

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

MEMORANDUM

DATE:

February 28, 2007

TO: The Federal Labor Relations Authority

FROM: CHARLES R. CENTER
Chief Administrative Law Judge

SUBJECT: U.S. DEPARTMENT OF THE AIR FORCE
325TH MISSION SUPPORT GROUP SQUADRON
TYNDALL AIR FORCE BASE, FLORIDA

Respondent

and

se No. AT-CA-06-0163

Ca

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 3240, 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 briefs filed by the parties.

Enclosures

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Case No. AT-CA-06-0163

AMERICAN FEDERATION OF GOVERNMENT
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NOTICE OF TRANSMITTAL OF DECISION

The above-entitled case having been heard before the undersigned Administrative Law Judge pursuant to the Statute and the Rules and Regulations of the Authority, the undersigned herein serves the 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, 2429.12, 2429.21, 2429.22, 2429.24, 2429.25, and 2429.27.

Any such exceptions must be filed on or before APRIL 2, 2007, and addressed to:

Office of Case Control
Federal Labor Relations Authority
1400 K Street, NW, 2nd Floor
Washington, DC 20005

CHARLES R. CENTER
Chief Administrative Law Judge

Dated: February 28, 2007
Washington, DC

FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
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U.S. DEPARTMENT OF THE AIR FORCE
325TH MISSION SUPPORT GROUP SQUADRON
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Respondent

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Case No. AT-CA-06-0163

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 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

^{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.

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

^{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.

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 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.

CHARLES R. CENTER
Chief Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the **DECISION** issued by CHARLES R. CENTER, Chief Administrative Law Judge, in Case No. AT-CA-06-0163, were sent to the following parties:

CERTIFIED MAIL & RETURN RECEIPT

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DATED: February 28, 2007

Washington, DC