65 FLRA No. 183

UNITED STATES
DEPARTMENT OF THE AIR FORCE
325th MISSION SUPPORT GROUP SQUADRON
TYNDALL AIR FORCE BASE, FLORIDA
(Respondent)

and

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 3240
(Charging Party/Union)

AT-CA-06-0163

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DECISION AND ORDER

May 31, 2011

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Before the Authority: Carol Waller Pope, Chairman, and Thomas M. Beck and Ernest DuBester, Members

I. Statement of the Case

This unfair labor practice (ULP) case is before the Authority on exceptions to the attached decision of the Administrative Law Judge (Judge) filed by the General Counsel (GC). The Respondent filed an opposition to the GC's exceptions.

The complaint alleges that the Respondent violated § 7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute (the Statute) when the Respondent reassigned two bargaining unit employees without giving the Union notice and an opportunity to negotiate to the extent required by the Statute. The Judge found that the Respondent did not violate the Statute and ordered that the complaint be dismissed.

For the reasons set forth below, we remand the case to the Judge for further proceedings consistent with this decision.

II. Background and Judge's Decision

A. Background

The bargaining unit represented by the Union includes laborers whose duties involve picking up garbage, performing ground maintenance, and distributing linens and supplies to housekeepers who maintain lodging areas, collectively known as the Sand Dollar Inn, at Tyndall Air Force Base (Tyndall AFB). Judge's Decision at 2. The lodging areas, which provide temporary accommodations for visitors, are located at various locations on the base. *Id.*

In May 2005, a lodging facility that had provided base housing was converted into an additional lodging area for visitors. This lodging area, which was designated Wood Manor, became part of the Sand Dollar Inn. *Id.* at 2-3. Two-, three-, and four-bedroom family units in Wood Manor replaced one-bedroom apartments in two other buildings that were closed. *Id.* at 3.

In January 2006, the Respondent reassigned two bargaining unit employees; one employee was assigned from another work site to Wood Manor (Employee A) and the other employee was assigned from Wood Manor to another work site (Employee B). After learning of these assignments, the Union filed a ULP charge. *Id*. at 1-2.

B. Judge's Decision

Before the Judge, the GC argued that the Respondent violated the Statute when it assigned the employees duties at different work sites without giving the Union notice and an opportunity to negotiate. *Id.* at 3. The GC asserted that the Respondent, by changing the location where the employees performed their assigned work, changed the employees' conditions of employment and that the impact of the change was more than de minimis. *Id.* at 3-4. In response, the Respondent "acknowledge[d] that the laborers primarily work some locations more often than others for purpose of continuity," but argued that, because the employees are required to work at all of the lodging areas as assigned, no change in the employees' conditions of employment occurred and that, even if such a change occurred, it was de minimis.[1] *Id.*

1. The Respondent also noted that the opening of Wood Manor was the subject of a separate ULP complaint. The Judge found that this complaint resulted in a finding that the Respondent had violated the Statute. Judge's Decision

The Judge concluded that the Respondent had not changed the employees' conditions of employment. *Id.* The Judge rejected the GC's assertion that "'a change in work location is itself a change in a condition of employment[,]'" noting that this principle does not apply in all circumstances. *Id.* at 4-5 (quoting *U.S. Dep't of Health & Human Servs. SSA, Balt., Md. and SSA, Fitchburg, Mass. Dist. Office, Fitchburg, Mass.*, 36 FLRA 655 (1990) (*SSA Fitchburg*)). The Judge found that the Authority has "made clear that determining a change in a condition of employment requires case-by-case analysis." *Id.* at 5 (citing *U.S. Immigration & Naturalization Serv., Houston Dist., Houston, Tex.*, 50 FLRA 140 (1995) (*INS, Houston*)). According to the Judge, even in *SSA Fitchburg*, the case primarily relied upon by the GC, the Authority noted that "'not all changes in office space will give rise to a bargaining obligation.'" *Id.* at 5-6 (quoting *SSA Fitchburg*, 36 FLRA at 668).

The Judge found that this case differed significantly from *SSA Fitchburg.* The Judge noted that, whereas the employees in *SSA Fitchburg* were expected to perform their duties in the same location on a daily basis, the laborers in this case had no such expectation. *Id.* at 6. The Judge found that "[t]here were no fixed assignments and no permanent duty stations at particular locations." *Id.* at 6-7. The Judge found, in this regard, that the Respondent's policy and practice "was to assign and alter which laborers would perform their duties at the various . . . locations . . . depending upon leave, availability, work load, and mission necessity." *Id.* at 6; *see also id.* at 3. Additionally, the Judge found that laborers were hired pursuant to a position description (PD) that clearly indicated that laborers were expected to perform the full range of custodial duties at all lodging locations. *Id.* at 6.

