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

UNITED STATES MARINE CORPS, WASHINGTON, D.C. and MARINE CORPS RESERVE SUPPORT CENTER, OVERLAND PARK, KANSAS Respondents and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 2904 Charging Party	Case No. 7-CA-80594

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For the General Counsel

William M. Petty
For the Respondents

Coralee Thompson
For the Charging Party

Before: JOHN H. FENTON
Chief 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.

At issue is the question whether Respondents were required to bargain over a decision to eliminate two previously designated smoking areas.

A hearing was held in Kansas City, Missouri. Based on the entire record and the briefs, I make the following findings of fact, conclusions and recommendations.1/

Statement of the Facts

A. Background: The prior case

This case is a sequel to 33 FLRA 105, having in common as Respondents the United States Marine Corps and its Support Center in Overland Park, Kansas, and as the principal issue whether the Corps was obliged to bargain at the Activity level concerning the implementation of a Tobacco Prevention Program (TPP).

AFGE and the Corps are parties to a Master Labor Agreement (MLA). Article 4, Sections 1 and 2 are at the heart of this controversy. They attempt to provide for bargaining during the term of the agreement as follows:

> Section 1 The employer will notify the council of policy changes originating above the activity level that give rise to a bargaining obligation under the statute. Where such changes originate at the activity level, the activity will notify the appropriate local union.
>
> Section 2 Any bargaining that might result from changes initiated above the activity level will be accomplished by the employer and the council unless they mutually agree otherwise. Normally bargaining resulting from changes initiated at the activity level will be accomplished by the local parties, however, either party to this MLA retains the right to transfer such negotiations to the level at which the recognition exists.

The parties began negotiating a memorandum of understanding (MOU) about the proposed TPP in 1986. They agreed on many matters, such as banning smoking in areas shared by

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1/ In the absence of any objection, the General Counsel's Motion To Correct Transcript is granted.

nonsmokers and smokers (conference rooms, classrooms and elevators), and on the establishment of designated areas for smokers as well as smoking in mixed areas where ventilation was adequate for maintenance of a "healthy" environment. However, they could not agree on any procedure for selecting those areas to be designated for use by smokers.

The Corps proposed that each Activity Commander be free to use his own discretion in designating smoking areas, after making a determination as to the adequacy of ventilation. AFGE Council 240 proposed a guideline concerning ventilation. The Corps rejected this proposal and the Council responded by proposing that smoking areas be selected through negotiation at the local level. The Corps, wishing to avoid local negotiations at its many Activities, asserted that the proposal for local negotiations conflicted with Article 4, Section 2, which called for bargaining at the national level inasmuch as the TPP was initiated above the Activity level. The Union's final offer would have required that the Activity negotiate with designated Union representatives over the new smoking areas and other appropriate arrangements consistent with the MOU. The Corps then decided to implement the TPP on the ground it had satisfied its bargaining obligation, having reached agreement on all matters except the issue of local unions negotiating at each Activity over the designation of new smoking areas. It specifically instructed its Activity Commanders to <u>solicit</u> the views of their local unions and, upon request to <u>consult</u> with local representatives before designating smoking areas.

On the day after authorizing its local commanders to begin implementing the TPP, the Corps' representative informed the Council's representative that its proposal of local negotiations was outside the duty to bargain and that the Corps was proceeding with implementation. The Council then promptly attempted to invoke the jurisdiction of the Federal Service Impasses Panel, which in due course declined to accept the case in the absence of any resolution of the threshold issues concerning the duty to bargain.

The General Counsel issued complaint alleging a violation of Section 7116(a)(1) and (6) based on implementation of the new smoking policy while the matter was still pending before the Panel, and a violation of Section 7116(a)(1) and (5) based upon such implementation in the absence of an opportunity for the Council to negotiate the substance, impact and implementation of the change. The Authority summarized its reasons for dismissing the complaint as follows:

> We conclude that the essence of the dispute in this case involves differing and arguable interpretations of the parties' MLA. We find that both parties have raised plausible arguments concerning whether the wording of Article 4, Section 2 places an unequivocal limitation on the Marine Corps' duty to bargain over the Council's proposal and whether, in the circumstances in which bargaining occurred in this case, the matter of the designation of smoking areas is a local or national issue under the terms of the MLA. An alleged unfair labor practice which involves differing and arguable interpretations of a collective bargaining agreement is not appropriate for resolution under unfair labor practice procedures. See, for example, 22nd Combat Support Group (SAC), March Air Force Base, California, 30 FLRA 331, 334 (1987). In such cases, the aggrieved party's remedy is through the negotiated grievance procedures of the agreement rather than through the Authority's unfair labor practice procedures.

