UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C. 20424-0001

MEMORANDUM

DATE: August 8, 2011

TO: The Federal Labor Relations Authority

FROM: CHARLES R. CENTER
Chief Administrative Law Judge

SUBJECT: DEPARTMENT OF THE AIR FORCE
NELLIS AIR FORCE BASE, NEVADA

RESPONDENT

AND

Case No. SF-CA-10-0467

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES,
LOCAL 1199, AFL-CIO

CHARGING PARTY

Pursuant to section 2423.34(b) of the Rules and Regulations 5 C.F.R. §2423.34(b), I am hereby transferring the above case to the Authority. Enclosed are copies of my Decision, the service sheet, and the transmittal form sent to the parties. Also enclosed are the transcript, exhibits and any briefs and motions filed by the parties.

Enclosures

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C. 20424-0001

DEPARTMENT OF THE AIR FORCE NELLIS AIR FORCE BASE, NEVADA RESPONDENT AND AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1199, AFL-CIO CHARGING PARTY	Case No. SF-CA-10-0467

NOTICE OF TRANSMITTAL OF DECISION

The above-entitled case having been heard by the undersigned Chief Administrative Law Judge pursuant to the Statute and the Rules and Regulations of the Authority, the undersigned herein serves his Decision, a copy of which is attached hereto, on all parties to the proceeding on this date and this case is hereby transferred to the Federal Labor Relations Authority pursuant to 5 C.F.R. §2423.34(b).

PLEASE BE ADVISED that the filing of exceptions to the attached Decision is governed by 5 C.F.R. §§2423.40-41, 2429.12, 2429.21-2429.22, 2429.24-2429.25, and 2429.27.

Any such exceptions must be filed on or before **SEPTEMBER 7, 2011**, and addressed to:

Office of Case Intake & Publication
Federal Labor Relations Authority
1400 K Street, NW., 2nd Floor
Washington, DC 20424-0001

CHARLES R. CENTER
Chief Administrative Law Judge

Dated: August 8, 2011
Washington, D.C.

FEDERAL LABOR RELATIONS AUTHORITY OALJ 11-11
Office of Administrative Law Judges
WASHINGTON, D.C.

DEPARTMENT OF THE AIR FORCE
NELLIS AIR FORCE BASE, NEVADA

RESPONDENT

Case No. SF-CA-10-0467

AND

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 1199, AFL-CIO

CHARGING PARTY

Robert Bodnar, Esq.
For the General Counsel

Michael Wells, Esq.
For the Respondent

Before: CHARLES R. CENTER
Chief 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 (the Authority), Part 2423.

A Consolidated Complaint and Notice of Hearing was issued on December 2, 2010, based on unfair labor practice charges filed on June 8, 2010, against the Department of the Air Force, Nellis Air Force Base (Respondent Nellis/Nellis AFB) by the American

Federation of Government Employees, Local 1199, AFL-CIO (Charging Party/Union).[1] The Complaint alleges that the Respondent refused to permit the Union to conduct a "Lunch and Learn" within the Child Care Development Center (CDC) during April 2010 and, thereby, violated §7116(a)(1) of the Statute.

A hearing was held in Las Vegas, Nevada, on January 26, 2011, where all parties were represented and afforded a full opportunity to be heard, product relevant evidence, and examine and cross-examine witnesses. Both the General Counsel and the Respondent filed timely post-hearing briefs.

Based on the entire record, including my observation 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 or a subordinate activity within an agency under §7103 (a)(3) of the Statute. (G.C. Exs. 1b & d 1c). The American Federation of Government Employees, AFL-CIO (AFGE) is a labor organization under §7103(a)(4) of the Statute and either it or the Charging Party is the exclusive representative of four bargaining units consisting of employees located at Nellis Air Force Base. (G.C. Exs. 1b & 1c, Tr. 81-82). One bargaining unit for which AFGE holds exclusive recognition and the Charging Party serves as its agent for purposes of representing the bargaining unit was certified on December 21, 2009, and consists of Nonappropriated Fund (NAF) employees of the Respondent. (G.C. Exs. 1b & 1c). A second bargaining unit consists of Air Force appropriated fund employees at Nellis Air Force Base. (Tr. 82, 284). The remaining two bargaining units consist of employees of AAFES (Army and Air Force Exchange Service) and DECA (Defense Commissary Agency) located at Nellis. (Tr. 82). Although the record does not identify whether AFGE or the Charging Party is the exclusive representative for each of the four units, it is undisputed that one or the other is, and with respect to those units for which AFGE holds exclusive recognition, the Charging Party serves as its agent.