As further support for his conclusion, the Judge noted that the record showed that the work assignments at issue did not: (1) "result in a change to the substantive duties required of any laborer in the . . . unit"; (2) require a personnel action; (3) involve a formal detail; or (4) result in modification of pay. [2] *Id.* at 7. The Judge also noted that no evidence had been presented regarding "a past practice of notice and negotiation over the assignment of a primary work location at a particular lodging location . . . ." *Id.* at 7-8. Additionally, the Judge determined that, "[w]hile there was some evidence of health issues introduced on the part of [Employee A]," it was "far from clear or persuasive" that any health problem was caused by working at Wood Manor. *Id.* at 8.

The Judge found that, even if there had been a change in the employees' conditions of employment, the impact of the change was de minimis because the laborers were subject to performing substantially similar duties at the various lodging locations operated by the Respondent. *Id.* at 9. In this regard, the Judge found that: (1) the laborers were hired with the understanding that they would have to work at the various lodging locations in the Sand Dollar Inn System; (2) none of them had worked exclusively at the very same location for years; (3) their work assignments were made orally as needed; and (4) there was no evidence in the record that the assignment to different locations had any impact on the employees' pay. *Id.*

Accordingly, the Judge recommended that the complaint be dismissed.

III. Positions of the Parties

A. GC's Exceptions

The GC contends that the Judge erred by finding that the Respondent's action in reassigning Employees A and B did not constitute a change in the employees' conditions of employment. In particular, the GC contends that the Judge incorrectly interpreted the phrase in *SSA, Fitchburg* that '"not all changes in office space will give rise to a bargaining obligation"' to mean that "not all changes in office space constitute *changes in conditions of employment* . . . ." Exceptions at 2 (quoting Judge's Decision at 5) (emphasis in original). According to the GC, the Judge should have interpreted this language as meaning that "*some* changes in office space may not

at 3 n.1 (citing *U.S. Dep't of the Air Force, 325th Mission Support Group Squadron, Tyndall Air Force Base, Fla.*, Case No. AT-CA-05-0287, (Nov. 8, 2006), ALJ Rep. No. 202 (Dec. 27, 2006)). The decision did not include a status quo ante remedy. *Id.* The Judge found that, because no exceptions were filed to that decision, any assignment to the Wood Manor location made in January 2006 --"some eight months after operations started at that location" -- was not an assignment to a newly created location. *Id.*

2. The Judge noted that, in July 2006, the Respondent began treating Wood Manor differently from its other temporary lodging areas by using different time keeping methods and altering the supervisory structure. The Judge stated that, while these changes "give rise to legitimate questions regarding changes in conditions of employment, those issues were not raised by the [c]omplaint" in this case. Judge's Decision at 8 n.2.

give rise to a bargaining obligation because their effects were no more than *de minimis* – not because they were not changes in conditions of employment at all." *Id*. at 2-3 (emphasis in original).

The GC also argues that the Judge erred in finding that the reassignments at issue did not differ from past practice. *Id*. at 3. The GC asserts that, in concluding that "'assigning laborers to different lodging locations was an expected part of the job for laborers[,]'" the Judge "omits" that there is "no history of routinely changing the *permanent* duty stations of employees . . . ." *Id.* (emphasis in original) (quoting Judge's Decision at 6). The GC contends that the evidence instead shows that "past routine assignments to alternate work locations were *only* to cover for absences based on leave, illness, scheduled days off or some specific overriding project." *Id.* at 3-4 (emphasis in original). According to the GC, the only evidence of a permanent reassignment is the example cited by the Judge, in which the Agency accommodated a Union official by assigning him to a work area with access to a telephone. *Id*. at 4. The GC notes that, although the Union acquiesced regarding this change and did not request to bargain, its acquiescence cannot be "construed as a waiver of the Union's right to negotiate in this instance." *Id*.

The GC further contends that the Judge erred by relying on the PD. *Id*. at 5. The GC asserts that the PD does not "necessarily reflect everything that that the laborers do or don't do" and that the Respondent does not strictly adhere to the PD. *Id.* (citing Tr. at 208, 230-31).

