

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

DEPARTMENT OF THE AIR FORCE AIR COMBAT COMMAND SEYMOUR JOHNSON AIR FORCE BASE GOLDSBORO, NORTH CAROLINA  Respondent	
and  NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES, LOCAL R5-188  Charging Party	Case No. WA-CA-02-0288

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 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. §§ 2423.40-2423.41, 2429.12, 2429.21-2429.22, 2429.24-2429.25, and 2429.27.

Any such exceptions must be filed on or before **JANUARY 5, 2004**, and addressed to:

Federal Labor Relations Authority  
Office of Case Control  
1400 K Street, NW, Suite 300  
Washington, DC 20424-0001

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WILLIAM B. DEVANEY  
Administrative Law Judge

Dated: December 2, 2003  
Washington, DC

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

MEMORANDUM

DATE: December 2, 2003

TO: THE FEDERAL LABOR RELATIONS AUTHORITY

FROM: WILLIAM B. DEVANEY  
ADMINISTRATIVE LAW JUDGE

SUBJECT: DEPARTMENT OF THE AIR FORCE  
AIR COMBAT COMMAND  
SEYMOUR JOHNSON AIR FORCE BASE  
GOLDSBORO, NORTH CAROLINA

Respondent

CA-02-0288 and Case No. WA-

NATIONAL ASSOCIATION OF GOVERNMENT  
EMPLOYEES, LOCAL R5-188

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 transmittal form sent to the parties, and the service sheet. Also enclosed are the pleadings, motions, exhibits and briefs filed by the parties.

Enclosures

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

DEPARTMENT OF THE AIR FORCE AIR COMBAT COMMAND SEYMOUR JOHNSON AIR FORCE BASE GOLDSBORO, NORTH CAROLINA  Respondent	
and  NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES, LOCAL R5-188  Charging Party	Case No. WA-CA-02-0288

Major Ferdinando P. Cavese, USAF  
Major Troy R. Holroyd, USAF  
For the Respondent

Mr. George L. Reaves, Jr.  
For the Charging Party

Philip T. Roberts, Esquire  
For the General Counsel

Before: WILLIAM B. DEVANEY  
Administrative Law Judge

**DECISION**

Statement of the Case

This proceeding, under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the United States Code, 5 U.S.C. § 7101, et seq.<sup>1</sup>, and the Rules and Regulations issued thereunder, 5 C.F.R. § 2423.1 et seq., concerns whether in about November, 2001, Respondent changed conditions of employment by, “. . . locking the door to the room containing the photocopier used by the Charging Party, whenever the room was temporarily vacated” and implemented this change without notice to the Union.

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For convenience of reference, sections of the Statute hereinafter are, also, referred to without inclusion of the initial, “71”, of the statutory reference, i.e., Section 7116(a)(5) will be referred to, simply, as, “§ 16(a)(5)”.

This case was initiated by a charge filed in the Washington Region on February 6, 2002, alleging violation of §§ 16(a)(1), (5) and (8) (G.C. Exh. 1(a)). By Order dated February 22, 2002, this, and other cases, were transferred to the Atlanta Region (G.C. 1(c)). The Atlanta Region on July 26, 2002, issued the Complaint herein, alleging violation of §§ 16(a)(1) and (5) only (G.C. Exh. 1(f)), and, on the same day, July 26, 2002, transferred this, and other cases, to the Chicago Region (G.C. Exh. 1(g)). The Complaint had set the hearing for January 30, 2003, at a place to be determined in Raleigh, North Carolina (G.C. Exh. 1(f)); but on January 15, 2002, Notice issued changing the place of hearing to Goldsboro, North Carolina (G.C. Exh. 1(k)), pursuant to which a hearing was duly held on January 30, 2003, in Goldsboro, North Carolina before the undersigned.

All parties were represented at the hearing, were afforded full opportunity to be heard, to introduce evidence bearing on the issues involved, and were afforded the opportunity to present oral argument which each party waived. At the conclusion of the hearing, March 3, 2003, was fixed as the date for mailing post-hearing briefs, which time subsequently was extended, on Motion of Respondent, to which there was no objection, to March 14, 2003. Respondent and General Counsel each filed, or mailed, an excellent brief on, or before March 14, 2003, which have been carefully considered. Upon the basis of the entire record, including my observation of the witnesses and their demeanor, I make the following findings and conclusions:

#### FINDINGS

1. The National Association of Government Employees, Service Employees International Union, AFL-CIO, Local R5-188 (hereinafter, "Union"), is the certified exclusive representative of an appropriate unit of Respondent's employees (G.C. Exhs. 1(f) and (i)).