The record in that case shows that implementation of the TPP at the instant Activity occurred in May of 1987, and resulted in a ban on all smoking inside the building. Soon thereafter the Activity Deputy Director, Colonel J. P. Arms, discussed with Union President Coralee Thompson his proposal that the morning and afternoon break periods be extended to 20 minutes and that employees be permitted to opt for two ten minute breaks as an accommodation to smokers. The Union of course agreed to the benefit. Late in the summer of 1987 Arms designated three smoking areas: the lunch room and the two restrooms on the main floor. The lunchroom section for smokers accommodated about 25 employees and was equipped with a large ventilating machine. The restrooms were likewise equipped with "smoke-eaters."

B. The facts of this case

On January 12, 1988 Colonel Arms notified the Union that the need for additional space required him to take about one-half the lunch-room space for storage of computer equipment. The Union requested bargaining on the decision to reduce the area available for relaxation and smoking. Arms replied on February 21 requesting prompt submission of "bargaining proposals."

The parties met on February 8 and discussed alternative locations for a nonsmokers' breakroom. The feasibility of a window exhaust fan was to be explored with GSA. They eventually agreed upon Room 128 as a nonsmokers' room, which would be furnished and made available by April 11. The substance of that agreement was set forth in a March 30 memo to the Union President. On April 7, the Deputy Director again wrote the Union to inform it that additional discussions with his Chief of Staff had convinced him that Room 128 was better suited to use as a smokers' break room. That was agreeable to the Union President, although the Steward was concerned about its proximity to high management staff and the possibility of intimidation of smokers.

On May 26 Colonel Arms announced that Room 128 would be available to smokers on June 1. He further said that smoking would not be permitted in the cafeteria and, for the first time, said that it would be prohibited in the two restrooms as well. The Union on June 7 made another demand to bargain, protesting the elimination of the restroom smoking areas, and noting that such use was a past practice. Respondent answered on June 9, offering June 14 for a meeting "to consult" on the matters raised by the Union.

The parties met on June 14 but were unable to resolve the issue and Colonel Arms informed Thompson of his intention to implement on June 20. On that day she requested assistance from FMCS and requested that Arms delay implementation pending completion of negotiations with the assistance of FMCS. The next day Arms refused to delay, stating that his "obligations under the MOU between CMC/MPL and the Council, namely to meet with Union representatives and consult on this issue, have been met." He added that the change was required by lack of adequate ventilation in the restrooms, and that his labor relations officer would be "available for consultation" should further discussion be needed.

The new policy took effect on June 20, and was followed by an unfair labor practice charge on June 27.

The Parties' Positions

Counsel for the General Counsel seems in the main to dispute and seek reconsideration of, the Authority's underlying decision, which is of course binding upon me. I shall attempt to restate it.

It appears to go as follows:

(1) Designation of smoking areas is a substantively negotiable employment condition.

(2) There was no MOU concerning such designation, the parties having failed to agree on Section 5, with Respondent Corps insisting that commanders have the right to use their own judgment after consulting with local union representative, and the Council insisting that the activity must bargain with the Union representatives it designates.

(3) In the absence of agreement permitting what was done, or of a waiver of the statutory right to negotiate such a change, Respondents had no right to implement as it did.

(4) The provision of the MLA permitting either party to elevate local bargaining over activity-initiated change to the national level of recognition is inapplicable, because it did not occur here.

(5) The ultimate result of Respondents' conduct in this matter has been that the Marine Corps escaped its bargaining obligation at both levels.

(6) Respondent Corp, by authorizing its local commander to exercise his own discretion, created a commensurate obligation to bargain, i.e. with the local designated representative.

(7) Respondent Corp, directive to its local commanders that they "consult" with local unions regarding designation of smoking areas, "triggered" an obligation to bargain, as "consult," absent explanation, is synonymous with bargain.