The GC also contends that the Judge erred in suggesting that "no change [in conditions of employment] occurred until July 2006 . . . ." *Id*. at 8. The GC contends that the Respondent's July actions "simply confirmed what was already true -- that the Wood Manor assignment was separate and unique and not simply a routine assignment to an alternate work location . . . ." *Id.*

The GC further contends that the Judge erred in finding that any asserted change in conditions of employment was de minimis. *Id*. at 9. The GC asserts that the Judge omitted pertinent facts that prevented a full evaluation of the nature and extent of the change. *See id.* The GC argues that these facts would have shown that Wood Manor is substantially different from the other locations. *Id.* at 9-10. In this regard, the GC contends that the Judge omitted that: (1) Wood Manor consists of fifty-two separate buildings that can house families; (2) the size of the units increases the amount of trash and outside work; (3) outside work has virtually no shade; (4) there is only one break area and the availability of water is limited; (5) the site is in a remote location, a few miles from the other locations; (6) there are no restaurants or food services within walking distance; and (7) employees must use personal vehicles to get to the site or go to lunch. *Id*. at 10.

The GC also asserts that, in reaching the de minimis determination, the Judge improperly applied Authority precedent. *Id*. at 11-12. The GC contends that Employee A's work environment changed because "he was exposed to the outdoors more . . . ." *Id*. at 11. The GC asserts that this is a "significant factor considering the Florida location[,] even if [his] heart condition and medical emergencies are not taken into account . . . ." *Id*. (citing Judge's Decision at 8). According to the GC, Employee A's increased exposure to the Florida heat has as much impact as an employee's loss of a window in *SSA, Fitchburg* and an employee's loss of a window and office space in *Pension Benefit Guaranty Corp.*, 59 FLRA 48 (2003) (*PBGC*) (then-Member Pope dissenting in part as to another matter). *Id*. at 11-12.

B. Respondent's Opposition

The Respondent asserts that there was no change to the employees' conditions of employment. According to the Respondent, laborers do not have fixed duty stations, are routinely reassigned as needed, and were routinely assigned to Wood Manor, both before and after the facility was opened. Opp'n at 2-4 (citing Tr. at 33, 36, 42, 221, 224-225, among others).

The Respondent contends that the Judge appropriately considered the PD in determining whether there was a change in the employees' conditions of employment. *Id*. at 4-6 (citing *Office of Program Operations, Field Operations, SSA, S.F. Region*, 20 FLRA 97, 99-100 (1985)).

The Respondent further asserts that laborer duties and other terms or conditions of employment are essentially the same regardless of the location where the laborer performs those duties. *See id* at 6-7. Moreover, according to the Respondent, any change that occurred at Wood Manor took place in May 2005 or July 2006 and was not a part of the complaint. *See id.* at 8-9.

The Respondent contends that, because Employee B is "primarily used as a 'floater' to cover

the various areas of lodging as needed or to perform other non-routine duties[,]" no change occurred with respect to his condition of employment. *Id.* at 9-10. According to the Respondent, although Employee B was "directed to work at Wood Manor" a couple of days a week from July 2005 until January 2006, he was never assigned to that location. *Id*. at 10.

The Respondent further asserts that, even if there was a change in the employees' conditions of employment, the effect, or reasonably foreseeable effect, of the change was no more than de minimis. *Id*. In this regard, the Respondent contends that: (1) the duties of the laborers are essentially the same regardless of the lodging area in which the employee works; (2) there was no change in employees' hours or compensation; (3) the employees routinely were asked to work at Wood Manor; (4) the location of the work area from the front gate is the same as other locations and is not remote; (5) employees at Wood Manor have access to water, break facilities, and food; and (6) there is no evidence to establish that the alleged change was permanent. *Id.* at 10-18. The Respondent also disputes the GC's contention that Employee's A assignment to Wood Manor exacerbated his medical condition. *Id.* at 14-16.

IV. Analysis and Conclusions

The GC contends that the Judge erred in concluding that: (1) the Respondent did not change the employees' conditions of employment; and (2) even if there was a change in the employees' conditions of employment, such change was de minimis.

The Authority has held that, in order to determine whether an agency's action violated the Statute, there must first be a finding that the agency changed unit employees' conditions of employment. *See, e.g., INS, Houston*, 50 FLRA at 143. The determination of whether a change in conditions of employment has occurred involves a case-by-case analysis and an inquiry into the facts and circumstances regarding the agency's conduct and employees' conditions of employment. *See id.* at 144; *92 Bomb Wing, Fairchild Air Force Base, Spokane, Wash.*, 50 FLRA 701, 704 (1995). Also, in determining whether a judge's factual findings are supported, the Authority looks to the preponderance of the record evidence.[3] *See, e.g., U.S. Dep't of Transp., Fed. Aviation Admin.*, 64 FLRA 365, 368 (2009) (Member Beck concurring).

