FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C.

OALJ 15-17

FEDERAL BUREAU OF PRISONS FEDERAL CORRECTIONAL COMPLEX BEAUMONT, TEXAS RESPONDENT AND AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO, LOCAL 1010 CHARGING PARTY	Case No. DA-CA-12-0351

Nora E. Hinojosa
For the General Counsel

Steve R. Simon
For the Respondent

David Lange
For the Charging Party

Before: SUSAN E. JELEN
Administrative Law Judge

DECISION

STATEMENT OF THE CASE

This case arose under the Federal Service Labor-Management Relations Statute (Statute), 5 U.S.C. §§ 7101-7135 and the revised Rules and Regulations of the Federal Labor Relations Authority (FLRA/Authority), part 2423.

On May 31, 2012, the American Federation of Government Employees, AFL-CIO, Local 1010 (Union) filed an unfair labor practice (ULP) charge against the Federal Bureau of Prisons, Federal Correctional Complex, Beaumont, Texas (Respondent). (G.C. Ex. 1(a)). After an investigation of the ULP charge, the Dallas Regional Director of the FLRA issued

an amended Complaint and Notice of Hearing on February 13, 2013, alleging that the Respondent violated § 7116(a)(1) and (5) of the Statute by removing a television from an employee conference room without notifying the Union of the change and providing it an opportunity to negotiate over the change. (G.C. Ex. 1(e)). The Respondent filed an answer to the amended Complaint on February 25, 2013. (G.C. Ex. 1(f)). In the answer, the Respondent admitted some of the factual allegations but denied that it committed the alleged ULP. (G.C. Ex. 1(f)).

A hearing in this matter was held on May 2 and 3, 2013, in Beaumont, Texas. The parties were afforded an opportunity to be represented and heard, to examine witnesses, introduce relevant evidence, and make oral arguments. The General Counsel and Respondent filed timely post-hearing briefs that have been fully considered.

Based on the entire record, including my observations of the witnesses and their demeanor, I make the following findings of fact, conclusions of law, and recommendations.

FINDINGS OF FACT

The Respondent is an agency under § 7103(a)(3) of the Statute. (G.C. Exs. 1(e) & (f)). At all times material to this matter, Carlos Rivera was the Warden at the Respondent's low security institution (the Low) and William Hibbs was the General Foreman at the Low. (G.C. Exs. 1(e) & (f)). Warden Rivera and General Foreman Hibbs acted on behalf of the Respondent at all times material to this matter. (G.C. Exs. 1(e) & (f)).

The American Federation of Government Employees, AFL-CIO (AFGE) is a labor organization under § 7103(a)(4) of the Statute and is the exclusive representative of a unit of employees appropriate for collective bargaining at the Respondent. (G.C. Exs. 1(e) & (f)). AFGE, Local 1010 (Union) is an agent of AFGE for purposes of representing employees at the Respondent. (G.C. Exs. 1(e) & (f)). David Lange is the Union Steward of the facility department at the Low. (Tr. 17, 85).

The Respondent's Federal Correctional Complex (FCC) in Beaumont, Texas encompasses a high security penitentiary (the Penn), a medium security institution (the Medium), a low security institution, and a minimum security camp (the Camp). (Tr. 20-22). The Respondent maintains two distinct cable contracts with Time Warner Cable for the entire FCC at Beaumont: one for the inmates and one for the staff. (G.C. Exs. 6 & 7; Tr. 239-41). The staff cable contract permits the Respondent twelve cable connections comprising of four connections at the Penn, Medium, and Low respectively. (G.C. Ex. 6; Tr. 242). Each institution should have one connection in the Warden's office, one in the command center, one in the correctional officers' lunch area, and one in the staff break room. (Tr. 242). As for the inmate cable contract, it permits seventy-one connections throughout the FCC. (G.C. Ex. 7; Tr. 69).