(8) Even if the Authority's decision was correct, Respondents' have nevertheless

> violated their bargaining obligation because a party acts at its peril when it interprets and applies an agreement, and the Authority here has not said that Respondents' reading is correct, but merely that it is "plausible."

I take all of this to constitute disagreement with the fundamental holding of the Authority that Respondents refusal to agree to negotiate at the local level concerning areas to be designated for smoking was a contract interpretation dispute, i.e. one presenting differing and arguable interpretations of the contract which does not rise to the level of an unfair labor practice, but is rather grist for an arbitrator's mill.

General Counsel does, however, add a new ingredient or dimension to its argument. It is that, even assuming the MOU lawfully limited the Union to mere consultation rights in connection with the initial designation of smoking areas, it contained no waiver of the right to negotiate over proposed changes in established conditions of employment. Here the restrooms designated for smoking had been in use for approximately a year and had become an established employment condition. Accordingly, no interpretation of the MOU would privilege unilateral elimination of those designated areas. Respondents do not even contend that the Union waived its right to bargain over such a change. Rather, they affirmatively assert that they discharged their bargaining obligation by consulting with the local union pursuant to the terms of the MOU. It follows, contends the General Counsel, that Respondents have effectively confessed to a violation of 5 U.S.C. 7116(a)(1) and (5).

Respondents counter with the argument that this case is governed by the Authority's prior holding in 33 FLRA 105, and should therefore be dismissed. It involves an identity of parties, facts and issues and should be dismissed for the same reason: there was in neither case a patent repudiation of the contract but rather a reasonable dispute over its meaning which belongs in the arbitrator's forum. Thus, Respondents assert they never agreed to bargain at the local level in the MOU, and the MLA very specifically preserved the right to require negotiations at the national level of exclusive recognition. It follows then, as in the cited case that there are, at the least, plausible arguments in support of its position and therefore no patent breach of agreement and no predicate for finding a violation of the Statute.

In an argument not entirely clear to me, the Corps contends that the Authority found no statutory violation in 33 FLRA 105 because, while it "observed" that the Corps could have agreed to local-level negotiations, "it correctly recognized that any such obligation was solely a matter of contract." It appears thereby to suggest that the Authority did not and could not properly have held that the Council's proposal that bargaining over designation of smoking areas take place at the Activity level imposed a bargaining obligation upon Respondents to negotiate in good faith about that very matter. "The Authority's observation does not mean that proposals requiring matters to be bargained below the level of recognition are mandatorily vice permissibly negotiable in the absence of an agreement at the national level for local-level negotiations," says the Corps, further asserting that such a result would run counter to settled law holding that the obligation to bargain resides only at the level of exclusive recognition.

Respondents, anticipating that General Counsel might argue that the Corps never bargained over the details of the TPP, asserts such argument misdirects the inquiry, as the Council had been provided every opportunity to bargain about the program, including the location of smoking areas. As to the latter, the Council's first and final proposals, i.e. for local negotiations, were, they say, nonnegotiable or "non-mandatorily negotiable." Respondents did not anticipate and do not meet General Counsel's argument that any plausible and hence arbitrable right to designate smoking areas without local level bargaining does not extend to unilateral elimination of previously designated areas.

Conclusions

As is too often the case, I find no easy answer. It does seem clear that the power to designate would comprehend the power to redesignate, i.e. that such changes as might follow the initial designation of smoking areas, because of changing space requirements, judgments about the adequacy of ventilation or other reasons, would be subject to the same bargaining obligation as existed in the first instance. Here it can be argued that the loss of half the cafeteria space was accomplished without the local bargaining to which it was subject (absent elevation) because there was a quid pro quo in the substitution of another designated area free of any (later) tie-in to elimination of the restrooms. While that arguably smacks of bad faith bargaining, that does not seem to be what the alleged unfair labor practice is all about. Rather the Complaint alleges that Respondents

unilaterally eliminated the designated restrooms without completing bargaining with the Local concerning the substance, impact and implementation of that change.