Moreover, an agency is obligated to bargain over the impact and implementation of a change only where that change has more than a de minimis effect on conditions of employment. *See, e.g., PBGC*, 59 FLRA at 50. In assessing whether the effect of a change in conditions of employment is more than de minimis, the Authority looks to the nature and extent of either the effect or the reasonably foreseeable effect of the change. *Id.* at 51.

Applying the above legal standards to the facts in this case, we find that the Judge failed to make the necessary factual findings for us to determine whether the Respondent's reassignments of Employees A and B constituted a change in their conditions of employment, and, if so, whether such change was more than de minimis.

With respect to the change in conditions of employment, the Judge found that, within the Sand Dollar Inn, there were "no fixed assignments and no permanent duty stations at particular locations" and that the Respondent's policy and practice "was to assign and alter which laborers would perform their duties at the various . . . locations . . . depending upon leave, availability, work load[,] and mission necessity." Judge's Decision at 6-7. As further support for his conclusion, the Judge noted that the record showed that the work assignments at issue did not "result in a change to the substantive duties required of any laborer in the . . . unit." *Id*. at 7.

The GC disputes the Judge's findings, asserting that the Judge, in so holding, "omitted" pertinent facts, specifically that there was "no history of routinely changing the *permanent* duty stations of employees" and that "'past routine assignments to alternate work locations were *only* to cover for absences based on leave illness, scheduled days off or some specific overriding project." Exceptions at 3- 4 (citing Judge's Decision at 6) (emphasis in original). Moreover, the GC argues that the Judge omitted pertinent facts that would have shown that Wood Manor is substantially different from other locations, including that: (1) Wood Manor consists of fifty-two

3. Member Beck notes that, for the reasons stated in his separate opinions in *U.S. Dep't of the Air Force, 12th Flying Training Wing, Randolph Air Force Base, San Antonio, Tex.*, 63 FLRA 256, 262-63 (2009) (Concurring Opinion of Member Beck) and *U.S. Dep't of the Air Force, Air Force Materiel Command Space and Missile Sys. Ctr., Detachment 12, Kirtland Air Force Base, N.M.*, 64 FLRA 166, 179-80 (2009) (Concurring Opinion of Member Beck), he reviews the Judge's factual findings using a "substantial evidence in the record" standard rather than a "preponderance" standard.

separate buildings that can house families; (2) the size of the units increases the amount of trash and outside work; (3) outside work has virtually no shade; (4) there is only one break area and the availability of water is limited; (5) the site is in a remote location, a few miles from the other locations; (6) there are no restaurants or food services within walking distance; and (7) employees must use personal vehicles to get to the site or go to lunch. *Id.* at 9-10.

The Judge failed to discuss -- and thus failed expressly to credit or discredit -- much of the evidence presented regarding the employees' reassignments, including the duration and permanence of the employees' assignments,[4] as well as the substantive duties required of each employee at the relevant locations.[5] Because the Judge failed to make the necessary factual findings, we are unable to determine whether the Respondent's reassignment of Employees A and B constituted a change in their conditions of employment.

The Judge also found that, even if there had been a change in the employees' conditions of employment, the impact of the change was de minimis because the laborers were subject to performing substantially similar duties at the various lodging locations operated by the Respondent. Judge's Decision at 9. As noted above, the Judge failed to discuss much of the evidence regarding the substantive duties required of Employee A and Employee B at the relevant work locations. As a result, we are unable to determine whether the change in the employees' conditions of employment, if such change occurred, was more than de minimis.

Accordingly, because we are unable to determine whether the Respondent's reassignment of Employees A and B constituted a change in their conditions of employment, and, if so, whether, such change was more than de minimis, we remand the case to the Judge for further consideration. On remand, consistent with this decision, the Judge should, in determining whether a violation of the Statute occurred, evaluate the contrary evidence and make the necessary factual findings regarding the reassignments of Employees A and B.

V. Order

The case is remanded to the Judge for further consideration consistent with this decision.

