FEDERAL LABOR RELATIONS AUTHORITY OALJ 14-06
Office of Administrative Law Judges
WASHINGTON, D.C.

U.S. DEPARTMENT OF THE AIR FORCE 325TH MISSION SUPPORT GROUP SQUADRON TYNDALL AIR FORCE BASE, FLORIDA RESPONDENT AND AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 3240, AFL-CIO CHARGING PARTY	Case No. AT-CA-06-0163 (65 FLRA 877)

Richard S. Jones, Esq.
For the General Counsel

Robert M. Gerleman, Major
For the Respondent

George White, President
For the Charging Party

Before: CHARLES R. CENTER
Chief Administrative Law Judge

DECISION ON REMAND

On February 6, 2006, the American Federation of Government Employees, Local 3240, AFL-CIO (Union) filed an unfair labor practice (ULP) charge against the U.S. Department of the Air Force, 325th Mission Support Group Squadron, Tyndall Air Force Base (AFB), Florida (Respondent) alleging "Change in Working Condition . . . by removing laborer James Stephen from Building 845, 1580, 1582 to Wood Manor and Chuck Hamilton from Wood Manor to building 845, 1580, 1582, without notifying the Union beforehand and giving prior negotiation substance or impact before implementing the change." GC Ex. 1(b). In the charge, the Union requested that the Federal Labor Relations Authority (Authority) issue a temporary restraining order, a remedy not available to the Authority under the Federal Service Labor-Management Relations Statute (Statute) and one for which the General Counsel must obtain Authority approval prior to seeking from a United States District Court. 5 U.S.C. § 7123(d); 5 C.F.R. § 2423.10(b). On July 28, 2006, the Regional Director of the Atlanta Region of the Authority issued a Complaint and Notice of Hearing in which it was alleged that the Respondent committed an unfair labor practice in violation of § 7116(a)(1)

and (5) of the Statute on January 9, 2006, when it reassigned two bargaining unit employees without giving the Union notice and an opportunity to negotiate to the extent required by the Statute. GC Ex. 1(c). The Respondent filed a timely Answer on August 15, 2006, in which it denied the alleged violation of the Statute. GC Ex. 1(f). On August 16, 2006, the Respondent filed a motion for continuance of the hearing scheduled for October 11, 2006, and requested that the hearing be conducted on October 19, 2006. GC Ex. 1(g). Neither the General Counsel nor the Charging Party opposed the motion and it was granted. GC Ex. 1(i).

A hearing was held in Panama City, Florida on October 19, 2006, at which the parties were present with counsel and were afforded the opportunity to present evidence and cross-examine witnesses.

On February 28, 2007, I issued a recommended decision recommending that the ULP complaint be dismissed. In *U.S. Dep't of the Air Force, 325th Mission Support Group Squadron, Tyndall AFB, Fla.*, 65 FLRA 877 (2011), on May 31, 2011, the Authority remanded the complaint for additional findings of fact.

Based upon the entire record, including my observation of the witnesses and their demeanor, as well as the findings of fact and conclusions set forth in the initial decision and adopted herein, I make the following additional findings of fact, conclusions, and recommendations.

STATEMENT OF ADDITIONAL FACTS

The Authority's remand was in response to assertions in the General Counsel's exceptions that pertinent facts were omitted from the recommended decision. However, as outlined below, the assertions represented as facts in the General Counsel's exceptions did not appear in the decision because they were not established as facts at the hearing.

The system of housing units collective known as the Sand Dollar Inn at Tyndall Air Force Base consists of Visiting Airman's Quarters (VAQ), Visiting Officers Quarters (VOQ), Visiting Quarters (VQ), and Temporary Lodging Facilities (TLF). Tr. 204; 217. The VAQ, VOQ and VQ buildings are situated in the same general area of Tyndall AFB and all are within walking distance of Building 1355 where laborers and housekeepers employed by the Sand Dollar Inn system clock in to begin their duty day. Tr. 32-33; 191; 205; 211; 230. The TLF, also referred to as Wood Manor is a group of 26 duplexes located approximately 3.1 miles from the other buildings in the Sand Dollar Inn system. Tr. 25; 225-226. Until July 2006, laborers and housekeepers assigned duties at the TLF/Wood Manor clocked in at Building 1355 before reporting for duty at Wood Manor. Tr. 186-87; 231. After reporting for duty, they would either transport themselves to Wood Manor using privately owned vehicles or management provided them with transportation. Tr. 110; 133; 231-32. In July 2006, a time clock was installed at Building 3133A in the Wood Manor complex and the housekeepers and laborer assigned duties at that location began clocking in there. Tr. 186-87; 232-33.