At the time of the alleged ULP, the Respondent admittedly and unlawfully benefitted from cable connections in excess of its contract with Time Warner Cable. (R. Br. at 5; Tr. 12). At the Low institution alone, there were over 130 cable connections. (Tr. 66-67, 69). The record is replete with evidence of cable wires being spliced for extra connections, and additional TVs being purchased. (G.C. Ex. 8; Tr. 77, 93, 125, 143, 151-52, 206).

At the Respondent's low institution, there are approximately 2,000 inmates lodged in three housing units. (G.C. Ex. 3(c); Tr. 22). The Low also contains a chapel, staff offices, medical offices, a segregated housing unit, a barbershop, a commissary, a food services building for inmates, a lunch area for correctional officers, and a facilities building. (G.C. Ex. 3(c); Tr. 22-25). Each of the four security institutions at the FCC maintains a facility department staffed by various maintenance employees. (Tr. 8). At the Low, the facilities building is connected to the inmates' food services building. (G.C. Exs. 3(c) & 3(d); Tr. 24).

There are approximately eleven employees in the facility department at the Low. Facility employees work as plumbers, painters, electricians, and communication technicians. (Tr. 37, 139, 158, 182, 194). They are responsible for the Low's maintenance and also serve as supervisors to inmates performing work detail. (Tr. 16, 38). In the morning and after the inmates' lunch, facility employees supervise and instruct between fifteen and forty-five inmates, who perform basic maintenance duties. (Tr. 60-61, 160).

Most facility employees at the Low work a compressed work schedule (CWS). (Tr. 45-46). On a CWS, an employee will work Monday through Thursday or Tuesday through Friday, ten hour days with a working lunch. (G.C. Ex. 12; Tr. 180). A working lunch is defined as eating lunch while doing paperwork such as opening and closing work orders. (G.C. Ex. 12; Tr. 109, 189). Employees on a CWS are required to switch to a five day, eight hour workday, during the weeks of federal holidays and annual and individual trainings. (G.C. Ex. 12; Tr. 46, 118). Under the eight hour day schedule, employees are entitled to a duty-free thirty minute lunch break. (Tr. 57, 109). Facility employees often take their lunch, working or duty-free, in the facility conference room while the inmates are at lunch in the adjacent food services building. (Tr. 24, 58).

Since at least 2000, the Respondent maintained a roughly 26" television with an attached VCR in the facility conference room at the Low. (Tr. 254). The TV was cataloged in the Federal Prison System (FPS) as accountable property and was assigned to the facility conference room in the Low. (Tr. 254). At the time of the alleged ULP, the TV was unlawfully connected to a cable connection. (Tr. 14).

The facility conference room is similar to a break room. In addition to the TV, it contains a table, two refrigerators, a blender, a microwave oven, a toaster oven, several cabinets, and storage areas for food. (Tr. 30, 216, 223-24). The conference room is also used as a work area for employees completing work orders during their working lunch and watching training videos on the VCR. (Tr. 58, 96, 176). Generally, the TV was utilized by facility employees in the morning to check the weather and plan their workday accordingly;

many facility department duties are performed outdoors over an expansive area. (Tr. 41-42, 203). The TV was also used to monitor current events that might affect the prison population. (Tr. 37-44).

In late 2009 or early 2010, Thomas Roberson, the Low's General Foreman at the time, instructed Julio Luna, a communications technician at the Low's facility department, to fix a 55" TV that was being stored in the facility's communication shop. (Tr. 253-55). General Foreman Roberson also directed Luna to transport the fixed TV to the training center. (Tr. 255). Approximately two years later, in January or February 2012, Roberson was no longer working at the Low. At this time, Luna transported the fixed 55" TV to the facility conference room. (Tr. 165-66). The facility staff replaced the 26" TV with the 55" TV. (Tr. 166).