4. We note that the record contains evidence that appears to contradict the Judge's finding that there were no fixed assignments or permanent duty stations at particular locations. Employee A testified that, before being assigned to Wood Manor, he was assigned to perform laborer duties in the same lodging area -- buildings 845, 1580, and 1582 -- for approximately "six years." Tr. at 95. Employee B testified that he performed work at Wood Manor for approximately six to eight months, until Employee A was reassigned there and he was reassigned to another location, and that he worked at Buildings 1615 and 1617 for a long period of time before he was assigned to Wood Manor. *See* Tr. at 139-140 &151. Additionally, there was testimony that laborers are assigned sometimes to a different location when circumstances require it -- e.g., to cover for an employee who may be on sick or annual leave, or to perform other tasks -- but that afterwards the laborer would return to his or her "regular" or "normal" assignment. Tr. at 36, 42, 77. The Judge, however, failed to discuss this testimony in his decision.

5. The Judge noted that, in July 2006, the Respondent began treating the temporary lodging area known as Wood Manor differently than its other temporary lodging areas by utilizing different time keeping methods and altering the supervisory structure for that location. Judge's Decision at 8 n.2. We note, as did the Judge, that the Respondent's action in this regard were not raised by the complaint and do not affect whether the violation alleged in the complaint actually occurred. *See id.*; GC Ex. 1(c); *see also, e.g., Air Force Flight Test Ctr., Edwards Air Force Base, Calif.*, 55 FLRA 116, 120-21 (1999) (Chair Segal concurring) (agency conduct after alleged change in working conditions not relevant with respect to whether change occurred on date alleged).

Office of Administrative Law Judges

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

Richard S. Jones, Esquire
For the General Counsel

Major Robert M. Gerleman
For the Respondent

George White, President
For the Charging Party

Before: CHARLES R. CENTER
Chief Administrative Law Judge

DECISION

Statement of the Case

On February 6, 2006, the American Federation of Government Employees, Local 3240, AFL-CIO (Union) filed an unfair labor practice charge against the U.S. Department of the Air Force, 325th Mission Support Group Squadron, Tyndall Air Force Base (AFB), Florida (Respondent) alleging a "Change in Working Condition". GC-1(b). In the charge, the Union requested that the Federal Labor Relations Authority (Authority) issue a temporary restraining order, a legal remedy not provided by the Federal Service Labor-Management Relations Statute (Statute). 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-1(c). The Respondent filed a timely Answer on August 15, 2006 in which it denied the alleged violation of the Statute. GC-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-1(g). Neither the General Counsel nor the Charging Party opposed the motion and it was granted. GC-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. This Decision is based upon consideration of all of the evidence, including the demeanor of witnesses, and of the post-hearing briefs submitted by the parties.

Findings of Fact

The Respondent is an "agency" within the meaning of §7103(a)(3) of the Statute. GC-1(f). The Union is a "labor organization" as defined by §7103(a)(4) of the Statute and is the exclusive representative of a unit of the Respondent's employees appropriate for collective bargaining. GC-1(b, c, f).

The bargaining unit includes laborers whose duties involve activities such as picking up garbage, performing ground maintenance, and distributing linens and supplies to the housekeepers who clean and maintain lodging areas collectively called the Sand Dollar Inn at Tyndall AFB, Florida. R-11, T-35, 138. These lodging areas exist at various locations on the base for the purpose of temporarily accommodating visitors to the base. T-33, 42, 77, 144, 221. Occupants of such lodging include students attending training, military and civilian personnel on temporary duty, and arriving or departing military families awaiting or clearing base housing. T-95 to 99.

In May 2005, the number of locations on Tyndall AFB at which the Sand Dollar Inn conducted temporary lodging operations was increased when 52 units of what was formerly base housing were converted into a temporary lodging facility designated as Wood Manor.[1/] T-41 to 43, 97 to 99, 178. These two, three and four bedroom family units replaced one-bedroom apartments in buildings 1615 and 1617 that were closed at another location on the

[1/] Although the opening of this location was the subject of a separate unfair labor practice complaint that resulted in an administrative law judge decision finding the Respondent violated the Statute, the decision did not include a *status quo ante* remedy and the Respondent was allowed to continue operations at this location. As no exceptions to that decision were filed, I find that any assignment to this location made in January 2006, some eight months after operations started at that location was not an assignment to a newly created location. *See Case No. AT-CA-05-0287.*

base. R-1, T-96, 97, 205, 206. The Agency's policy and practice for determining which laborers would perform the duties at each of the lodging locations were not changed when operations at the Wood Manor housing area were initiated and buildings 1615 and 1617 closed. T-178 to 185, 187 to 192, 203.