Given the Authority's holding that there was no clear-cut failure to comply with a contractual requirement of local-level bargaining, one is hard-put to find a basis for finding Respondents' refusal to negotiate at the local level unlawful. Respondents' position here was the same as its position in the earlier case: a willingness to consult or receive input. It was thereby made clear that negotiations would not take place at the Activity level. While General Counsel asserts that Article 4, Section 2, allowing elevation, is here inapplicable because never invoked, it could as easily be argued that the burden shifted to the Council to demand bargaining at the level of exclusive recognition, or even that Respondents' view that designation of smoking areas would be a "national" subject was known from the beginning of this controversy. In either case we are, as in the original decision of the Authority, confronted with what it has said are differing and arguable interpretations of contract. There, more precisely, the Authority faced the question whether Article 4, Section 2 "place(d) an unequivocal limitation on the Marine Corps' duty to bargain over the Council's proposal (to bargain at the local level) and whether, in the circumstances in which bargaining occurred in this case, the matter of the designation of smoking areas is a local or national issue under the terms of the MLA." Here we are faced with the question whether Respondents' refusal to negotiate at the Activity level violated the Statute. Absent a meaningful distinction between "designating" a smoking area and removal of such a designation, it must follow that the Authority would here find to exist the same "plausible" arguments in support of each position as to where the same Master Agreement places the bargaining obligation. The result is the absence of a patent breach, a prerequisite to any unfair labor practice finding in the circumstances.

These adversaries spend much time in an apparent, though unstated effort to persuade me to recommend that the Authority reconsider and modify its original decision. General Counsel's argument is a broadside attack on the very foundations of the Authority's decision, and seems to me to be fundamentally at odds with long-settled law about a bargaining obligation, even as respects uniquely local (or highly individualized and specific) problems, resting at a higher level of exclusive recognition. Respondents, while essentially asserting that the cases are identical, so as to

approach res judicata, also strongly argue that the Authority did not hold, as it appears to have held, that the Council's proposal that negotiations over designation of smoking areas be conducted at the local level was a negotiable one. As noted, it is not clear to me what Respondents are attempting to establish, unless it be that their original argument was correct. While happy to support the Authority's conclusion that no ULP occurred, they, too, appear to be disputing the correctness of that decision in the guise of pointing out that the Authority did not find the proposal contemplating local level negotiations to be "mandatorily" negotiable, but only "permissibly" negotiable.

Justice Frankfurter long ago observed that words do not always mean what they say, and it does appear that such a crucially important term as "negotiable" has become somewhat slippery. Respondents say that the Authority observed, or noted, that they could have agreed to local negotiations, and that this "merely reflects that the Council's proposal for local level negotiations . . . would be negotiable (and enforceable) if the MLA required bargaining below the level of recognition." On the other hand, the Authority plainly said, at 33 FLRA 105, 113, that:

> . . . proposals which authorize the negotiation of agreements below the level of recognition are negotiable. See, for example, American Federation of Government Employees, AFL-CIO, International Council of U.S. Marshals Service Locals and Department of Justice, U.S. Marshals Service, 11 FLRA 672, 678-79 (1983) (Proposal 5, requiring the agency to negotiate supplemental agreements covering certain specified subject matters at the level of the agency's district office, held to be within the agency's duty to bargain) (emphasis mine)

The Marine Corps asserts that U.S. Marshals Service concerned the scope of that agency's obligation to negotiate on matters which it had previously agreed to negotiate locally. Examination of the case provides no clue concerning the existence of any agreement to handle some issues locally, although it hardly indicates in any clear way that the issue of forcing bargaining to a lower level was truly litigated, as opposed to the question whether certain proposals involved subject-matters which were themselves within the duty to bargain.

In U.S. Marshals the Authority flatly said that it "has consistently held that . . . the duty to bargain at the level of exclusive recognition within an agency extends to proposals which authorize the negotiation of supplemental agreements at a sub-level." Four cases are cited in support of that principle. In the first, Wright-Patterson Air Force Base (2 FLRA 604, 619), the Authority said something not wholly supportive of that notion:

> On the contrary, as indicated above, matters related to discrimination in employment are within the agency's duty to bargain under the Statute. That is, an agency is obligated to negotiate with an exclusive representative on those matters, unless otherwise prohibited by law and regulation, at the level of the exclusive recognition. Moreover, in circumstances which involve a comprehensive unit, such as the present case, the agency is also under an obligation to negotiate at the level of the exclusive recognition with respect to the particular conditions of employment which will apply at subordinate activities within the unit. That is, the parties may provide in a master agreement at the level of recognition for the negotiation of supplemental agreements at the local level regarding matters pertaining to the conditions of employment of unit employees at the local level. For example, if the particular agency actions at issue in a proposal could be negotiated, as relevant herein, at the command level, to be performed by the agency at the command level, the Statute does not preclude the parties from providing in a master agreement at the command level for these actions to be performed at the level of subordinate activities within the unit. (Last two underscorings mine).