2. The Union has office space, Rooms 303 and 305, on the third floor of Building 3612 at Seymour Johnson Air Force Base (Res. Exh. 1; Tr. 14, 64-65).

3. The Manpower Division (hereinafter, "Manpower") is an 11-12 person function and is part of the 4<sup>th</sup> Fighter Wing, an organizational unit at Seymour Johnson Air Force Base (hereinafter, "Respondent"). Manpower is also located on the third floor of Building 3612: Lieutenant Colonel Stewart Gray Cox, Chief of Manpower since 1997 (Tr. 61), is in Room 327; a team of five to eight employees occupy a three-room office, Rooms 317, 319 and 321 (Tr. 62, 64; Res.

Exh. 1). This is known as the "Main Office" (Tr. 63). A private office, Room 323, is connected to the "Main Office" and is occupied by Lieutenant Walker Moody, Operations Team Chief (Tr. 102, 103). Manpower's Conference Room consists of Rooms 316 and 318 (Res. Exh. 1; Tr. 64). Before May, or June, 2002, Senior Master Sergeant David Geer, Manpower Analyst and Superintendent of the Office, was in Room 326 (Tr. 94) and since that time has been in Room 311 (Tr. 92); which is entered through Room 309, where the copy machine is, and has been, located since late 2000 or January, 2001, (Tr. 16, 27, 64). Previously, the copier had been located in the Conference Room (Rooms 316 and 318). Mr. James Harnage had previously been in Room 311 and in May or June, he was moved to Room 326 (Tr. 66). Room 307 which is accessible both from Room 309 and from the outside hallway (Res. Exh. 1; Tr. 65) is the Wartime Room (Tr. 65).

4. As noted, the copy machine is in Room 309 which is part of a three room Administrative Office Complex. In the beginning of 2001, Room 309 was occupied by two people: Staff Sergeant Rodowski (Tr. 68) and Tech. Sergeant Axeboro (Tr. 67-68). Room 307 was occupied by Master Sergeant O'Keef (Tr. 69) and Room 311 was occupied by Mr. Harnage. Room 309, in addition to the copy machine, has mail boxes for incoming mail and computers (Tr. 65, 72); Room 307, Wartime Room, has classified computer systems, a safe, and is where classified data processing is done (Tr. 65). Mr. Harnage was in Room 311 (Tr. 66).

In July, 2001, Sgt. Rodowski retired and was not replaced (Tr. 68); in August, 2001, Master Sgt. O'Keef was transferred to Germany and was not replaced (Tr. 69); and in November, 2001, Tech. Sgt. Axeboro was transferred to Randolph AFB (Tr. 69). Although Tech. Sgt. Axeboro's manning slot was filled, it was filled by a person brand new to the Manpower career field and this new recruit was placed in the "Main Office" Complex (Rooms 317-319-321) (Tr. 70). Of course, as previously noted, in May or June, 2001, Senior Master Sergeant Geer moved to Room 311 and Mr. Harnage moved to Room 326.

After Tech. Sgt. Axeboro's transfer in November, 2001, there has been a single person located in the Administrative Office Complex (Rooms 307-309 and 311), and none in Rooms 307 and 309, whereas, in January, 2001, there had been four, with one in 311, two in 309 and one in 307.

5. The Union, which has offices two doors from Room 309 (Rooms 303 and 305), has been permitted for many years to use the copy machine without reimbursement (Tr. 15, 127). The most frequent Union user of the copy

machine in recent years has been Ms. Minnie May Howell, Executive President of Local R5-188 since November 20, 2002 (Tr. 13) and President from May, 1995, until 2002. She has three hours official time for Union activity daily (Tr. 17) which she normally takes in the afternoon. Most of her copier usage occurs after 2:00 p.m. (Tr. 118).

All employees of Manpower use the copier as do Area Defense Counsel (two employees), the Audit Agency and the Union. For the last four months of 2002, Manpower made between 2200 and 2300 copies; Area Defense Counsel 2400 copies; the Union between 2200 and 2300 copies; and Audit Agency none (Tr. 128).

6. Since at least 1997, when Lt. Col. Cox became Chief of Manpower, his policy, as well as Air Force Policy, has been that each office door must be locked when the office is vacant for more than a momentary length of time (Tr. 70, 71, 84, 93, 104, 113). The general Air Force policy requiring office doors to be locked when vacant is designed to safeguard resources such as computers, printers, personal effects and to protect from cyber-terrorism and theft (id.).