The VAQ, VOQ, and VQ consist of multiple one, two and three story buildings containing numerous housing units, with the three story dormitory containing 96 housing units. Tr. 36; 118; 189. Some of the buildings have common area bathrooms and laundry rooms which the laborer assigned to that location must clean and supply. Tr. 138; 159-60; 189.

Occupancy rates in the housing units vary depending upon the activities taking place at Tyndall AFB, and thus, a laborer's workload at particular buildings located within the Sand Dollar Inn system fluctuates in accordance with the number of personnel housed in that location. Tr. 66; 113; 118 & Resp. Ex. 3.

The TLF referred to as Wood Manor consists of 26 duplexes within walking distance of each other, providing a total of 52 housing units containing two, three or four bedrooms used by families transitioning to or from Tyndall AFB. Tr. 118; 193. Each duplex has a carport covered by an awning and a laborer working at Wood Manor has use of a government pick-up truck and a covered golf cart equipped with a truck bed to assist in the delivery of linens, cleaning supplies, and removal of garbage. Tr. 58; 68; 103; 114; 181; 193-94; 227 & Resp. Ex. 4.

Until July 2006, each laborer working at the Sand Dollar Inn reported for duty each day at Building 1355, where he would clock in and be assigned duties for the day. Tr. 32; 49; 60; 179-80; 186-87; 221-225. While a particular laborer was frequently assigned the same group of housing units within the Sand Dollar system designated as his primary area of responsibility, a laborer's daily assignment was determined by the logistics supervisor based upon mission needs and employee availability, and assignments were made verbally each morning. Tr. 33, 36; 179-180; 182; 214; 221-225 & Resp. Ex. 3. The practice of moving workers around to the various locations within the Sand Dollar Inn system in accordance with vacancy rates and mission needs is also used to manage the housekeepers who are part of the bargaining unit. Tr. 173.

In the course of making the TLF/Wood Manor operational during spring of 2005, all of the laborers employed by the Sand Dollar Inn system, including James Stephens, were assigned tasks at Wood Manor on a regular basis for some portion of the work day. Tr. 42; 63; 79; 107; 149; 182.

The activities performed by a laborer at each of the buildings within the Sand Dollar Inn system are generally the same. Tr. 35; 72-73; 119; 188; 236. They empty garbage cans in the common areas and dispose of the garbage collected by housekeepers; they sweep common areas, clean parking lots of litter, police the exterior grounds, and assist with loading and unloading supplies. Tr. 72-73; 119-20; 138; 185-88. In buildings with laundry rooms and common area bathrooms, laborers are responsible for cleaning and stocking them. Tr. 188. There are no common area bathrooms or laundry rooms in the TLF/Wood Manor

complex as those conveniences are located within the housing units cleaned by a housekeeper. Tr. 120; 141; 159-61; 199. Laborers are not responsible for cleaning individual housing units within any the buildings in the Sand Dollar Inn system; however, they are responsible for replacing air filters and light bulbs in those individual units. Tr. 120; 159-61; 188.

A laborer spends approximately eighty percent (80%) of his duty day working outdoors and twenty percent (20%) of his time working indoors regardless of the housing units assigned to him as his primary area each day. Tr. 120; 186-88. Some buildings within the Sand Dollar Inn system require the laborer to climb stairs, some require Laborers to clean common area bathrooms or laundry rooms, and some require handling more garbage or linens, however, the duties are mostly similar in all the locations as they involve various forms of custodial work. T-72; 99; 101; 118; 135; 141; 159; 187-88; 203; 236.

Until July 2006, all of the laborers employed by the Sand Dollar Inn were supervised by the Logistics Supervisor, a position filled by Joseph Moore since November 2005. Tr. 96; 187-88; 216; 220-21; 228.

In July 2006, two of the laborers were placed under the direct supervision of the housekeeping supervisors responsible for the VAQ and TLF/Wood Manor housing areas. Tr. 216-17; 228. The laborer placed under the supervision of Helen Gillen at the TLF/Wood Manor housing area at that time was James Stephens. Tr. 28; 96; 216-17.