While laborers are routinely assigned to perform their laborer duties in the same lodging areas within the Sand Dollar Inn system each day for reasons of continuity and familiarity, responsibility for a particular lodging area is not fixed by any position description or personnel action, and the lodging area(s) to which a particular laborer is assigned on any given day is determined by leave, mission necessity or other factors. T-32 to 36, 49, 156, 157, 184 to 198, 202, 203, 224, 225. The laborer position description applicable to these bargaining unit employees states that the purpose of the laborer position is to "perform the full range of custodial duties in the Lodging areas", using a plural to describe the locations. R-11. The position description also indicates that laborers are to "Maintain ground maintenance of all Lodging areas in a timely and efficient manner." R-11.

Positions of the Parties

The General Counsel

The General Counsel contends that the Respondent violated §7116(a)(1) and (5) of the Statute on or about January 9, 2006, when it assigned bargaining unit laborers James Stephens and Chuck Hamilton to duties at different primary work locations without giving the Union notice and an opportunity to negotiate. GC-1(c); GC's Post-Hearing Brief, p. 10. The General Counsel maintains that in so doing, the Respondent changed the conditions of employment of Stephens and Hamilton and that the impact of that change was more than *de minimis*. The General Counsel essentially asserts that any change in the location where an employee performs his or her assigned work constitutes a change to his or her conditions of employment.

The Respondent

The Respondent contends that there was no change to a condition of employment because the duties of the laborers in question require them to work at all of the lodging areas at Tyndall AFB as assigned. Although the Respondent acknowledges that the laborers primarily work some locations more often than others for purpose of continuity, they have no fixed lodging location and are assigned duties at different lodging locations when required by mission necessity. Furthermore, the Respondent also asserts that even if a change in conditions of employment were to be found, that the foreseeable effect was no more than *de minimus*.

Discussion and Analysis

I. No Change to Conditions of Employment

The Complaint alleges the Respondent committed an unfair labor practice by changing the conditions of employment for a bargaining unit without giving notice and an opportunity to bargain. To conclude that the Respondent violated the Statute, it must be found that: (1) the Respondent's action in assigning two employees to work at differing locations within its temporary lodging system constituted a change in unit employees' conditions of employment; (2) such a change gave rise to duty to bargain; and (3) the Respondent failed to fulfill its duty to bargain. *See U.S. Immigration and Naturalization Service, Houston District, Houston, Texas*, 50 FLRA 140, 143-44 (1995) (*INS Houston*); *Dep't of Veterans Affairs, Veterans Administration Medical Center, Veterans Canteen Service, Lexington, Kentucky*, 44 FLRA 179, 187 (1992). For the reasons set forth below, I conclude that no change was made to the conditions of employment for bargaining unit employees in this case. Thus, there was no violation of the Statute and the Complaint should be dismissed.

The post hearing brief filed by the General Counsel cites a single case in support of the assertion that "a change in work location is itself a change in a condition of employment." *U.S. Dep't of Health and Human Services, Soc. Sec. Admin., Baltimore, Maryland and Soc. Sec. Admin., Fitchburg, Massachusetts District Office, Fitchburg, Massachusetts*, 36 FLRA 655, 668 (1990) (*SSA Fitchburg*). While that general axiom can be accurate under some circumstances, it is not true under all circumstances, as was pointed out in *INS Houston*, wherein the Authority made clear that determining a change in a condition of employment requires case-by-case analysis. *INS Houston* at 144. In fact, the Authority pointedly indicated in the *SSA Fitchburg* decision that ". . . not all changes in office space will give rise to a bargaining obligation. . .", *SSA Fitchburg* at 668. Thus, even the decision cited by the General Counsel stands for the proposition that not every change in the location at which an employee performs work will constitute a change in conditions of employment.