7. Senior Master Sergeant Geer, since November, 2001 the only person in the Administrative Office Complex (Rooms 307, 309, 311) (Tr. 114), is out of his office (311) about four hours a day (Tr. 97), of these four hours, approximately 2½ to 3 hours daily is spent in Room 307 doing classified work in the war like room; however, when he is behind closed doors in Room 307, he posts a sign on the exterior doors of Room 307 which reads, "classified work in progress; please knock" (Tr. 96). Whenever a Union official has knocked, Senior Master Sergeant Geer promptly has ceased his work, secured the classified material and opened the door to permit the Union official to make copies (Tr. 34, 35, 98, 99). He has never refused to assist a Union official who has knocked on the door (Tr. 99).

When Room 309 is locked and no one is in Room 307 doing classified work, a Union official wanting to use the copy machine may go in the "Main Office" complex about 50-60 steps away (Room 317, 319, 321 and Lt. Moody's office 323) which is staffed with at least one person during duty hours and it is a very rare occurrence that no one is present during normal duty hours - 6:30 or 7:00 a.m. to 5 p.m. or later, Monday through Friday (Tr. 78, 105-106). Two Manpower employees who have worked in the "Main Office"

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A device was installed so that a PIN (Personal Identification Number) number must be entered in order to turn the copier on. Copies are tallied by PIN number.

during the last one and one-half years, Lt. Moody and Master Sergeant Fields, testified that out of an average of 180 duty hours per month, the "Main Office" is vacant for no more than six hours (Tr. 103, 106-107, 111, 119-120). Of this, four hours are due to a weekly one-hour staff meeting on Friday in the Conference Room, which is just across the hall (Tr. 120, 107, 108). There is a Wing Commander call each quarter (Tr. 120) and a Squadron Commander's call about once a month (id.), but, as civilians do not have to attend the Wing Commander and Squadron Commander calls, Sandy Geary usually mans the Office on these occasions (id.) The other hours, about 2 hours per month, are due to unavoidable events which require all personnel to be out of the office, such as comp time when the staff has had Wartime generation with 24-hour operations (Tr. 120, 123) or occasions such as New Year's Eve when the staff was released early (Tr. 123), or when there is ice or snow storms, hurricane - tornado watches, etc. (Tr. 20-21) or when the Base itself is shut down (Tr. 79). But even when Manpower goes to a reduced manning mode, the policy is to have at least one person on duty in the "Main Office" each work day (Tr. 78, 118-119).

8. If no one is available in the "Main Office", Union personnel may find another person on the floor to open the copy machine room. For example, Lt. Col. Cox may be in his office (Tr. 74-75, 30, 31) and he has opened the copy machine door for Ms. Howell (Tr. 31, 74-75).

9. When the copy machine was located in the Conference Room (i.e., Rooms 316 and 318), before November, 2000, when it was moved to Room 309 (Tr. 22-27), Ms. Howell testified that if she had to make copies after Manpower employees in the "Main Office" left, she would tell someone in Manpower and they would leave the Conference Room door open for her and tell her to turn the copier off and lock the door when she was through (Tr. 18). Ms. Howell stated that after the copier was moved to Room 309 the door was locked at night (Tr. 19).

Ms. Howell first said that Room 309 was locked constantly (Tr. 19), then she said, "greater than 50 percent of the time" (id.). She professed not to know who was authorized to let her into Room 309 (Tr. 20), then said the most problematic days were during the holidays, or the military are given time off, when we have ice storms or snow storms, hurricane, tornado watches (id.).

Ms. Howell admitted she knocked on the door of Room 307 when the sign was up and Senior Master Sergeant Geer always comes out to let her into Room 309 (Tr. 33-35), that all people in the "Main Office" are very responsive and open the



door for her (Tr. 30) and that Col. Cox has opened the door for her (Tr. 31).

Ms. Howell said that times when Room 309 was locked was not a problem until the fall of 2001 (Tr. 23), i.e., after Tech. Sgt. Axeboro, the last person located in Room 309, was transferred (Tr. 69) (Staff Sgt. Rodowski who had shared Room 309 had retired in July, 2001 (Tr. 68) and Master Sgt. O'Keef, who had occupied Room 307, had been transferred in August, 2001 (Tr. 68)).

10. Ms. Howell said that in November, 2000, the Union was given notice and opportunity to bargain over locking the door to the copier room (Tr. 22); that base-wide payment of copies changed whereby each organization had to fund copies made; that Col. Cox did not want to continue providing the Union copies without charge; that she submitted proposals, but Col. Cox's letter was withdrawn and the Union was permitted to continue to use the copier without charge (Tr. 22-23). However, the door was locked after hours and when they were out of the office during the day (Tr. 23).