There was no collective bargaining agreement in effect covering the NAF bargaining unit during the period when the events relating to the lunch and learn series that is the subject of the complaint in this case occurred. (Tr. 132-33, 230-31). Rather, an agreement pertaining to the NAF unit did not go into effect until July 15, 2010. (Resp. Ex. 1; Tr. 132-33, Tr. 230-31). At the times relevant to the events involving the April 2010 lunch and learn series, there was, however, a collective bargaining agreement in effect that covered the bargaining unit at the Respondent that consisted of Air Force appropriated fund employees.

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[1] **Originally, the Consolidated Complaint encompassed unfair labor practice allegations in Case**

No. SF-CA-10-0468 in addition to the ones in the instant case. By order dated January 13, 2011, the Regional Director of the San Francisco Region approved a settlement agreement in the above case. (G.C. Ex. 1 (d)).

(Tr. 170). That collective bargaining agreement provided at section 21.6 as follows:

> Management agrees to provide facilities for "Lunch and Learn" meetings at a location that will provide access to unit employees during lunch and break periods. Detailed arrangements will be agreed to by labor relations officer/designee and the union on a case by case basis.

(G.C. Ex. 3).

No information was provided in the record regarding the existence of collective bargaining agreements covering the AAFES and DECA bargaining units. In any event, the dispute involved in the complaint in this case did not involve AAFES or DECA employees.

The complaint in this case centers on efforts by the Charging Party to obtain permission to use space in or associated with the two buildings then occupied by the CDC—specifically CDC 1 and CDC 3--for the purpose of conducting lunch and learn sessions for employees at the CDC.

The CDC is responsible for providing child care services for children in age-groups ranging from infants through kindergarten. (Tr. 60, 244, 246). The employment complement at the CDC consists of both NAF and appropriated fund employees. (Tr. 264). The CDC complex consists of two buildings each of which contains "classrooms" and other rooms dedicated to child-care activities, a break room, a training room, offices, a kitchen and a front desk area. The break rooms are used by employees for breaks and lunch and has such things as a refrigerator, microwave, television, table and/or a desk, seating, etc. (Tr. 34, 262-63). The break room in CDC 1 also has a time clock that is used by NAF employees. (Tr. 263-64). Children are not allowed in the break rooms. (Tr. 34, 272). The CDC complex also includes several playgrounds that are not accessible from the outside but only through the buildings. (Tr. 243). Each of the various playgrounds is dedicated to a particular age-group of children, e.g., infants, toddlers and preschool-age, and the different age groups are kept segregated from one another. (Tr. 59, 243).

The operations of the CDC are governed by Air Force Instruction 34-248 (AFI 34-248), which sets forth a number of mandatory requirements. (Resp. Ex. 2). Operations are also subject to the Military Child Care Act of 1989/1996 (Pub. L. No. 101-189, §2, Division A, Title XV). (Tr. 320). For purposes of ensuring the safety of the children, access to the buildings and playgrounds is tightly controlled and limited to those having "official business" at the CDC. (Resp. Ex. 2; Tr. 26-33, 239-40). Generally, anyone who is not an employee of the CDC or the parent of a child enrolled there must be escorted by a CDC employee while on the premises.[2] (Resp. Ex. 2; Tr. 26-33, 224, 239-40). The groups and individuals who

were identified as having been given access to the CDC premises and who were subject to the escort requirement were: parents who either do not yet have a child enrolled at CDC or are visiting an area other than the classroom where their child is located (Tr. 27, 244-45, 311); personnel from the dental clinic who make presentations to the children on dental hygiene (Tr. 248); personnel from the security force and fire department who conduct demonstrations for the children (Tr. 248-49); personnel from public health who carry out