Centrally located within the TLF/Wood Manor complex of the Sand Dollar Inn system is Building 3133A, one side of a duplex containing an employee break area equipped with a kitchen sink, running potable water, a refrigerator with an ice maker, a microwave oven and other furnishings including a couch. Tr. 91; 112; 114; 157-58; 191-92. As of July 2006, this building serves as the location where housekeepers and the laborer working at TLF/Wood Manor clock in to begin their duty day. Tr. 65; 186-87; 209-10; 225; 232. Building 3133A in the TLF/Wood Manor complex is located 1.9 miles from the Sabre gate entrance to Tyndall AFB. Tr. 225.

Building 1355, where all laborers formerly clocked in to begin their duty day and where those supervised by the Logistics Supervisor continue to do so, is also 1.9 miles from the Sabre gate entrance to Tyndall AFB. Tr. 225. The distance between Building 1355 and Building 3133A in the TLF/Wood Manor complex is 3.1 miles. Tr. 225-26.

Across the street from the Wood Manor housing complex is a small convenience store selling sandwiches, soft drinks, bottled water, candy, chips and snacks along with sundry items. Tr. 92; 158; 194. Within a two or three block walk of Wood Manor is the Yacht Marina Club which operates a restaurant that serves hot meals. Tr. 93; 194; 213.

From the time it became operational in May 2005, until July 2005, the laborer with primary responsibility for the TLF/Wood Manor Monday through Friday was Doug Dean. Tr. 41; 77; 140; 178; 182; 213-14. When Dean left employment at the Sand Dollar Inn, the

laborer duties at that location were performed by different laborers, including James Stephens, until Charles Hamilton, a laborer who worked weekends on a Thursday to Monday workweek became the laborer whose primary location was the TLF/Wood Manor. Tr. 33; 69-70; 77-79; 85; 139-43; 148; 155-56; 182; 184; 204; 214. On Saturdays and Sundays, Hamilton was the only laborer on duty and he performed the required custodial duties at all of the Sand Dollar Inn housing locations. Tr. 144; 148; 150; 155-56; 182; 201-04. On Tuesdays and Wednesdays when Hamilton was off duty, one of the other laborers would be sent to the TLF/Wood Manor location to perform the required laborer duties. Tr. 77-79; 148; 155-56; 182; 184; 203-04.

On about January 9, 2006, Logistics Supervisor Moore began to regularly assign the TLF/Wood Manor location to James Stephens on the Tuesdays and Wednesdays when Hamilton was off, as well as the Monday, Thursday, and Fridays previously assigned to Hamilton, while Hamilton continued to be the laborer with primary responsibility for the TLF/Wood Manor on Saturday and Sunday. Tr. 147; 150-51; 184; 222. On the other three days of his work week, Hamilton was treated as a floater and assigned to various locations within the Sand Dollar Inn system depending upon where assistance was needed. Tr. 139; 202; 204-05. These assignments were initiated in anticipation that Hamilton was going on leave for a month while another laborer was scheduled to take seven weeks of leave. Tr. 147; 156-57; 202-05; 222-24; 229. During this period of extended leave use, Moore wanted to assign the same laborer to the TLF/Wood Manor Monday through Friday to provide the housekeepers and housekeeping supervisor who worked on a Monday through Friday schedule with continuity and familiarity with the laborer assigned primary duties at that location. Tr. 147; 156-57; 202-05; 222-24; 229. After Hamilton's leave plans were altered and the other laborer returned from seven weeks of leave, Supervisor Moore left the assignments he initiated on or about January 9, 2006, in place, however, Hamilton continues to work at Wood Manor as part of his duties on Saturday and Sunday as well as other work days when needed. Tr. 147-48; 150-51; 202-05; 222-24.

On January 9, 2006, James Stephens and Chuck Hamilton were serving in the position of Laborer, designated as NA-3502-03 on the Nonappropriated Fund (NAF) Civilian Position Description, AF Form 1065. Resp. Ex. 11. Supervisor Moore did not change their position or grade on January 9, 2006, and they remained laborers employed by the Sand Dollar Inn at the time they testified at the hearing. Tr. 95; 138.

On January 19, 2006, the Respondent gave the Union notice that it was changing the working conditions of James Stephens by altering the location at which he would be clocking in for duty from Building 1355 to Building 3133A effective February 6, 2006. Tr. 186-87; 209-210 & GC Ex. 2. On January 23, 2006, the Union advised the Respondent that it would not bargain upon that change until after the Federal Labor Relations Authority ruled upon its pending unfair labor practice charge related to the action taken by Moore on or about January 9, 2006. Tr. 183 & GC Ex. 3.