11. The parties are negotiating a new collective bargaining agreement and, although several articles are at impasse, one article to which both sides have agreed states that Respondent will furnish the Union a dedicated copier for its use in the Union's own office (Tr. 41-42).

12. Col. Cox testified, both credibly and without contradiction, that he was not aware of the Conference Room door ever being left open for Ms. Howell after hours to make copies (Tr. 81). Senior Master Sergeant Geer stated that for the three years he had been at Manpower we have secured [locked] rooms not in regular use (Tr. 93, 94-95). Lt. Moody testified that he did not know of copy room door ever being left open after hours for Ms. Howell (Tr. 108-109) and Master Sergeant Fields testified that he did not know of any instance that the door to the copier room was left open for Ms. Howell after hours (Tr. 118), indeed, he said, ". . . have a checklist and we usually check off that we locked all the doors before we left." (id.).

## CONCLUSIONS

### A. NO CHANGE OF CONDITIONS OF EMPLOYMENT

As well stated by Chairman Cabaniss in her concurring opinion in, United States Department of Labor, Occupational Safety and Health Administration, Region 1, Boston, Massachusetts, 58 FLRA 213 (2002) at 216:

"As reflected in our Statute, 'conditions of employment' is a term of art expressly defined at § 7103(a)(14) that means 'personnel policies, practices, and matters, whether established by rule, regulation, or otherwise, affecting working conditions' (emphasis added). Clearly, 'conditions of employment' and 'working conditions' are related, but they are not the same thing. For example, 'working conditions' would be an employee's work starting and stopping times, or whether the employee has the ability to take home a GOV: 'conditions of employment' would be the 'rules, regulations, or otherwise' that define the hours of work for the bargaining unit, or establish what employees have the right to take that GOV home.

. . .

"Our precedent, in its discussion of the statutory duty to bargain, focuses on whether there has been a change to 'conditions of employment' and not whether 'working conditions' have been changed. . . ."

(58 FLRA at 216-217)

See, also, Chairman Cabaniss' concurring opinion in United States Department of the Air Force Headquarters, 96<sup>th</sup> Air Base Wing, Eglin Air Force Base, Florida, 58 FLRA 626 (2003). Here, the condition of employment was that unoccupied rooms must be locked. Respondent made no change whatever in this condition of employment. It existed and was enforced since at least 1997, when Col. Cox arrived as Chief of Manpower. The only departure was, according to Ms. Howell, President of the Union, before November 2000, when the copy machine was located in the Conference Room, and she had to work late on union business and needed to make copies she would notify someone in Manpower's "Main Office" who would leave the door of the Conference Room open for her and tell her to turn the machine off and lock the room when she left. Col. Cox testified that he was not aware of the Conference Room door ever being left open for Ms. Howell; Senior Master Sergeant Geer, Superintendent, stated that for the three years he had been at Manpower they secured [locked] doors of rooms not in regular use; Lt. Moody testified he did not know of the Conference Room door ever being left open for Ms. Howell; and Master Sergeant Fields testified that he did not know of any instance that the door to the copier room was left open for

Ms. Howell. Consequently, if it occurred it was not known to management. Moreover, after the copy machine was moved to Room 309, in about November 2000, it is undisputed that the room was locked when vacant. Ms. Howell stated that after the copy machine was moved to Room 309 the door was locked at night and she conceded that Room 309 was locked during the day when vacant. Indeed, Ms. Howell first said the door to 309 was locked constantly; then she said, "greater than 50 percent of the time" (Tr. 19). The record shows that from November, 2000, when the copy machine was moved to Room 309 the door was locked when 309 was vacant (Tr. 70, 71, 72, 95, 113, 114). Moreover, Ms. Howell admitted that she had noticed on a number of occasions that the door to 309 was locked before November, 2001 (Tr. 27) and that it had occurred in the first half of 2001 (id.). The record does not support the allegation of the Compliant that, "In November, 2001 . . . Respondent . . . began locking the door to the room containing the photocopier . . . whenever the room was temporarily vacated." (G.C. Exh. 1(f), Par. 11). To the contrary, the practice existed from November, 2000, when the copy machine was moved to Room 309. Respondent changed no condition of employment in November, 2001.

