recording sessions. Studios are divided into the control room portion and the performing studio portion. The control room of the studios in which technicians perform their work contains various electronic devices including: an audio console with buttons, switches, levers; turntables; and tape and disk machines to produce, control, and broadcast the program. While sitting at the console the technician faces the other section of the studio through a glass window where performers engage in their

part of the recording or broadcast which includes reading scripts and such materials.1/

VOA operates 24 hours a day 7 days a week with approximately 45 of the 70 technicians working on a daily basis. Technician's assignments last from as little as 15 minutes to all day for special programs. However, generally assignments are for 30 minutes to 2 hours and 15 minutes without a break during which times the technician is confined to the broadcast booth.

As part of a modernization program VOA began to refurbish its Washington, D.C. studios in 1988. By the spring of 1989, nine of Respondent's nineteen studios had been refurbished. The refurbished control rooms were refitted with what was described as "state of the art" electronic equipment. Warranties and literature dealing with the new equipment cautioned against exposure to dust, dirt and liquids which could damage the equipment or shorten its life-span. On May 1, 1989 Respondent sent the Union the following letter:

> This letter is to advise you that VOA/BB management has decided to implement a policy prohibiting eating and drinking in all studios. The only exception to this policy will be old studios 8 through 17 in the 2200 and 2600 corridors, which will continue to be governed by current policy.
>
> All studios that will be affected by this decision will be designated as "No Eating or Drinking" areas, similar to the way we have posted signs regarding our no smoking policy. The reasons for this action are the potential harm to the studio electronic equipment from food residue or liquids, sanitation considerations, and degradation of the pleasant working environment created by the renovation project.
>
> We offer the Union the opportunity to present to the Agency whatever bargainable proposals it believes will address any

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1/ Most of the time the technician works with a performer in the studio.

impact on the bargaining unit as a result of implementation of this policy. Such proposals must be received no later than the close of business on May 12, 1989.

On May 2, the Union replied to Respondent and, inter alia, requested to negotiate on the matter and made the following proposals:2/

> 2. The Agency, at its expense, will provide NFFE Local 1418 with a minimum of 200, 16-ounce capacity "commuter mugs" for use by members of the bargaining unit.
>
> 3. Food consumption in workareas shall be limited to food snacks commonly supplied in food vending machines located in the VOA Washington Headquarters facility.

By letter dated May 22, 1989 Respondent refused to bargain with the Union on the matter stating, inter alia:

> a. The Agency has had a long standing policy of no eating or drinking in all studios, however, enforcement of that practice has been somewhat lax.3/ While the Agency may be willing to tolerate a reasonable and limited amount of food and drink in the older studios, the new studios present a more serious problem. The new studios are equipped with state of the art equipment which, because of the use of circuit boards, is more sensitive to damage resulting from spilled liquids and food particles, as well as smoke and other pollutants. Accordingly, the Agency is exercising its right to take steps to protect that equipment and the relatively pollutant free environment in the new studios. Because the Agency is exercising a reserved right under the Statute, the

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2/ The Union subsequently withdrew one of its proposal.

3/ The record reveals that in the old studios there existed a practice of only minimal enforcement of a no eating, no drinking policy.

Union may not bargain over the Agency's decision to prohibit eating and drinking in the described areas.

Respondent further specifically declared the Union's proposals to be nonnegotiable since they were contrary to Respondent's prohibition against eating or drinking in the refurbished control rooms.

Ultimate Findings, Discussion and Conclusions

The General Counsel contends that while Respondent's ban on drinking and eating in control rooms constituted the exercise of a management right, the Union's proposals constituted appropriate arrangements for employees adversely affected by the ban and were therefore negotiable.4/

4/ Section 7106 of the Statute provides in relevant part:

"(a) Subject to subsection (b) of this section, nothing in this chapter shall affect the authority of any management official of any agency--

"(1) to determine the mission, budget, organization, number of employees, and internal security practices of the agency . . .

. . . . .

"(b) Nothing in this section shall preclude any agency and any labor organization from negotiating--

"(1) at the election of the agency, on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;

"(2) procedures which management officials of the agency will observe in exercising any authority under this section; or

"(3) appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such management officials."