Around this time, in December 2011, Carlos Rivera became Warden at the Low. (Tr. 214). While conducting "rounds" in early March 2012, Warden Rivera, Associate Warden Scott Nicklin, and Deputy Captain Derrick Wilson discovered the 55" TV in the facility conference room. (Tr. 224, 270-71). The TV was not on. (Tr. 271). Several employees were sitting at a table in the conference room. (Tr. 224). Warden Rivera informed Associate Warden Ralph Hanson, the facility department supervisor, "that there was a large television in the facilities break room and that . . . was [not] appropriate to be in there due to compressed schedules." (Tr. 193). Either Associate Warden Hanson (Tr. 193) or Warden Rivera (Tr. 215), or both, instructed General Foreman William Hibbs, to remove the 55" TV. In turn, General Foreman Hibbs informed the facility staff that the TV needed to be removed because "it's too big of a TV . . . ." (Tr. 199). The staff removed the 55" TV and replaced it with the original 26" TV. (Tr. 200).

A couple of days later, Warden Rivera asked General Foreman Hibbs if the TV was removed. (Tr. 199-200). Hibbs informed Rivera that the larger TV was replaced with a smaller TV. (Tr. 200). Warden Rivera then told General Foreman Hibbs to remove the small TV. *Id.* Hibbs "blew off[]" the request and refused to "take action . . . ." *Id.* After a couple of days, Warden Rivera again inquired if the small TV was removed. *Id.* After that request, General Foreman Hibbs removed the 26" TV at the end of the workday on March 22, 2012. (Tr. 31-32, 200).

Union Steward Lange returned to work the following Monday and noticed that the TV was gone. (Tr. 31-32). Lange and some other facility staff members approached General Foreman Hibbs to inquire about the TV. (Tr. 32-33). Hibbs informed the employees that he took the TV down "as a request from the warden." (Tr. 201).

On April 3, 2012, several facility employees including Union Steward Lange, initiated a meeting with Warden Rivera. (Tr. 187-88). During the meeting, the staff questioned Warden Rivera about the removal of the TV. (Tr. 175, 188). Rivera stated that the TV was removed because the employees were on a CWS and were not permitted to watch TV during a working lunch. (Tr. 175). The staff told Warden Rivera that the TV was used to check the weather and plan outdoor maintenance work. (Tr. 188). Warden Rivera stated that the TV would not be returned. (Tr. 188). There is no evidence that employees ever misused the TV.

POSITIONS OF THE PARTIES

General Counsel

The General Counsel (GC) alleges that the Respondent violated § 7116(a)(1) and (5) of the Statute by failing to provide prior notice and an opportunity to bargain over the removal of the 26" TV from the facility conference room.

In support of its position, the GC asserts that the Respondent failed to provide notice to Union Steward Lange, Union Steward Bergeron, or Union Vice President Roach, prior to removing the 26" TV. The GC disputes the Respondent's assertion that General Foreman Hibbs notified Lange that the 55" TV needed to be removed and that was sufficient notification under the Statute. In the GC's view, such notice was not sufficiently specific to permit the exclusive representative with a reasonable opportunity to request bargaining over the removal of the 26" TV.

The GC maintains that the Respondent had an obligation to bargain over the TV's removal because the TV was a condition of employment. According to the GC, the 26" TV developed into a condition of employment through past practice, over the course of sixteen years. The GC relies on *U.S. Dep't of Transp., FAA, Airway Facilities Ctr., Denver Air Route Traffic Control Ctr., Longmont, Colo.*, 5 FLRA 817 (1981) (*FAA*), where the Authority previously found that a TV became a condition of employment through past practice and as such, the Agency was obligated to bargain over its removal.

Finally, the GC argues that the removal of the TV had more than a de minimis impact on the facility employees' working conditions because the workers utilized the TV to plan their work duties.

Turning to the Respondent's defenses, the GC avers that the unlawful cable connection in the facility conference room does not preclude a ULP finding concerning the Respondent's failure to bargain over the removal of the TV. The GC also contends that the "covered-by" defense is inapplicable to the circumstances of this case because Article 29, Section e of the parties' agreement does not cover the removal of a television.