Here, working conditions were the frequency of the door to 309 being locked during the day. Ms. Howell stated that prior to the fall of 2001, ". . . the frequency of the door being locked . . . was not often enough that it was a problem." (Tr. 23). The change in the frequency of the door of 309 being locked was, pure and simple, attrition. As noted above, Room 309 had been occupied by two persons: Staff Sergeant Rodowski, who retired in July, 2001, and Tech. Sergeant Axeboro, who was transferred to Randolph AFB in November, 2001. Room 307 was occupied by Master Sergeant O'Keef, who was transferred to Germany in August, 2001. After August, 2001, Room 309 had only one occupant, Tech. Sergeant Axeboro, Room 307 had none, and Senior Master Sergeant Geer was in Room 311, and after November only Senior Master Sergeant Geer remained in the Administrative Complex and his duties took him out of his office about 4 hours per day and with his absence Room 309 was locked. Room 309 consistently had been locked after hours before November, 2000, and after November, 2000, when the copy machine was moved there.

Because Respondent changed no condition of employment in November, 2001, it had no duty to give notice or to bargain even though attrition increased the frequency of the copy room being vacant and, necessarily, locked, in compliance with long established policy and practice. While working conditions, i.e., the frequency of Room 309 being

vacant changed because of attrition, changed in the fall of 2001, conditions of employment, i.e., the policy that office rooms must be locked when vacant, was not changed. Accordingly, for this reason alone I would recommend that the complaint be dismissed.

B. If it were deemed that a working condition, i.e., increased frequency of Room 309 being vacant, gives rise to a duty to bargain, nevertheless, the effect of the change was de minimis.

Ms. Howell's testimony concerning times during the day that she could find no one to open Room 309 for her is not convincing. Senior Master Sergeant Geer testified credibility, and without contradiction that for 2½ to 3 hours of the four hours of each day that he is out of his office, he spends in Room 307 doing classified work; that there is a sign on the door to 307 that, "classified work in progress; please knock"; and when Ms. Howell has knocked he stops his classified work and opens the door to 309 for her. For the hour to one and a half hours that Senior Master Sergeant Geer is absent from his office and is not working in 307, the "Main Office" Complex which is manned by five to eight employees daily from 6:30 to 7:00 a.m. to 5:00 p.m., or later, Monday through Friday, is staffed with at least one person during duty hours. Recognizing that she could not support her claim that no one was present during duty hours to let her into Room 309, Ms. Howell switched and said the problematic days were during the holidays, or the military was given time off because of ice storms, snow storms, hurricane-tornados. Although, even when Manpower goes to a reduced manning mode, the policy is to have at least one person on duty in the "Main Office" each work day, when the Base is closed, because of snow or ice storms, etc., or other reasons, but it is true there may be no one present to let Ms. Howell into Room 309; but this would have true previously and the record does not show any change whatever in the availability of access to the copy machine when Manpower and/or the Base was closed. Nor, as noted previously, was there any change whatever in Room 309 being locked after hours. It was locked after hours consistently since the copy machine was placed there in November, 2000.

Locking the door to Room 309 when the room was vacant and at the close of the work day was a management right, Air Force Logistics Command, Warner Robins Air Logistics Center, Robins Air Force Base, Georgia, 53 FLRA 1664, 1670 (1998), and while not obligated to bargain over this decision, the Union in November, 2000, was given notice of the decision and an opportunity to negotiate I&I; submitted proposals;

but bargaining petered out. Of course, this is not, in any event, an issue in this case. Respondent changed no condition of employment in November, 2001, and did not then begin locking Room 309 when it was vacant. To the contrary, it consistently had been doing so since the copier was moved in Room 309 in November, 2000. Although attrition removed all personnel from Room 307 and 309 which, in turn, caused Room 309 to be locked more frequently after November, 2001, the effect of this change of working conditions was de minimis. General Services Administration, Region 9, San Francisco, California, 52 FLRA 1107, 1111 (1997).

Accordingly, it is recommended that the Complaint in Case No. WA-CA-02-0288 be dismissed and that the Authority adopt the following:

**ORDER**

The Complaint in Case No. WA-CA-02-0288 be, and the same is hereby, dismissed.

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WILLIAM B. DEVANEY  
Administrative Law Judge

Dated: December 2, 2003  
Washington, DC

**CERTIFICATE OF SERVICE**

I hereby certify that copies of this **DECISION** issued by WILLIAM B. DEVANEY, Administrative Law Judge, in Case No. WA-CA-02-0288, were sent to the following parties:

**CERTIFIED MAIL & RETURN RECEIPT**

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DATED: December 2, 2003

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