On the morning of May 2, 2006, there was a situation involving James Stephens at the Wood Manor location that resulted in an ambulance being called and his being taken to the Bay Medical Center for examination. Tr. 26-28; 166 & Resp. Ex. 12, 13. Upon examination by Jeffrey Appel, M.D., Stephens reported abdominal discomfort for which he had taken Pepto Bismol the night prior, he also reported dizziness, pain, and slight pressure in his chest and indicated that he had taken some aspirin. Resp. Ex. 12. As objective observations, the doctor noted Stephens was alert and oriented to person, place, time and event, that his skin was warm and dry, his sinus rhythm was normal, and his respiration was unlabored. Resp. Ex. 13. Stephens was diagnosed with non-specific abdominal pain possibly early enteritis, and released for follow up with his personal physician. Resp. Ex. 12.

POSITIONS OF THE PARTIES

General Counsel

The General Counsel (GC) notes that even where the decision to change a condition of employment constitutes the exercise of a management right under section 7106 of the Statute and the substance of the decision to make the change is not negotiable, the agency is nonetheless obligated to bargain over the appropriate arrangements and procedures of that decision if the resulting change will have more than a *de minimis* effect on bargaining unit employees' conditions of employment. *Dep't of Health & Human Serv., SSA*, 24 FLRA 403 (1986). *Cf. Soc. Sec. Admin., OHA, Charleston, S.C.*, 59 FLRA 646 (2004). In such circumstances, an agency which fails to provide adequate prior notice of the change to the affected employees' exclusive representative or rejects the union's timely request for negotiations pursuant to § 7106(b)(2) and (3) of the Statute will be found to have violated § 7116(a)(1) and (5) of the Statute. *Fed. Bureau of Prisons, FCI, Bastrop, Tex.*, 55 FLRA 848 (1999).

While the GC acknowledges that an assignment of work constitutes the exercise of a management right granted by Statute, it contends that the Respondent unilaterally changed the conditions of employment for laborers working in the Sand Dollar Inn system at Tyndall AFB when Supervisor Moore began assigning James Stephens to duties at the TLF location known as Wood Manor on or about January 9, 2006. The GC contends the employee was permanently assigned to another location within the Sand Dollar Inn system and that assigning him duties at a different location within that system constituted a reassignment that could not be made without providing the Union with notice and an opportunity to bargain over the change. In support of this position, the GC argues that Stephens had been assigned work at the same set of buildings within the Sand Dollar Inn system for several years before being assigned work at the TLF area known as Wood Manor in early January 2006.

The GC also submits that the change imposed upon Stephens was more than *de minimis* because the duties required of a laborer at the TLF/Wood Manor location are substantially different from those performed by laborers at other buildings within the Sand Dollar Inn System as is the environment in which the work is performed. The GC alleges

that the amenities available to employees working at the Wood Manor location were dissimilar and inadequate in comparison to those at other work locations within the Sand Dollar Inn system.

Respondent

The Respondent denies that it violated the Statute as alleged in the complaint. The Respondent contends that the assignment of work made on or about January 9, 2006, was the same assignment of work made each day in the course of managing the laborers whose duties are needed to keep the entire Sand Dollar Inn system operational and properly functioning. The Respondent submits that Stephens and all of the other laborers working in the Sand Dollar Inn system were assigned to work at the TLF/Wood Manor location on numerous occasions prior to January 9, 2006, and that a laborer's duties are determined by their supervisor on a daily basis. The Respondent asserts that any or all of the laborers employed by the Sand Dollar Inn system can be assigned duties at any location within that system at any time based upon need and mission requirements without it constituting a change in conditions of employment requiring notice and bargaining. The Respondent also alleges that the Union has not previously demanded or expected notice or bargaining upon such assignments.

In the alternative, the Respondent contends that if a change did occur it had no more than a *de minimis* effect on the working conditions of bargaining unit employees, and therefore, there was no duty to bargain over said change. The Respondent asserts that the duties performed by laborers at any location within the Sand Dollar Inn system are the same, as is the environment in which they work, and the amenities available to them.