As a remedy, the GC requests that the Respondent be ordered to cease and desist from failing to provide notice of changes impacting the working conditions of bargaining unit employees. The GC also requests that the Respondent post a Notice signed by the Warden, in all locations at the Respondent's facility in Beaumont, Texas, and send a copy of the notice via electronic mail to all of the Respondent's employees. Finally, the GC seeks a return to the status quo ante regarding the 26" TV. It does not request a status quo ante relief regarding the unlawful cable connection.

Respondent

The Respondent denies that it violated the Statute as alleged in the Complaint. The Respondent relies on *Portsmouth Naval Shipyard, Portsmouth, N.H.*, 49 FLRA 1522 (1994) (*Portsmouth*) and *U.S. Dep't of Interior, Bureau of Reclamation*, 20 FLRA 587 (1985) (*Interior*) to argue that it did not have a duty to substantively bargain the decision to remove the TV. Instead, the Respondent maintains that it was privileged to terminate the unlawful practice of providing cable to the facility conference room, subject only to post-termination impact and implementation bargaining. According to the Respondent, the fact that the TV was removed due to compressed work schedules–not to correct the unlawful practice–is irrelevant. *Dep't of the Navy, U.S. Marine Corps*, 34 FLRA 635, 638-39 (1990) (*Navy*).

Further, the Respondent contends that the TV and the unlawful cable connection were inseparably bound. Accordingly, because the removal of the cable is subject only to impact and implementation bargaining, the removal of the TV is subject only to impact and implementation bargaining. The Respondent claims that it discharged its statutory duty to bargain on April 3, 2012 at the informal meeting after the TV was removed. During the meeting Union Steward Lange proposed reinstallation of the TV, the agency declined, and impasse was reached.

Lastly, Respondent argues that it was not required to give advance notice to, or bargain with, the Union over the TV's removal because the TV was a tool and Article 29 of the parties' collective bargaining agreement (CBA) "squarely" addresses the issue. (R. Br. at 6). Article 29 of the parties' CBA is entitled "Work Site Conditions." (G.C. Ex. 2 at 62). Section e states that the "[e]mployer agrees to provide, maintain, or repair all equipment for staff to fulfill their duties." (*Id.*).

ANALYSIS AND CONCLUSIONS

It is well settled that an agency may not change a condition of employment without fulfilling its bargaining obligations. *E.g., Portsmouth*, 49 FLRA at 1527. Prior to implementing a change in conditions of employment, an agency is obligated, by § 7116(a)(1) and (5) of the Statute, to provide the exclusive representative with notice of the change and an opportunity to bargain over those aspects of the change that are within the duty to bargain. *SSA, Office of Hearings & Appeals, Charleston, S.C.*, 59 FLRA 646, 649 (2004), *pet. for review denied, sub nom. Assoc. of Admin. Law Judges v. FLRA*, 397 F.3d. 957 (D.C. Cir. 2005) (*OHA*). However, there is no obligation to bargain over an agency's decision to terminate an unlawful practice; instead, the agency is required to engage in impact and implementation bargaining, *i.e.*, the procedures to implement the decision. *E.g., Portsmouth*, 49 FLRA at 1527. In any instance where an agency seeks to change conditions of employment, there is no obligation to bargain over the change if the impact on the conditions of employment is de minimis. *OHA*, 59 FLRA at 654.

A. The use of the TV developed into a condition of employment through past practice

Conditions of employment may be established by past practice or agreement. *U.S. DHS, U.S. Customs & Border Prot., El Paso, Tex.*, 67 FLRA 46, 48 (2012). For a past practice to develop into a condition of employment, the practice must have been "consistently exercised over a significant period of time and followed by both parties, or followed by one party and not challenged by the other." *Id.* "Essential factors in finding that a past practice exists are that the practice must be known to management, responsible management must knowingly acquiesce in the practice, and the practice must continue for a significant period of time." *U.S. Dep't of the Air Force, U.S. Air Force Acad., Colo.*, 65 FLRA 756, 758 (2011) (quoting *U.S. DHS, Border & Transp. Directorate, Bureau of Customs & Border Prot.*, 59 FLRA 910, 914 (2004)).