The second case, U.S. Mint, (3 FLRA 43, 47), seems at best tangentially relevant. There it was held that union proposals concerning the detailing of employees through the use of volunteers and, if need be, by seniority, were nonnegotiable because they directly interfered with

management's right to assign employees. In dictum the Authority noted that the agency also argued that the union's proposal violated the controlling national agreement while the union defended it as consistent therewith. The Authority simply referred to earlier holdings that disputes over whether a master agreement authorizes local negotiations over matters contained therein are to be resolved in the forum adopted by the parties for such purpose.

The third case, SSA and AFGE Local 1346, (6 FLRA 202, 204) concerned a refusal to enter local negotiations pursuant to a reopener clause after AFGE had been certified to represent a nationwide consolidated unit. The Authority dismissed the complaint, holding that the mutual obligation to bargain "exists only at that level of exclusive recognition with respect to conditions of employment which affect any employees in the unit; a contrary result would render consolidation meaningless." It cautioned, citing U.S. Mint, above, that this "is not to say that there exists any impediment to the parties at the level of recognition agreeing to authorize supplemental negotiations at a sub-level." (My emphasis, to underscore the clear indication that authorization of supplemental local negotiations is to be accomplished voluntarily rather than pursuant to any requirement.)

The last case is Interpretation and Guidance, 7 FLRA 682, 684. There the issue presented was entitlement to official time for union negotiators bargaining local agreements designed to supplement a national or controlling agreement. The Authority found no statutory basis for granting official time because, it said, the local negotiations are voluntary, rather than "the performance of the mutual obligation of the parties to bargain in good faith." That holding, as well as the others, hardly supports, but rather undercuts, the notion that a proposal for local bargaining is negotiable, if, by use of the term negotiable, we mean that the subject-matter proposed is one which the recipient is required to bargain about in good faith, with the FSIP procedures available for possible imposition of local bargaining. If we do not mean that an obligation to bargain attaches to the proposal, we are merely saying that an agency is free to discuss it and even agree to it - there is no impediment. But we emphatically cannot mean that it is subject to the requirements of good faith bargaining and Panel resolution without gutting the doctrine that the mutual obligation only exists at the level of recognition. Thus the Corps seems to be correct in contending that a proposal for local, or supplementary negotiations is not

"mandatorily" negotiable but is, rather, "permissibly" negotiable.

The Circuit Court[2/] reversed this last holding, saying that the Authority erred in equating the term "mutual obligation . . . with a requirement that a statutory obligation to bargain must exist before official time is due union employee-representatives" and in characterizing "local negotiations, which are not required by statute, as voluntary in nature and, for this reason, beyond the provisions (respecting official time)."

Most importantly, for this attempt at analysis, the Court said:

> Secondly, the FLRA's characterization of local negotiations as "voluntary" in nature overlooks the fact that any local negotiations are undertaken by the parties only pursuant to agreement at the master level. Thus, the negotiation of a local agreement is derivative from the master agreement and appears no less the result of the underlying statutory obligation to bargain than the master agreement itself. This in no way renders local negotiations mandatory under the FLRS. Parties at the master agreement level remain free to agree to, or abstain from, the conduct of local agreement negotiations. However, once local negotiations are agreed upon, a "mutual obligation" to bargain exists at that level, thus triggering the provisions of section 7131(a). (Emphasis supplied)

Thus the Court reaffirms the notion that bargaining for purposes of authorizing local negotiations is entirely voluntary, but that any agreement reached then gives rise to a mutual obligation to bargain at that level. The contractual assumption of an obligation to negotiate supplemental agreements then is, in fact, a result of the discharge of the underlying statutory duty to bargain, as the Court observes, but it is not a required result. Rather

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2/ AFGE v. FLRA, 750 F.2d 143 (USCA, D.C. 1984), 118 LRRM 2021.

it was an acceptable and sensible substitute for mandated discussions at the national table. Nonetheless, the Court finds this voluntary agreement, at least for official time purposes, gives rise to a mutual obligation to bargain, absent any statutory obligation to bargain in the first instance.