[2] **The only exceptions to the escort requirement identified by witnesses at the hearing were the crew that cleans the CDC facilities (Tr. 32), the "laundryman" who picks up and delivers laundry to the facility (Tr. 28), and an inspector from the Department of Defense who conducts annual inspections at all CDCs (Tr. 245).**

monthly inspections of the kitchen (Tr. 248); personnel from Civil Engineering who perform maintenance and repairs (Tr. 26); a photographer who comes in to take pictures of the children a couple of times a year (Tr. 29); therapists who provide treatment to a special needs child (Tr. 32-33); groups of about 5 to 10 persons consisting of caregivers from other CDC's or students from colleges who come to tour the facility at Nellis (Tr. 31, 72-73, 324). Other security measures include extensive video surveillance and alarmed doors. (Resp. Ex. 2; Tr. 240, 314, 320-21).

In addition to specifying provisions relating to access and security, AFI 34-248 establishes ratios of staff to children that must be maintained. (Resp. Ex. 2). Different ratios apply to the different age groups of the children and according to the Respondent's witnesses the required ratios must be maintained and if they are not the CDC risks losing its accreditation. (Resp. Ex. 2; Tr. 226, 246). If the CDC is faced with a situation that would result in falling below the required staffing levels for any group of children, it employs measures such as moving some children in with a different group, sending CDC staff members who don't normally perform direct child care functions to be with the children, or bringing in staff from the other CDC building or the Youth Center. (Tr. 247).

Staff lunch breaks at the CDC occur between 10AM and 2PM. (Tr. 265). The period

between 10 AM and 1 PM is when children are on the various playgrounds.[3] Different age groups are on their particular playground at different points during that period.

At some point, Vernon Steed, who was president of the Charging Party, was advised that the "national" union wanted to conduct a series of "lunch and learn" sessions for employees located at Nellis during April of 2010. (Tr. 82-83). According to Steed, a lunch and learn is part of an exercise referred to as a "Metro," which he described as being an informative event in which union representatives visit various work centers during employee lunch breaks for the purpose of speaking to employees about their rights and what is going on at the "national level." (Tr. 82). Steed also referred to the "Metro" as a membership drive. (Resp. Ex. 3). According to Steed, about 20 national representatives from AFGE came to Nellis to conduct the lunch and learns. (Tr. 82). The record provides little information concerning the extent to which employees at Nellis participated in conducting the lunch and learns along with the national representatives.[4] As planned, the lunch and learns were to be conducted over a period of three to four days at various locations on Nellis

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[3] **There were some differences in the testimony of the various witnesses with respect to playground use. One witness, a caregiver at CDC 3 who at the time of the hearing worked with the 6 to 12 month age group and previously worked with toddlers, testified that the only children on the playground between 11AM and 1PM were the kindergarten children. (Tr. 28, 59-60.) Another witness, a caregiver for the 1-year-old age-group at CDC 3, testified that based on her observation, there were no children on the playgrounds between 11AM and 1PM. (Tr. 181, 201, 204, 207-09.) The testimony of this second witness appears, however, to have been focused on two particular playgrounds—the one the 1-year-olds in her group used and an adjoining playground used by pre-schoolers. A third witness, the Director of CDC 1, testified that the "younger" children are on the playground starting in the 10AM time frame and eat lunch beginning at 11AM, pre-schoolers are on the playground at the time the younger children are eating lunch and the kindergartners go to the playground at around 12PM. (Tr. 244.) This third witness further testified that at around 12:30PM children in a "part-day preschool program" go to a playground with their parents until 1PM or after. (Tr. 244.) In view of the fact that the two caregivers who testified, would have been occupied either with feeding very small children during the 11AM to 12PM time frame or on their own lunch break and would not have been well-positioned to be aware of playground use by the pre-schoolers during that period, I find the testimony**

of the CDC Director to be more reliable. Also, I find that the CDC Director, rather than the two caregivers, would have involvement in activity schedules for all age groups of children represented at

the CDC and, thus, would be expected to have better knowledge of those schedules. Although it may

not be the case that there are always some children on one or more of the playgrounds throughout the period running from 10AM to 1PM, I find that is the period when playground use occurs.