ANALYSIS AND CONCLUSIONS

Initially I note that the complaint alleges that the Respondent reassigned James Stephens and Chuck Hamilton. Complaint, ¶10. However, under Office of Personnel Management (OPM) regulations, a "reassignment" of a Federal employee has a specific meaning. Reassignment is defined by OPM as a change of an employee, while serving continuously within the same agency, from one position to another without promotion or demotion. 5 C.F.R. § 210.102(b)(12). In this case, neither James Stephens nor Chuck Hamilton experienced a change in their position on or about January 9, 2006. There was no record of either being moved from laborer to another position description as typically documented on a Standard Form 50 (SF-50), and neither their position nor grade was altered by the assignments of work made by Logistics Supervisor Moore on that date. The employees were NA-3502-03 laborers on or about January 9, 2006, and they remained in that position and grade up to the time of the hearing. Tr. 207-08.

Thus, if proving the facts alleged was required, the GC could not do so. However, a complaint does not have to be pled with specificity, and it is sufficient so long as it provides the party with notice of what is being alleged as a violation. *Dep't of the Air Force, 343rd Combat Support Group, Eielson AFB, Alaska*, 39 FLRA 609 (1991); *AFGE, Local 2501, Memphis, Tenn.*, 51 FLRA 1657 (1996). In this case, the Respondent was placed upon

adequate notice that the assignment of work made by Supervisor Moore on or about January 9, 2006, was the gist of the action alleged to be an unfair labor practice in the complaint. That it was styled as a reassignment implies a permanence that was not established by the facts and reveals more about the strength of the GC's case than accurately describing the actions that were taken. However, that liberty pales in comparison to the reliance the GC places upon the testimony of James Stephens, the supposed victim of the Respondent's undertakings.

Aside from his general motive or bias to misrepresent to gain from his claims, Stephens demonstrated a remarkable ability to contradict reality in an attempt to bolster his version of events, thus rendering the entirety of his testimony completely unreliable. Among his claims contradicted by other witnesses was his claim that the "passing out" incident on May 2, 2006, was the result of heatstroke after being in the hot sun all day. Tr. 106. Helen Gillen and Linda Morrison testified that the incident happened early in the morning prior to him doing much work and they described his condition as being more emotional than physical, and his falling to the ground more an intentional dive than fainting. Tr. 26-28; 164-67. Furthermore, the medical records from the incident make no mention of heatstroke and he was diagnosed with non-specific abdominal pain, possibly early enteritis. Resp. Ex. 12. While Stephens claim of heatstroke after a long day of work under an unyielding sun with no access to shade or water conveniently dovetails with the GC's theory that an assignment to the Wood Manor TLF area constituted a drastic change from the work performed by laborers at other locations within the Sand Dollar Inn system, it has no basis in fact and cannot be believed.

Aside from the discrepancies related to time of day and diagnosis, witnesses for both the GC and the Respondent made it clear the duplexes in the Wood Manor complex have carports with awnings that provide shade and that employees working in that area have access to an air conditioned breakroom where water and ice are readily available. In short, while the dire and bleak portrait of the demands imposed by working at the Wood Manor complex painted by Stephens makes a great story, it was nothing but a story.

When Stephens was challenged about the medical history documented by the doctor during his examination on May 2, 2006, Stephens denied telling the doctor that he had taken over the counter medication for his abdominal pain. Tr. 123-30. While Stephens testified that he experienced a heatstroke, it is clear the doctor treated him for the abdominal pain he reported at the time, and there was no reason for the doctor to document the use of over the counter medication taken to treat his stomach condition unless Stephens reported it. That the medical history didn't square with his claim of heatstroke Stephens made at the hearing was one he tried to minimize by denying it, but his denial of providing the doctor with that medical history was not credible given his lack of veracity and the absence of any reason for a medical professional to make up such information as part of examination.

Stephens' mendacity was also displayed in his claim that there was no water, nor a place to take a break at Wood Manor. Tr. 102. In response to the question of why Wood Manor was more dangerous to his health than other locations, Stephens replied: "Well, once like I said, I know being down there where there isn't any water. Or anyplace [sic] to really take a break was the concern."

When confronted with the idea that there actually was a break room in the Wood Manor complex, Stephens corrected himself and claimed: "Yes, sir, there's a break room there, but there isn't any water fountain or ice machine or anything like that down there, sir. Where you can get some water." Tr. 102.