Respondent essentially takes the position that its ban on drinking and eating in its modernized studios was an action involving the technology, methods and means of performing work within the meaning of section 7106(b)(1) of the Statute and the Union's proposals would directly interfere with the agency's purposes in imposing the ban. Respondent further urges that the ban constitutes a determination of its internal security practices under section 7106(a)(1) of the Statute and the Union's proposals contravene that policy. Respondent also argues that the Union's proposals should not be construed as "appropriate arrangements" within the meaning of the Statute.

The Authority has held that means of performing work as used in section 7106(b)(1) of the Statute encompasses "anything used to attain or make more likely the attainment of a desired end, and . . . refers to any instrumentality, including an agent, tool, device, measure, plan, or policy used by the agency for the accomplishing or furthering of the performance of its work." Division of Military and Naval Affairs, State of New York, Albany, New York, 15 FLRA 288, 291 (1984); National Treasury Employees Union, Chapter 83 and Department of the Treasury, Internal Revenue Service, 35 FLRA 398, 406-408 (1990) and cases cited therein.

In my view the ban on drinking and eating in the newly renovated control rooms constituted an action within the Statutory meaning of "the technology methods and means of performing work." Indeed, Counsel for the General Counsel does not dispute Respondent's contention that the ban on drinking and eating in the control rooms was an action which involved the determination by the agency of the technology, methods or means of performing work.

However, the General Counsel does allege the proposals are appropriate arrangements for employees adversely affected by Respondent's imposition of a ban on drinking and eating.5/

5/ The General Counsel does not suggest that Respondent is obliged to bargain on the decision or substance of the change. If the issue was whether the Union's proposals were substantively negotiable then the matter would be evaluated using the Authority's two pronged test determining (1) whether a direct and integral relationship existed between

(footnote continued)

With regard to the dispute over whether the proposals are within the meaning of appropriate arrangements under section 7106(b)(3) of the Statute, the Authority set forth its test in National Association of Government Employees, Local R14-87 and Kansas Army National Guard, 21 FLRA 24 (1986). In that case the Authority stated that in making such a determination it would determine (1) whether the proposal is in fact intended to be an arrangement for employees adversely affected by the agency's action and (2) whether the arrangement excessively interferes with the exercise of the management right involved. See also, National Treasury Employees Union and Department of Health and Human Services, Social Security Administration, Office of Hearings and Appeals, 34 FLRA 1000, 1011-1014 (1990). With regard to the second part of the test, the Authority indicated the totality of facts and circumstances should be taken into account and set out five factors as illustrative of matters to be considered when evaluating whether a union proposal excessively interferes with the exercise of a management right. Id. at 32, 37. The five factors to be examined are: (1) the nature and extent of the impact experienced by adversely affected employees; (2) the extent to which the circumstances giving rise to the adverse effects are within the employer's control; (3) the nature and extent of the management right affected; (4) the negative impact on management's right compared to the employee benefit derived from the proposed arrangement; and (5) the effect of the proposal on effective and efficient government. Thus it must be determined in the case herein whether employees were adversely affected by Respondent's ban; whether the Union's proposals are in fact arrangements for employees adversely affected; and whether the proposals excessively interfere with Respondent's exercise of a management right.

(footnote 5 continued)

the means the agency chose to adopt (here the ban) and the agency's mission and (2) whether the Union's proposals directly interfered with the mission-related purpose for which the agency established the particular means. See U.S. Department of Justice Kennedy Center, Federal Correctional Institution, Bureau of Prisons, 29 FLRA 1471 (1987), petition for review denial, 864 F.2d 178 (D.C. Cir. 1988). Since there is no allegation of obligation on Respondent's part to negotiate substantively on this matter, I need not address this issue.

Clearly technicians were adversely affected by the ban on drinking and eating while on duty in control rooms. A practice had developed whereby technicians were permitted to drink and eat while on duty in control rooms and the practice obviously benefited the technicians and was a desirable circumstance connected with their employment. Thus I find the withdrawal of the benefit of being able to drink and eat while working in control rooms adversely affected technicians.

The Union proposed that "commuter mugs" be provided by the agency so technicians could continue to drink beverages in control rooms. The use of mugs was proposed to overcome Respondent's argument that liquids, if spilled, could damage the sensitive and costly electronic equipment whose continual operation is necessary so the agency can fulfill its mission of providing radio broadcasts on behalf of the Government. The mugs are virtually watertight and if tipped, there would be little likelihood of fluid inadvertently escaping from the container and finding its way to the electronic circuitry. In these circumstances I conclude the proposal for use of commuter mugs in the control rooms is an appropriate arrangement for employees adversely affected.