[4] **One witness who was an employee at the CDC and also served as a Union steward testified that she took part in conducting one of the lunch and learn sessions. (Tr. 188-89).**

Air Force Base. (Tr. 83; G.C. Ex. 2; Resp. Ex. 3). Initially, the Charging Party sought to conduct two separate lunch and learns for the CDC employees—one in each CDC building--that would last from 10 AM to 1 PM. (G.C. Ex. 2).

In developing a schedule for the lunch and learns, Steed had one of his stewards request use of the break room in each of the two CDC buildings for the purpose of conducting lunch and learn sessions there. (Tr. 83). When that request was denied, the steward sought, as an alternative, that the union be allowed to use what she referred to as the "picnic area," which was essentially a portion of one of the CDC playgrounds for pre-schoolers.[5] (Tr. 184-86, 200). That request was denied as well. (Tr. 186-87).

During the process of trying to arrange the lunch and learns, there was discussion about the possibility of using the Family Child Care Center (FCC), which is a building near the two CDC buildings that has a sizable conference room, as an alternative location. (Tr. 141-44, 183, 264-67, 294-95, 297-98). It is not clear from the record when this occurred. Ultimately, however, a single lunch and learn session for the CDC employees was held from 10 AM to 1 PM on April 13, 2010, in a conference room in Building 625, which is in a location that is approximately one-half block from one of the CDC buildings and one block from the other.[6] (Tr. 87-88; Resp. 3). A small number of CDC employees attended. (Tr. 189).

DISCUSSION AND CONCLUSIONS

Positions of the Parties

General Counsel

The General Counsel alleges that Respondent violated section 7106(a)(1) of the Statute by denying the Charging Party access to the non-work areas of the CDC for purposes of conducting lunch and learns for employees while they were on their lunch breaks.

Citing Authority decisions,[7] the General Counsel contends that an agency may not prohibit employees who are on breaks, including paid breaks, from engaging in union solicitation to include lunch and learns as long as there is no interference with the work of the agency. The General Counsel asserts that the Respondent could have enforced its policies with respect to requiring escorts and limiting access to children in a manner that didn't preclude the Charging Party from conducting lunch and learn sessions in the CDC break rooms or on the playground area. The General Counsel suggests that if a constant escort were required for non-CDC personnel conducting the lunch and learns on CDC premises, this could be accomplished by having CDC employees who are attending the lunch

[5] The reference to the area as the "picnic area" derived from it being the location in which picnics for the staff have been conducted on a few occasions in the past. (Tr. 73-76, 211-12).

[6] From the record, it appears that the FCC and Building 625 were both about the same distance from the CDC complex.

[7] United States Dep't of the Navy, Naval Air Station, Pensacola, Fla., 61 FLRA 562 (2006)(NAS, Pensacola); Oklahoma City Air Logistics Center (AFLC), Tinker Air Force Base, Okla., 6 FLRA 159 (1981).

and learn serve in the capacity of escort. The General Counsel maintains the Respondent failed to offer a suitable alternative location for the Charging Party to conduct its lunch and learns.

As remedy, the General Counsel seeks an order requiring the Respondent to cease and desist and post a notice to employees to be signed by the 99th Air Base Wing Commander. The General Counsel also requests that the Respondent be ordered to provide the Union an opportunity to host a lunch and learn within the CDC break areas "upon request."