It would behoove us to be as clear as we can be about the meaning of these terms. The term "permissibly negotiable" has been repeatedly used to define proposals concerning which parties may, but need not, bargain. Most commonly it is used for proposals which are within the ambit of Section 7106(b)(1) and are, by the statute's express terms, negotiable "at the election of the agency." Government management can enter and then back out of such discussions, and perhaps even agree upon but refuse to sign off on such terms.3/ Other proposals are similarly outside the duty to bargain, because they contain "permissive subjects" which do not concern conditions of employment,4/ or involve waivers of, or infringements upon, a party's statutory rights.5/ If, however, a party reaches agreement concerning a subject or proposal not mandatorily negotiable, and executes it, such agreement is "binding" for its term, although not thereafter, i.e. the practice may be unilaterally discontinued. Federal Aviation Administration, 14 FLRA 644, 648.

Here the MLA, in Article 4, Section 2 merely restates or reflects the rights and obligations set forth in the Statute, neither adding nor detracting therefrom. It permits negotiations (even encourages them) below the level of recognition by mutual consent, but allows either party to

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3/ American Federation of Government Employees, AFL-CIO, National Immigration and Naturalization Service Council and U.S. Department of Justice, Immigration and Naturalization Service, 8 FLRA 347, 379 (proposal 15).

4/ See International Association of Fire Fighters, Local F-61, 3 FLRA 438, 443; Naval Underwater Systems Center, Newport, Rhode Island, 11 FLRA 316; (promotion procedures for supervisory positions).

5/ American Federation of Government Employees, 4 FLRA 272, (limitation on union's right to designate its representatives); Federal Deposit Insurance Corporation, 18 FLRA 768, 774 (limitation on unions right to use impasse procedures).

insist upon national level negotiations. In the discussions looking forward to an MOU concerning smoking policy, the Corps refused to agree that designation of smoking areas would be the subject of local level negotiations.

In 33 FLRA 105, 113-114, the rationale set forth by the Authority was that proposals which authorize negotiation of agreements below the level of recognition are negotiable, and that this controversy should be resolved through the grievance/arbitration procedures because "both parties have raised plausible arguments concerning whether . . . Article 4, Section 2 places an unequivocal limitation on the Marine Corps' duty to bargain over the Council's proposal and whether, in the circumstances in which bargaining occurred in this case, the matter of the designation of smoking areas is a local or national issue under the terms of the MLA."

It seems to me that the question there presented was not whether the MLA placed an unequivocal limitation on the Corps' duty to bargain but rather quite the opposite: in the absence of any statutory duty to bargain, did the Corps commit itself by contract to local level bargaining concerning Activity commander decisions regarding where smoking was to be allowed? The Corps was statutorily free to reject a request for local bargaining or to grant it. The MLA provides precisely for the same thing. While generally endorsing local negotiations concerning local management initiatives (such as designation of smoking areas here), either party is clearly left free to insist upon bargaining at the level of recognition. Viewed from the perspective of Respondents' defense there was, then, no clear and unequivocal waiver or surrender of the right to negotiate any particular matter only at the national table. The very notion that the contrary contentions are arguable or plausible undercuts the requirement that a waiver of a statutory right be clear.

In sum, there existed no statutory duty to bargain below the national level of recognition, and a "mutual obligation" to bargain locally could exist only as a result of agreement reached by Respondent Marine Corps and the Council. The MLA clearly did not require local bargaining and the Corps clearly rejected the Council's proposal that such bargaining take place as it was privileged to do. Respondent Activity was, then, under no obligation to bargain with Local 2904.

I accordingly recommend that the Federal Labor Relations Authority employ this rationale, rather than the approach

utilized in its earlier decision involving these same parties and issues, and that it adopt the following order dismissing the Complaint in its entirety.

ORDER

It is hereby ordered that the Complaint should be, and hereby is, dismissed in its entirety.

Issued, Washington, D.C., July 30, 1990

John H. Fenton

JOHN H. FENTON
Chief Administrative Law Judge