In this case, the Respondent does not contest that the 26" TV and attached VCR constituted a past practice. It is undisputed that the TV was maintained in the conference room for twelve (Tr. 254) to sixteen years (Tr. 53). *See FAA*, 5 FLRA at 820-22 (the use of a TV, over the course of roughly six years, became an established condition of employment). Moreover, the record demonstrates that the practice was consistently exercised with the knowledge and consent of the Respondent: the 26" TV was "accountable property" in the FPS and was assigned by the Respondent for use in the facility conference room. (Tr. 254). Consistent with Authority precedent, I find that the use of the TV in the facility conference room became a condition of employment through past practice. *See FAA*, 5 FLRA at 821.

There is no basis for finding, and the Respondent does not suggest, that the removal of the TV was an exercise of management rights under the Statute. *See e.g., U.S. Dep't of Agric., Food Safety & Inspection Serv., Boaz, Ala.*, 66 FLRA 720, 730 (2012) (when an agency exercises a reserved management right under § 7106(a) of the Statute, the substance of the decision is not subject to negotiation). However, the Respondent contends that it was permitted to remove the TV, to terminate the unlawful cable connection, subject only to impact and implementation bargaining.

In the two cases relied on by the Respondent, *Portsmouth* and *Interior*, the Respondents discovered an unlawful practice and, in good faith, unilaterally implemented a change to conform their conduct to the law. *Portsmouth*, 49 FLRA at 1523-24; *Interior*, 20 FLRA at 594-96. The Authority determined that the Respondents implemented the changes in order to correct an unlawful practice. Accordingly, the Respondents were not obligated to bargain the substance of their decisions but were required to bargain after implementation, over the impact and implementation of the changes. *E.g., Portsmouth*, 49 FLRA at 1522; *Interior*, 20 FLRA at 588-89.

Unlike the Respondents in *Portsmouth* and *Interior*, the Respondent in this case was not endeavoring to abide by the law–its contracts with Time Warner Cable–when it removed the TV. First, had the Respondent acted in good faith, with the intention of terminating the unlawful cable connection, it would have simply removed the cable from the facility TV.

Second, the Respondent concedes that it removed the TV based on compressed work schedules and, it did not discover the unlawful cable connection until "preparing for this litigation." (Tr. 12). Third, the evidence establishes that the Respondent was entirely unconcerned with its cable contracts. No other TVs, aside from the facility TV, were removed at the Respondent's facility. (Tr. 68, 227-28). The Respondent also continued to install TVs in other areas of the prison, even after the facility TV was removed. (G.C. Ex. 8).

I further disagree with the Respondent's contention that Warden Rivera's ignorance of the unlawful cable connection is irrelevant to determining what type of bargaining was required. The Respondent made Warden Rivera's intent relevant by relying on a justification that inherently necessitates the determination of whether it changed its past practice *due to* the illegality of that practice. *Cf. Marine Corps Logistics Base, Barstow, Cal.*, 33 FLRA 196, 202 (1988) (in a case that did not involve a change from an unlawful past practice, the Authority stated that the Respondent's "state of mind . . . ha[s] no bearing *on this case*.") (emphasis added). The Respondent's reliance on *Navy* to argue otherwise is severely misplaced. 34 FLRA at 638-39. In *Navy*, the Respondent revoked a memorandum of understanding (MOU) based on an Authority decision that rendered the MOU unenforceable. The Respondent waited several months after the Authority's decision before it revoked the MOU. *Id.* The Authority held that the delay prior to the revocation was irrelevant because the Respondent's decision was "based on . . . applicable law." *Id.* at 639.