Respondent

The Respondent denies that a violation of the Statute occurred. The Respondent asserts that although employees generally have a right to engage in solicitations and distribution of literature on behalf of unions during non-work times and in non-work areas, this right is not absolute and agencies may prohibit such actions when warranted by special or unusual circumstances.[8] The Respondent contends that the CDC's need to restrict access to

the children in the interests of ensuring their safety and well-being and minimizing their exposure to contagious illnesses constitutes such a special or unusual circumstance and justified denying the Charging Party's request to conduct a lunch and learn on the CDC premises. The Respondent notes that in contrast to the circumstances present in the Authority's decision in *SSA*, there is no evidence in this case that the CDC has allowed other forms of solicitation to occur on its premises. Additionally, the Respondent points to the fact that lunch and learns did occur at other locations at Nellis and argues the dispute in this case did not involve a general denial of the request to conduct a series of lunch and learns at Nellis but is limited to the question of whether the Charging Party had a right to hold its lunch and learns at a particular location, i.e., on the premises of the CDC.

The Respondent asserts that if the Charging Party was allowed to conduct lunch and learns on the CDC premises, CDC personnel would have to be diverted from their regular work in order to escort the participating non-CDC personnel. The Respondent contends the diversion of resources from child-care duties would disrupt CDC operations.

The Respondent maintains that there has been no past practice of allowing the a union or other non-CDC related organization to conduct meetings on the CDC's premises and the Charging Party cannot claim the existence of such a practice establishes a right for it to distribute literature or solicit membership on the premises.

The Respondent contends the General Counsel has not met its burden of proof and that the complaint should be dismissed in its entirety.

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[8] **Respondent cites Dep't of Health & Human Serv., Soc. Sec. Admin., Se Program Serv. Ctr.,**

21 FLRA 748 (1986) and Soc. Sec. Admin.,13 FLRA 409 (1983)(SSA) as well as several decisions issued under E.O. 11491, as amended, by the Assistant Secretary of Labor for Labor Management Relations.

DISCUSSION

The Authority has held that the rights of employees under section 7102 of the Statute to form, join, or assist labor organizations include the rights to distribute literature on behalf of a labor organization in non-work areas and during non-work times and engage in solicitations on behalf of a labor organization during non-work times. *See, e.g., Social Security Administration*, 21 FLRA at 751. It has been recognized, however, that similar to the rights granted employees in the private sector by section 7 of the National Labor Relations Act (NLRA), the section 7102 rights to engage in union activity are not absolute and considerations relating to the interests of employers may justify limitations on the employee rights. *See, e.g., United States Dep't of Justice, Immigration & Naturalization Serv., Border Patrol, El Paso, Tex. v. FLRA*, 955 F.2d 998, 1007 (5th Cir. 1992); *cf. Republic Aviation Corp. v. NLRB*, 324 U.S. 793, 798 (1945)(*Republic Aviation*)(under National Labor Relations Act, employee right of self-organization is not unlimited).

The Authority engaged in an extensive discussion and analysis of employees' 7102 rights in the context of a dispute over the issue of employees wearing union insignia in *U.S. Dep't of Justice, Immigration & Naturalization Serv., United States Border Patrol, San Diego Sector, San Diego, Cal.*, 38 FLRA 701 (1990)(*INS, San Diego*). Although that particular decision was focused on the issue of union insignia and was subsequently reversed by the U.S. Court of Appeals for the Ninth Circuit in 967 F.2d 596 (9th Cir. 1992), much of the analysis remains relevant in addressing questions of the rights of employees to engage in various union activities under section 7102. In particular, in its discussion in *INS, San Diego*, the Authority drew on court and NLRB precedent that focused on the need to work out an adjustment between the "undisputed right of self-organization assured to employees . . . and the equally undisputed right of employers to maintain discipline in their establishments." 38 FLRA at 714 *quoting Republic Aviation,* 324 U.S. at 797-98. Although not specifically referenced in the Authority's discussion in *INS, San Diego*, a consideration that was articulated by the Supreme Court during the course of the development of legal principles to achieve such adjustment in private sector labor law is that accommodation between the employee and employer rights "must be obtained with as little destruction of one as is consistent with the maintenance of the other." *Beth Israel Hospital v. NLRB*, 437 U.S. 483, 491-92 (1977)(*Beth Israel*), *quoting NLRB v. Babcock & Wilcox Co.*, 351 U.S. 105, 112 (1956)(*Babcock & Wilcox*). Under the Statute, efforts to balance employee rights to form, join and assist labor organizations on the one hand and employer rights on the other resulted in a standard similar to that applied by the courts and NLRB in the private sector. That is, employee rights to engage in union activity otherwise protected under section 7102 can be limited if "special circumstances" are present. *See INS, San Diego*, 38 FLRA at 715; *Fed. Aviation Admin., Spokane Tower/Approach Control*, 15 FLRA 668 (1984); *United States Army Support Command, Fort Shafter, Haw.*, 3 FLRA 796 (1980). In determining whether special circumstances exist that warrant limiting employee rights under section 7102, the Authority, like the NLRB and courts in the private sector with respect to Section 7 of the NLRA, examine factors such as whether the particular exercise of an employee right to engage in self-organization would disrupt employee discipline, detract from business operations, or compromise safety. *See INS, San Diego*, 38 FLRA at 716-17.