However, the proposal dealing with the consumption of food snacks in the control rooms stands on another footing. Thus, the Union's proposal merely attempts to limit the source and classification of food which might be consumed in the control rooms (those supplied by vending machines) but does not address the reason for the ban, e.g. dust and particles from the food getting into the electronic machinery and interfering with its operation. Particles of food can come from snacks as well as sandwiches or full meals for that matter. Accordingly, it appears that the Union's proposal in this regard does not substantially eliminate the problem but seeks to present a marginal limitation on the cause of the problem. As such I find this proposal is not an appropriate arrangement but simply an effort to negate management's exercise of its right and accordingly is not negotiable.

Having examined the totality of facts and circumstances herein including the factors set forth in Kansas Army National Guard, supra, I further conclude the use of commuter mugs does not excessively interfere with the underlying purpose of banning the consumption of liquids in control rooms. Thus, the record does not disclose that spilling liquids on the electronic equipment was a problem in the past or, in actuality, would reasonably be expected

to be a problem using commuter mugs and additional safeguards such as leaving cups, when not in hand, on a cart or on the floor away from the console might be utilized to avert the opportunity for liquids to come into contact with electronic equipment. I also note that the availability of liquids in control booths is not directly related to the mission of the agency but only indirectly when and if the liquid should come in contact with a particularly sensitive aspect of the electronic mechanism of the equipment. Accordingly I find and conclude the Union's proposal regarding use of commuter mugs by technicians in control rooms does not excessively interfere with management's right to take precautions to keep liquids from coming into contact with its electronic equipment and preserving the performance of the equipment.

Counsel for Respondent, also contends that VOA management was concerned about its internal security, that is the protection of its equipment and employees,6/ when establishing the policy against eating and drinking in the control rooms. The Authority has held that an agency's right to determine its internal security practices under section 7106(a)(1) of the Statute includes the right to determine policies and take actions which are part of its plan to secure or safeguard its physical property and personnel against internal and external risks. Cf. Fraternal Order of Police Lodge 17 (R.I.) Federal and Veterans Administration, Veterans Administration Medical Center, Providence, Rhode Island, 32 FLRA 944, 957-958 (1988) and American Federation of Government Employees, Local 1482 and Marine Corps Logistics Base, Barstow, California, 31 FLRA 916 (1988). The Authority has further held that where a link has been established between an agency's action and its expressed security concerns, the Authority will not review the merits of the action and will find the action to be an exercise of its right under section 7106(a)(1) to determine internal security practices. Id. The required linkage is established where an agency shows a reasonable connection between the requirement and the security of its operations and the Authority will not question the extent of the measures used by the agency to achieve the objective as long as they are reasonably related

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6/ Testimony was offered regarding the possibility, which I find to be very slight, that a spill of liquids coming in contact with wiring in the console could in some circumstances result in electrical shock to technicians.

to the purpose for which the security practice is adopted. American Federation of Government Employees, Council 214, AFL-CIO and Department of Defense, Department of the Air Force, Air Force Logistics Command, 30 FLRA 1025, 1028 (1987).

I find and conclude Respondent's prohibition against eating and drinking in control rooms was, in substantial part, adopted to protect electronic equipment from coming into contact with liquids and food residue which could interfere with the operation of the equipment and the broadcast of the Agency's programs. I further find and conclude that there exists a reasonable connection between Respondent's prohibiting the use of liquids and food in new studios and protecting the new, sensitive, electronic equipment. As I am precluded from evaluating the merits of Respondent's action of imposing a total ban on eating or drinking in control rooms in pursuing its objective of protecting its electronic equipment, I am constrained to conclude Respondent's actions herein constitutes an exercise of its right under 7106(a)(1) of the Statute to determine internal security practices to protect its equipment. Accordingly, I conclude Respondent was not required to negotiate with the Union on its proposals which would lessen the extent of the measures Respondent adopted. I therefore recommend the Authority issue the following:

ORDER

IT IS HEREBY ORDERED that the Complaint in Case No. 3-CA-90614 be, and hereby is, dismissed.

Issued, Washington, D.C., July 31, 1990

SALVATORE J. ARRIGO
Administrative Law Judge