Here, as noted above, it is undisputed that the Respondent did not base its decision to remove the TV due to the Time Warner Cable contracts. Instead, the Respondent seeks to use information that it discovered roughly a year *after* it unilaterally changed bargaining unit employees' conditions of employment as justification for that change. I refuse to strain Authority precedent in such a fashion, simply to benefit the Respondent.

I find that the Respondent was not privileged to unilaterally remove the TV, subject only to post-removal impact and implementation bargaining.

B. The reasonably foreseeable effects of removing the TV were greater than de minimis

As noted earlier, an agency is not obligated to bargain over a change when the impact of the change on the conditions of employment is de minimis. *OHA*, 59 FLRA at 654. To determine whether a change is de minimis, the Authority looks to the nature and extent of the effect. *Id.* The focus is not primarily on the actual effects of the change; it is on the reasonably foreseeable effects of the change. *Id.*

I find that the reasonably foreseeable effects of removing the TV were greater than de minimis. It is undisputed that access to the TV was an integral part of the facility employees' workday. Employees used the TV to plan their workday and create schedules for inmates on work detail. (Tr. 39-40, 173, 188, 203). Most of the work "involves [the] inmates having to go across the compound," outdoors and over an expansive area. (G.C. Ex. 3(b); Tr. 38-39). The Respondent's witness, General Foreman Hibbs, corroborated other

testimony that facility employees utilized the TV for weather updates, to schedule their workday, and the work activities of the inmates. (Tr. 203).

It was also reasonably foreseeable that employees would fail to receive at least some information regarding current events that could affect the prison population and thus affect the safety of facility employees. Facility employees utilized the TV to "keep up with the local and national news, . . . that would affect [the] inmate population." (Tr. 37). According to Lange, it is necessary to know current events "because inmates can change their attitude overnight, depending on what happens on the television." *Id.* When inmates are not working, they almost always have access to a TV. *Id.* In the past, inmates reacted adversely to the events on TV. (Tr. 44). The facility employees supervise upwards of fifteen inmates on work details and some inmates are granted tools. (Tr. 60-61).

The existence of only "a few computer stations" for roughly eleven employees would not foreseeably diminish the loss of the TV in a significant fashion. (Tr. 37). The evidence indicates that employees utilized the TV's VCR for training purposes. (Tr. 96). Furthermore, the credited testimony of Lange reveals that the computers are frequently being used for other reasons and are unavailable. (Tr. 40). Accordingly, there is no reliable alternative means to receive the information the employees obtained from the TV.

Based on the foregoing, I find that the removal of the TV had more than a foreseeable de minimis impact on bargaining unit employees. Consequently, prior to removing the TV, the Respondent was required to provide the Union with notice of the change and an opportunity to bargain over its removal. *OHA*, 59 FLRA at 649.

C. The Respondent failed to provide sufficiently specific notice of the change

Under the Statute, notice of a proposed change in conditions of employment "must be sufficiently specific and definitive to adequately provide the exclusive representative with a reasonable opportunity to request bargaining." *E.g. U.S. Dep't of Def., Def. Commissary Agency, Peterson AFB, Colo. Springs, Colo.*, 61 FLRA 688, 692 (2006).

I credit the testimony of Union Steward Lange and Union Vice President Roach. Both Roach and Lange testified that they did not receive prior notice of the decision to remove the TV. (Tr. 31-32, 106). The evidence indicates that Union Steward Lange did not know about the TV's removal until three days after it occurred, when he noticed it missing from the conference room. (Tr. 31-32). Roach did not know about the removal of the TV until later, when Lange informed her. (Tr. 107). After the TV was removed, it was Union Steward Lange that sought out General Foreman Hibbs. (Tr. 32-33). Hibbs told Lange that "the TV had to come down[]" because it was "what [he] was told to do by the warden." (Tr. 201). In short, aside from the self-serving testimony of Warden Rivera, there is no evidence that the Respondent provided the Union advance notice and an opportunity to bargain over the removal of the 26" TV.