In this case, it is undisputed that the lunch and learns constitute an exercise of

forming, joining or assisting a labor organization within the meaning of section 7102 of the Statute. Moreover, that attendance at a lunch and learn is an exercise of the right protected under a section 7102 to solicit membership is consistent with the Authority's decision in *NAS, Pensacola*, 61 FLRA at 562. The question presented here is whether special circumstances justified limiting the right of employees to participate in lunch and learns on the CDC premises.[9] The special circumstance identified by the Respondent is its need to control and monitor access to the CDC premises in the interests of ensuring the safety and well-being of the children enrolled at the CDC. I find the Respondent's claim that denying the Charging Party access to the CDC break rooms and outside areas was justified based on its need to protect the children from exposure to carriers of contagious illnesses unpersuasive. There is no evidence in the record that the Charging Party routinely screens individuals who

seek entry to the CDC for the purpose of determining whether they are suffering from such illnesses. As expressed by one of the Respondent's witnesses, although someone with obvious signs of illness would be questioned about their health status to establish whether they are healthy enough to be around children, CDC personnel don't take the temperature of everyone who enters the CDC. (Tr. 269).

I do find, however, that the Respondent has demonstrated a need to limit access to the children in the interest of safeguarding them from individuals who might abuse, mistreat or otherwise harm them. The record shows that with respect to individuals who are granted access to the CDC, this interest is met by requiring non-CDC personnel to be escorted while on the premises. I see no reason why the same measure could not be employed as a means of ensuring the safety of the children in conjunction with the presence of non-CDC personnel who are on the premises to conduct the lunch and learns. The Respondent contends that having to provide escorts for representatives of the Charging Party who are conducting the lunch and learns would jeopardize its ability to maintain required ratios of staff to children and, thus, would be detrimental to its child care operations. Respondent, however, has failed to show, and it is not otherwise apparent to me, that providing escorts to tour groups and maintenance personnel is materially different from providing escorts to those involved in the lunch and learns and that it can meet escort needs in the former instances but not in the latter. In this regard, I recognize that working out escort arrangements for the lunch and learns may present some challenges. The General Counsel's suggested solution that CDC personnel who are attending the lunch and learns serve as escorts while doing so is problematic at best.

Such arrangement would effectively require that employees who are necessarily on non-work time while participating in union solicitation efforts be assigned the task of serving as an escort. It would also place the Respondent in the position of having to ascertain employees' plans with respect to attending the lunch and learn—both whether they plan to attend as well as the timing and duration of their attendance—in order to schedule escort coverage. On the other hand, using employees who are not attending the lunch and learn to serve as escorts may give rise to allegations of surveillance. Additionally, there may be

[9] **Although the record indicates that the lunch and learns involved granting non-employee organizers access to the Respondent's property to participate in conducting the lunch and learns, no issue is raised with respect to that particular circumstance. See, e.g., United States Dep't of the Air Force, Randolph Air Force Base, San Antonio, Tex., 58 FLRA 14, 18-19 (2002)(different standards apply with respect to distributions on behalf of unions by employees than those by non-employees). Thus, I find that is not an issue before me.**

instances when circumstances, such as unusually high employee absenteeism, require that the Charging Party's plans to conduct a lunch and learn on the CDC premises be altered, perhaps on short notice, in response to the Respondent's legitimate inability to both provide one or more escorts and maintain staff/child ratios. These challenges should not prove insurmountable and I find that employing the escort policy in conjunction with conducting lunch and learns on the CDC premises meets the objective articulated by the Court in *Babcock & Wilcox* of accommodating both employee and employer rights "with as little destruction of one as is consistent with the maintenance of the other."