The portion of the *SSA Fitchburg* decision relevant to changing conditions of employment involved rearranging the seating location of four employees in a Social Security field office with sixteen bargaining unit employees. This change was prompted in part by the acquisition of new office furniture, a desire to gain efficiency from the centralization of Teleclaim work, and moving claims representatives who conducted in-person interviews closer to the clientele. While the Authority's decision did not directly address the question of whether such action constituted a change in conditions of employment because the unexplained determination of the judge was not challenged, the Authority did consider an exception alleging that the action was *de minimis*, and concluded that it was not. *SSA Fitchburg* at 668. However, it is important to note that the precedent relied upon by the Authority, *Library of Congress v. FLRA*, 699 F.2d 1280, 1286 (D.C. Cir. 1983) and *National Treasury Employees Union, Chapter 83 and Department of the Treasury, Internal Revenue Service*, 35 FLRA 398, 414 (1990), involved cases wherein entire bargaining units were moved to completely new physical locations, whereas *SSA Fitchburg* only involved moving four employees to different cubicles within existing physical workspace already assigned to the bargaining unit. Nonetheless, the precedent developed in cases involving the relocation of entire bargaining units to new physical locations, was, by virtue of the Authority's *SSA Fitchburg* decision, extended to cover the reseating of four employees at different cubicles in the same work space with little to no discussion for why such an extension was consistent with the Statute. While the Respondent's failure to file an exception to the judge's determination that such an action constituted a change in conditions of employment may explain why this extension was enacted with little explanation, the Authority was cognizant enough of the breadth of the expansion to cogently advise for future reference that ". . . not all changes in office space will give rise to a bargaining obligation. . .". *SSA Fitchburg* at 668.

While the Authority may have an opportunity to revisit and more fully explain the expansion it set forth in *SSA Fitchburg*, the precedent of that does not require a conclusion that assigning workers to perform laborer duties at differing temporary lodging locations on Tyndall AFB constituted a change to the conditions of employment for that bargaining unit. In fact, an essential difference between the Social Security employees in *SSA Fitchburg* and the laborers in this case leads to the opposite conclusion. The idea that altering the seating arrangements of employees within an established area of bargaining unit work space constitutes more than a *de minimis* change to conditions of employment when there is no change in the work being done is one upon which reasonable minds may differ; however, the issue ceases to be debatable when such alteration of work locations is a routine part of an agency's policy and practice. Because assigning laborers to different lodging locations was an expected part of the job for laborers working within the Sand Dollar Inn system, a case-by-case analysis of the facts distinguishes this case from the precedent of *SSA Fitchburg*.

In this case, the policy and practice of the Respondent was to assign and alter which laborers would perform their duties at the various lodging locations requiring their custodial services depending upon leave, availability, work load and mission necessity. Each of the laborers was hired pursuant to a position description that made clear the ability to perform the full range of custodial duties required at all of the locations was essential. The testimony from witnesses called by both sides indicated that laborers are typically assigned to work a particular area with which they are familiar, but that each employee was subject to being assigned to other areas when circumstances required it. Sometimes these differing assignments were made on a daily basis due to sick leave or other reasons, sometimes they would be on a weekly basis or longer to accommodate annual leave, and other times they took the form of altering the particular lodging area assigned to an employee. Whether the cause was employee unavailability, mission necessity, accommodating a union official by assigning him work in an area with access to a telephone, work loads or other reasons, the one constant that each of the laborers understood was that working at a particular location within the Sand Dollar Inn lodging system was never a certainty. There were no fixed assignments and no permanent duty stations at particular locations. It is the established fluidity in the assignment of laborer duties performed by the bargaining unit employees, as outlined in the position description and implemented in the policies and practices of the Respondent, which makes the precedent of *SSA Fitchburg* inapplicable in this case.

In *SSA Fitchburg*, there was no position description indicating that the ability to work at each cubicle was a requirement and that the employee would have to be able to perform the duties required at each cubicle. Further, there is nothing in the record demonstrating that Social Security Administration (SSA) field office managers assigned the employees duties at different cubicles on a routine basis. Thus, those SSA employees arguably

had some reasonable expectation of performing their duties in the same cubicle on a daily basis and it can be argued that altering those static seating assignments impacted a condition of their employment in more than a *de minimis* manner. While I find such an argument dubious given the fact that bargaining unit employees continued to do the same type of work at the same physical location and within the very same floor space already assigned to that bargaining unit, I reject it outright when the facts of the case demonstrate that any expectation of working at the same lodging location within the Sand Dollar Inn system was not reasonable. One cannot accept a position for which he or she is told the job requires you to work at all lodging locations and then contend that the Respondent changed a condition of employment by assigning the employee to work at lodging location D instead of lodging location A.