Prior to the removal of the 26" TV, during the time that the 55" TV was in the facility conference room, General Foreman Hibbs informed the staff that the 55" TV needed to be removed because "it's too big of a TV . . . ." (Tr. 199). The parties presented conflicting testimony as to whether Union Steward Lange was present at that meeting. However, even if Lange was present at that meeting, the record in this case does not establish that Lange received specific and definitive notice of the Respondent's decision to remove the 26" TV. When Hibbs met with the facility staff, he simply stated that the TV needed to be removed due to its size. *See U.S. DHS, U.S. Customs & Border Prot. El Paso, Tex.*, 65 FLRA 422, 424 (2011) (*Customs*) ("notice must apprise the exclusive representative of the scope and nature of the proposed change in conditions of employment, the certainty of the change, and the planned timing of the change.").

General Foreman Hibbs defined the scope of the change as the removal of the large TV due to its size. (Tr. 199). The staff reasonably interpreted Hibbs statement to signify that they needed to "downsize" and were permitted to restore the 26" TV. (Tr. 96, 175). The facility employees' complaints subsequent to the removal of the 26" TV further suggest that General Foreman Hibbs failed to adequately define the parameters of the change. *See Customs*, 65 FLRA at 424 ("notice must be sufficient to inform the exclusive representative of what will be lost").

Accordingly, I find that the Respondent failed its statutory duty to furnish sufficiently specific notice regarding the removal of the TV.

D. The removal of the TV is not "covered by" the parties' agreement

Under the "covered by" doctrine, a party is not required to bargain over conditions of employment that already have been resolved through bargaining. *E.g., Nat'l Air Traffic Controllers Ass'n*, 61 FLRA 437, 441-42 (2006) (*NATCA*). To assess whether a particular proposal is "covered by" the parties' agreement, the Authority applies a two-prong test. *Id.*

Under the first prong, the Authority examines whether the subject matter is expressly contained in the agreement. *Id.* Article 29 of the parties' agreement states that "[t]he employer agrees to provide, maintain, or repair all equipment for staff to fulfill their duties." (G.C. Ex. 2 at 62). The plain language of Article 29 does not permit the Respondent to *remove* a *television*. Moreover, the removal of a TV does not modify or conflict with the plain language of Article 29. *See NATCA*, 61 FLRA at 441-42 (the subject matter is expressly contained if it would modify and/or conflict with the express terms of the contract). Clearly, the removal of the TV is not expressly contained in Article 29.

Under the second prong, the Authority determines whether the matter is "inseparably bound up with and . . . thus [is] plainly an aspect of . . . a subject expressly covered by the contract." *Id.* at 441 (quoting *U.S. Dep't of HHS, SSA, Balt., Md.*, 47 FLRA 1004, 1018 (1993)). This analysis considers the parties' intent and bargaining history. *Id.* Here, the Respondent does not cite bargaining history or any other evidence to demonstrate that its

decision to remove the TV is inseparably bound up with Article 29. The Respondent also failed to explain, under its own reasoning, how or why the removal of the TV is an aspect Article 29. Thus, I find that the Respondent's defense in this matter is without merit.

REMEDY

The purpose of a status quo ante remedy is to place the parties in the positions they would have been absent the Respondent's unlawful conduct. Unless special circumstances exist, a status quo ante remedy is appropriate where, as here, an agency has refused to bargain over the substance of a matter that is within its duty to bargain. *U.S. DOL, Wash., D.C.*, 38 FLRA 899, 913 (1990). However, a status quo ante remedy cannot be ordered if it would result in the restoration of an unlawful practice. *E.g., Portsmouth*, 49 FLRA at 1532.

In this case, the GC does not dispute the illegality of the cable connection and therefore, does not seek a return of the cable. Rather, the GC seeks the return of the TV. Because the Respondent has not established any special circumstances to show that a status quo ante remedy is unwarranted with regard to the TV, I will direct the Respondent to return the 26" television to the Low institution's facility conference room.