Later in his testimony he was asked a direct question: "Is there water in the break room", and his answer was "No, sir". When counsel seemed surprised by that response, he followed up with the question: "There's no water in the break room?", and Stephens responded: "No water, no ice machine, no fountain, no nothing. Just a regular faucet, sir." Then counsel asked: "There's no, is there a refrigerator?", and Stephens responded "Yes, sir, there's a refrigerator in there." Counsel then asked if the refrigerator made ice and Stephens replied: "It makes ice, sir, but sometimes, just ice period. But even if you have ice there, sir, . . . sometimes the water is, it have [sic] . . ., it's brown or whatever. So really, you don't get sufficient water all the time. Not out of the faucet." Tr. 111.

Clearly, Stephens had a story he wanted to tell about working at Wood Manor. A story of long hours laboring in the blazing Florida sun, a full day of hard, physical exertion performed bereft of shade or water. However, that story had no basis in fact or reality, and while he begrudgingly conceded the inaccuracy of his claims, he desperately clung to the final thread of his woeful tapestry by testifying that the water available at Wood Manor was warm, brown, and inadequate for drinking. Perhaps most telling about the inaccuracies Stephens conceded in the course of spinning this tall tale of dreadful working conditions was the fact that many of the concessions were made during direct examination when the counsel calling him as a witness appeared dubious about some of the claims.

The reality is that employees working at the Wood Manor complex have access to an air conditioned break room containing a refrigerator with an ice maker, running water that comes from the same system that supplies each of the 52 housing units in that area, and all of the duplexes have carports that provide shade irrespective of tree canopy. Tr. 100; 191-93. That Stephens prefers water from water fountains or bottles, and his ice from an ice machine rather than a refrigerator's ice maker, are preferences reflecting *de minimis* differences. Tr. 102; 111-12. That Union president George White's complaints about the Wood Manor complex also included the lack of shade and the absence of water coolers, ice machines, and cold water, when each duplex has a covered carport and the break room contains a refrigerator with an ice maker along with running water rendered his testimony as less than credible as well. Tr. 58; 74.

While Stephens lack of veracity was made clear by his testimony, he candidly admitted that his ability to use a government vehicle was taken away for "burn[ing] too much gas [ ]" in unauthorized use. Tr. 104. That Stephens abused the faith entrusted in him when given the ability to use a government vehicle for authorized purposes further demonstrates his propensity to act in a self-serving manner that is consistent with the bias exhibited in his testimony, and provides further reason to give his testimony little weight.

In an effort to bolster the testimony of Stephens and White, the GC called Chuck Hamilton, the other laborer whose conditions of employment were allegedly changed in January 2006. While Hamilton testified that the work at Wood Manor was different and required more work involving tree and hedge trimming and garbage removal, he conceded during cross-examination that the things that made working at Wood Manor so onerous were completed or eliminated prior to January 2006, by virtue of tree and hedge removal and alterations in how the trash was handled. Tr. 141-42; 153. Although Hamilton testified that there was more garbage at Wood Manor due to the presence of families, he also observed that Wood Manor did not have laundry rooms or common area bathrooms which the laborer was responsible for cleaning. Tr. 141. While Hamilton may have established that the work at Wood Manor different in the summer of 2005, when his supervisor started assigning him that location on a regular basis, his testimony also demonstrated that by January 2006, when Stephens was assigned there, a laborer's duties at Wood Manor were substantially like those performed at other locations within the Sand Dollar Inn system. I also note that the Union made no demand to bargain over the assignments given to Hamilton in the summer of 2005, when the work at that location may have been different from that performed at other locations. Tr. 43; 87.

The Union had no issue with Chuck Hamilton being assigned to work at Wood Manor in July of 2005, because he was the person the Union wanted assigned at that location when it became operational in May 2005. Tr. 68; 74 & Resp. Ex. 5. In fact, it is abundantly clear from the testimony of George White, as well as the documents he issued during the establishment of Wood Manor, that the Union's primary interest was not negotiating impact and implementation proposals related to the opening or its operation. What the Union sought to do was to use the creation of the Wood Manor as an opportunity to dictate which bargaining unit employee would be assigned to that location and to secure a grade increase for all of the laborers employed by the Sand Dollar Inn. Tr. 41; 74; 83 & Resp. Ex. 5.