I find that it was incumbent on the Respondent to demonstrate that special circumstances justified denying the Charging Party's request to conduct lunch and learns on the CDC premises and in this particular case it failed to do so. *Cf. Beth Israel*, 437 U.S. at 492-93 (restrictions on employee solicitation during non-work time and distributions in non-work areas during non-work times violate the NLRA unless the employer justifies them by a showing of special circumstances which make the rule necessary to maintain production or discipline).

CONCLUSION

I find that the Respondent violated section 7116(a)(1) of the Statute as alleged when it denied permission for the Charging Party to conduct lunch and learns on the CDC premises. Accordingly, I recommend that that Authority adopt the following Order:

ORDER

Pursuant to section 2423.41(c) of the Authority's Rules and Regulations and section 7118 of the Federal Service Labor-Management Relations Statute (the Statute), the Department of the Air Force, Nellis Air Force Base, Nevada, shall:

1. Cease and desist from:

(a) Failing or refusing to permit the American Federation of Government Employees, Local 1199, AFL-CIO (the Union) the exclusive representative of employees, to conduct lunch and learn sessions in non-work areas of the Child Development Center during non-work times.

(b) In any like or related manner, interfering with, restraining, or coercing its 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) Permit the Union to hold lunch and learn sessions in the non-work area of the Child Development Center during non-work times.

(b) Post at its facilities where bargaining unit employees 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 Commander, 99th Air Base Wing, Nellis Air Force Base, and shall be posted and maintained for 60 consecutive days, 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.

(c) Pursuant to section 2423.41(e) of the Authority's Regulations, notify the Regional Director, San Francisco 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 herewith.

Issued Washington, D.C., August 8, 2011.

_____
CHARLES R. CENTER
Chief 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 Department of the Air Force, Nellis Air Force Base, Nevada, violated the Federal Service Labor-Management Relations Statute (the Statute), and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT fail or refuse to allow the American Federation of Government Employees, Local 1199, AFL-CIO (the Union), the exclusive representative of employees, to conduct lunch and learn sessions in non-work areas of the Child Development Center during non-work times.

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

WE WILL, permit the Union to conduct lunch and learn sessions in the non-work areas of the Child Development Center during non-work times.

(Agency/Activity)

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, San Francisco Region, Federal Labor Relations Authority, and whose address is: 901 Market Street, Suite 220, San Francisco, CA 94103, and whose telephone number is: 415-356-5000.

CERTIFICATE OF SERVICE

I hereby certify that copies of this **DECISION**, issued by CHARLES R. CENTER, Chief Administrative Law Judge, in Case No. SF-CA-10-0467, were sent to the following parties:

CERTIFIED MAIL & RETURN RECEIPT **CERTIFIED NOS:**

Robert Bodnar 7004-1350-0003-5175-4359
Counsel for the General Counsel
Federal Labor Relations Authority
901 Market Street, Suite 220
San Francisco, CA 94103

Michael Wells, Esq. **7004-1350-0003-5175-4748**
Litigation Attorney
Labor Relations Law Branch
Air Force Labor Law, FSC
1501 Wilson Boulevard, 7th Flr.
Arlington, VA 22209

Vernon Steed 7004-1350-0003-5175-4755
President, AFGE, Local 1199
P.O. Box 9742
Nellis AFB, NV 89191

REGULAR MAIL:

President
AFGE, AFL-CIO
80 F Street, N.W.
Washington, DC 20001

_____
Catherine Turner
Office of Administrative Law Judges
Federal Labor Relations Authority

Dated: August 8, 2011
Washington, DC