The Respondent is also ordered to cease and desist from changing conditions of employment without satisfying its bargaining obligations. The Respondent is directed to bargain, upon the request of the Union, over the removal of televisions. I will incorporate the electronic dissemination into the Order in accordance with the Authority's decision that ULP notices should, as a matter of course, be posted both on bulletin boards and electronically. *See U.S. DOJ, Fed. BOP, Fed. Transfer Ctr., Okla. City, Okla.*, 67 FLRA 221 (2014).

CONCLUSION

I find that the Respondent violated § 7116(a)(1) and (5) of the Statute by removing the facility conference room TV and failing to provide the Union with prior notice of, and an opportunity to bargain over, the change.

Accordingly, I recommend that the Authority adopt the following Order:

ORDER

Pursuant to § 2423.41(c) of the Authority's Rules and Regulations and § 7118 of the Federal Service Labor-Management Relations Statute (Statute), the Federal Bureau of Prisons, Federal Correctional Complex, Beaumont, Texas, shall:

1. Cease and desist from:

(a) Unilaterally removing televisions or making other changes in conditions of employment without first notifying the American Federation of Government Employees, AFL-CIO, Local 1010 (Union), the exclusive representative of bargaining unit employees, about any such proposed changes and providing the Union an opportunity to negotiate concerning the change.

(b) In any like or related manner, interfering with, restraining, or coercing bargaining unit employees in the exercise of their rights assured by the Statute.

2. Take the following affirmative actions in order to effectuate the purposes and policies of the Statute:

(a) Restore the 26" TV to the Low institution's facility conference room, where it existed prior to its removal.

(b) Notify, and upon request, negotiate with the Union over any changes to the Low institution's facility conference room television.

(c) Post at its facilities where bargaining unit employees represented by the Union are located, copies of the attached Notice on forms to be furnished by the Federal Labor Relations Authority. Upon receipt of such forms, they shall be signed by the Warden, FCC Beaumont, Texas, and shall be posted and maintained for 60 consecutive days thereafter, in conspicuous places, including all bulletin boards and other places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that such Notices are not altered, defaced, or covered by any other material.

(d) Disseminate a copy of the Notice signed by the Warden through the Respondent's e-mail system to all bargaining unit employees. This Notice will be sent on the same day that the Notice is physically posted.

(e) Pursuant to section 2423.41(e) of the Authority's Rules and Regulations, notify the Regional Director, Dallas Region, Federal Labor Relations Authority, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply.

Issued, Washington, D.C., February 18, 2015

SUSAN E. JELEN
Administrative Law Judge

NOTICE TO ALL EMPLOYEES

POSTED BY ORDER OF THE

FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the Federal Bureau of Prisons, Federal Correctional Complex, Beaumont, Texas, violated the Federal Service Labor-Management Relations Statute (Statute), and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT unilaterally remove televisions or make other changes in conditions of employment without first notifying the American Federation of Government Employees, AFL-CIO, Local 1010 (Union), the exclusive representative of bargaining unit employees, about any such proposed changes, and provide the Union an opportunity to negotiate concerning the change.

WE WILL NOT in any like or related manner, interfere with, restrain, or coerce bargaining unit employees in the exercise of their rights assured to by the Statute.

WE WILL restore the 26" TV to the Low institution's facility conference room, where it existed prior to its removal.

WE WILL notify, and upon request, negotiate with the Union concerning any changes to the Low institution's facility conference room television.

____
(Agency/Respondent)

Dated: __________________ By: ____
(Signature) (Title)

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

If employees have any questions concerning this Notice or compliance with any of its provisions, they may communicate directly with the Regional Director, Washington Regional Office, Federal Labor Relations Authority, whose address is: 525 S. Griffin Street, Suite 926, Dallas, TX, 75202 and whose telephone number is: (214) 767-6266.