In reaching this conclusion, it is important to note some of the factors that were not presented by the work assignments that are the subject matter of the General Counsel's Complaint. One, it did not result in a change to the substantive duties required of any laborer in the bargaining unit. All of the witnesses agreed that the general duties required of a laborer at any of the temporary lodging areas were basically the same. Two, the work assignment did not require a personnel action, did not involve a formal detail and did not result in modification of pay. Had such record keeping actions been necessary for personnel or pay reasons, it might indicate that the assignment of particular lodging location was something more than an assignment of work. However, no such evidence was presented. *See, U.S. Dep't of Veterans Affairs Medical Center, Leavenworth, Kansas*, 60 FLRA 315 (2004) (VA). Three, no evidence of a past practice of notice and negotiation over the assignment of a primary work location at a particular lodging location was presented. To the contrary, the witnesses agreed that previous changes in assignments were made without them being negotiated as changes in conditions of employment. In particular, the Union president testified that the location to which he was routinely assigned was changed without notice or bargaining in order to give him better telephone access. T-50, 88, 89. It appears that the driving force behind the Union's unfair labor practice charge was James Stephens' personal relationship with the Union president and Stephens' displeasure with working at the Wood Manor location. While there was some evidence of health issues introduced on the part of Stephens, it was far from clear or persuasive that any health problem was caused by working at this particular location. Furthermore, even if a causal relationship to the assignment were established, such health matters would not have been foreseeable given his full ability to perform at other temporary lodging locations involving substantially the same duties. *VA at 331.* Finally, another indication why the assignment of Stephens to Wood Manor was not a change in conditions of employment for the bargaining unit is the fact that if Stephens was not the laborer assigned to perform duties at Wood Manor, the responsibility of completing those tasks at that location would fall to another employee within the bargaining unit.[2/] Thus, the only thing that would change is the individual performing the work and not the conditions under which they were performed by the bargaining unit.

II. Any Change was *De Minimis*

Although I find that there was no change to the conditions of employment for the bargaining unit in question, even if there were a change, its impact was *de minimus.* Therefore, the Respondent had no obligation to bargain the impact and implementation over the exercise of its management right to assign work at the various temporary lodging areas. The *VA* case discussed above was cited by neither the General Counsel nor the Respondent's briefs, however, it provides a clear indication that assigning laborers to various temporary lodging locations at Tyndall AFB had no more than a *de minimis* impact on the bargaining unit.

In the *VA* case, two nurses at the VA Medical Center in Leavenworth, Kansas were reassigned by formal detail from their positions in the Acute Medical/Surgical Ward, to other health care units located in different areas on the facility's campus. *VA* at 327. While these details involved performing substantially the same nursing duties, they required the two nurses to perform them at different physical locations separate and distinct from that at which they had previously worked for eight and nineteen years. Although the Authority concluded that the change was more than *de minimis*, it did so because the details resulted in one of the nurses losing the opportunity to earn more pay by virtue of a lost

[2/] At some point in July 2006, the Respondent began treating the temporary lodging area known as Wood Manor differently than its other temporary lodging areas by utilizing different time keeping methods and altering the supervisory structure for that location. While those changes give rise to legitimate questions regarding changes in conditions of employment, those issues were not raised by the Complaint that was the subject of this hearing. T-116, 215 to 219.

opportunity for shift differential. In other words, despite being reassigned via formal detail to work at a new physical location after years of work at a prior work location, the Authority concluded that the reason the reassignment was more than *de minimis* was because it resulted in an assignment to a new unit where weekend work was not performed and shift differentials could not be earned; not because the nurses were physically relocated to new work locations. Thus, the act of moving the nurses to a new location on the medical campus was either *de minimis*, or not a change in conditions of employment at all.

The case at bar, involves laborers hired with the understanding that they would have to work at the various lodging locations in the Sand Dollar Inn system. None of the laborers had worked exclusively at the very same location for years on end, their work assignments were made orally as needed and there is no evidence in the record that the assignment to different lodging locations had any impact upon the pay they earned in the performance of their duties. For all of these reasons, the precedent of the *VA* case indicates that assignments made under the circumstances of this case have no more than a *de minimis* impact on the bargaining unit at Tyndall AFB because these laborers, like the nurses in *VA*, were subject to performing substantially similar duties at the various locations operated by the Respondent at all times. While each of the laborers experiences some change whenever he or she is assigned duties at a different lodging location, each change does not constitute a change to their conditions of employment that is more than *de minimis*.

For the reasons set forth above, I conclude that the Respondent did not violate the Statute and that the Complaint of the General Counsel should be dismissed.

ORDER

It is ordered that the Complaint be, and hereby, is dismissed.

Issued, Washington, DC, February 28, 2007.

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CHARLES R. CENTER
Chief Administrative Law Judge