In the GC's view, James Stephens and Chuck Hamilton experienced a change to their conditions of employment because the former had, by virtue of regular daily assignments made over an extended period of time, developed an entitlement to work as a laborer at Buildings 845, 1580 and 1582, while the latter was, for the same reason, entitled to work as a laborer at the Wood Manor complex. In essence, the GC contends that the Respondent had established a past practice of assigning those employees to specific locations within the Sand Dollar Inn system and that assigning them to work at any other location within the system required notice to the Union and an opportunity to bargain over the impact and implementation of such assignments. For the reasons outlined below, the GC's position is without merit.

The fundamental premise of the GC's argument is that by virtue of regularly assigning Stephens to work as a laborer at certain buildings within the Sand Dollar Inn system, the Respondent established a permanent location to which he had to be posted for duty on all subsequent assignments. This argument is flawed for several reasons, the first of which is that over the course of his fifteen year career, Stephens performed duties at various locations within the Sand Dollar Inn system and the particular location of his assignment was never a matter of negotiation because the position description under which he was hired makes it clear that a laborer performs a full range of custodial duties in all lodging areas. Tr. 15 & Resp. Ex. 11. Historically, alteration of the location to which a laborer was regularly and typically assigned did not require notice and the parties did not engage in impact and implementation bargaining over such moves, even when the assignment involved alteration after a prior assigned location was given for an extended period. *See, VA Med. Ctr., Phx., Ariz.*, 20 FLRA 399, 409 (1985).

While the General Counsel places emphasis on the six years prior to January 9, 2006, when Stephens was regularly assigned Buildings 845, 1580 and 1582, this conveniently ignores the fact that the record is replete with testimony indicating that all of the laborers, including Stephens, were assigned to other locations within the Sand Dollar Inn system during that six year period when it was necessitated by workload, leave, or other availability complications. Of particular importance is the fact that January 9, 2006, was not the first time Stephens was assigned duties at Wood Manor. In fact, all of the laborers employed by the Sand Dollar Inn system were regularly assigned duties at that location throughout the spring of 2005, when that portion of base housing was converted to temporary living quarters. Thus, being assigned to that location in January 2006, was not something new, nor did it involve a change for bargaining unit employees. What the GC is actually challenging is the frequency with which that particular location was assigned to a particular bargaining unit employee. While the GC argues that the duty locations of Stephens and Hamilton were essentially traded, that is not what happened. In fact, Hamilton continued to perform duties at Wood Manor on Saturdays and Sundays after January 9, 2006.

What actually happened in this situation was consistent with the past practice these parties have utilized for years without notice and negotiation. When the supervisor became aware of Hamilton's plan to take 30 days of leave, he decided that rather than covering Hamilton's regular Monday, Thursday and Friday schedule on a piece meal basis with various laborers, as he was already doing on Hamilton's regular Tuesday and Wednesday days off, he opted to assign a single laborer to that location on a Monday through Friday schedule. This provided the benefit of placing a laborer on the same schedule as the housekeepers servicing that location, thus providing them with continuity and familiarity. Furthermore, as a result of this assignment, the supervisor would be available to use Hamilton as a "floater" who could be assigned to any location as needed when Hamilton returned from leave. This fully utilized the knowledge and experience of Hamilton, who was familiar with the work demands at each location as he regularly covered them all on Saturdays and Sundays. The assignment of laborers to different locations to cover needs created by workload, leave, and availability issues was the past practice utilized by the

parties, and the GC's contention that the past practice was to send a particular laborer to a single location within the Sand Dollar Inn system is not supported by the evidence in the record. James Stephens was never exclusively assigned to Buildings 845, 1580 and 1582, and January 9, 2006, was not his first assignment to Wood Manor. Thus, the assignment made on January 9, 2006, did not change the conditions of employment for James Stephens, let alone all bargaining unit employees. Laborers in the bargaining unit were responsible for providing custodial duties at any location within the Sand Dollar Inn system and determining which laborer would perform those duties on any given day was an assignment of work that did not require notice and impact bargaining.

It is clear and undisputed that, as a routine matter, the Respondent assigned and reassigned laborers to different locations based on anticipated workload requirements. While they were frequently assigned to a primary location, they were always available for reassignment during a shift or sent to another location at the beginning of their shift when workload demands required their presence at another location within the Sand Dollar Inn system. Thus, the assignment of locations for laborers was much like the change in shift hours for inspectors present in *U.S. INS, Houston, Dist., Houston, Tex.*, 50 FLRA 140 (1995), wherein the Authority held no change in conditions of employment were made when the agency altered the work shift by one hour to a shift previously established and assigned to inspectors at various times since its establishment.

While deciding which laborer would perform custodial duties at Wood Manor did not change the conditions of employment for bargaining unit employees, the decision to change the location of where the laborer assigned to Wood Manor would begin his duty day presents a closer question. On January 19, 2006, the Respondent gave the Union notice that effective February 6, 2006, James Stephens would cease initiating his duty day by clocking in at Building 1355 and would instead begin his duty day by clocking in at Building 3133A in the Wood Manor complex. GC Ex. 2. The distance between Building 1355 and Building 3133A is approximately 3.1 miles, a distance substantially further than the less than a mile change imposed upon a single employee and found *de minimis* in *Dep't of the Air Force, 63rd Civil Eng'g Squadron, Norton AFB, Cal.*, 22 FLRA 843 (1986) (ALJ Decision), but also shorter than the four or five mile change imposed upon all bargaining unit employees and found more than *de minimis* in *Soc. Security Admin., OHA, Region II, N.Y.*, 19 FLRA 328, 344-45 (1985) (ALJ Decision). However, the commuting distance from the Sabre gate of Tyndall AFB to each building is 1.9 miles. Thus, the buildings are equidistant from the employee entrance to Tyndall and changing locations did not increase the commute for the single laborer assigned to clock in at Wood Manor.

Given the similarity of the commuting distance, a legitimate argument can be made that changing the location of where the laborer assigned to Wood Manor would begin his work shift was a *de minimis* change. Nonetheless, the Respondent gave the Union notice of the change and the Union elected to not bargain over the change. Tr. 47 The Union instead argued that the duty assignments made by the Respondent on January 9, 2006, were changes for which notice and an opportunity to bargain was owed, and the Union elected to pursue a

unfair labor practice charge filed in response to the January 9, 2006, assignments, rather than presenting impact and implementation proposals for the change of which it was notified on January 19, 2006. Tr. 47. Despite the projected date of February 6, 2006, James Stephens did not begin to initiate his work shift at Building 3133A until July 2006, and no proposals were submitted by the Union during the five month period between planned and actual implementation. The Union's refusal to submit proposals related to the impact this change would have upon bargaining unit employees further demonstrates that what it really wanted to negotiate was which bargaining unit employee would be assigned to the Wood Manor location and not minimizing the impact of such assignments upon the bargaining unit employees given duties at the Wood Manor location.

The standard for determining the existence of a past practice is whether a practice was consistently exercised for an extended period of time with the other party's knowledge and express or implied consent. *U.S. Dep't of the Treasury, IRS, Louisville Dist., Louisville, Ky.*, 42 FLRA 137, 1142 (1991); *U.S. Dep't of Labor, OASAM, Dallas, Tex.*, 65 FLRA 677 (2011). The practice must be "consistently exercised over a significant period of time and followed by both parties, or followed by one party and not challenged by the other." *Soc. Sec. Admin., OHAs, Montgomery, Ala.*, 60 FLRA 549, 554 (2005).

In this matter, the GC contends that the practice exercised by management was regular assignment of certain employees to fixed locations within the Sand Dollar Inn system. However, the facts presented at the hearing demonstrated that the practice in place and the one to which all laborers were accustom was one of assigning any employee to any location where work needed to be done. While employees were frequently assigned to a regular location to perform their typical duties, they were also accustom to being assigned to other locations when, leave, illness, absenteeism, or special operations resulted in their labor being required at another location, and this practice was applied to all of the laborers and housekeepers employed within the Sand Dollar Inn system.

Under these facts, I find that the Respondent did not change the conditions of employment for bargaining unit employees when in anticipation of upcoming scheduled leave it assigned laborers to locations where they had previously worked that differed from earlier assignments. Therefore, the Respondent did not violate § 7116(a)(1) and (5) of the Statute as alleged in the complaint and I recommend that it be dismissed.

CONCLUSION

I find that the Respondent did not violate § 7116(a)(1) and (5) of the Statute as alleged when in anticipation of upcoming scheduled leave it assigned laborers to locations where they had previously worked that differed from earlier assignments without notifying the Union and affording it an opportunity to bargain.

Accordingly, I recommend that the Authority dismiss the complaint.

Issued, Washington, D.C., May 16, 2014

CHARLES R. CENTER
CHIEF ADMINISTRATIVE LAW JUDGE