

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY

Office of Administrative Law Judges

WASHINGTON, D.C. 20424-0001

MEMORANDUM

DATE: January 22, 1998

TO: The Federal Labor Relations Authority

FROM: Samuel A. Chaitovitz
Chief Administrative Law Judge

SUBJECT: DEPARTMENT OF THE TREASURY, INTERNAL REVENUE
SERVICE
GULF COAST DISTRICT, BIRMINGHAM DISTRICT OFFICE
NEW ORLEANS, LOUISIANA

Respondent

and

Case No. AT-CA-70139

NATIONAL TREASURY EMPLOYEES UNION

Charging Party

Pursuant to section 2423.26(b) of the Rules and Regulations, 5 C.F.R. § 2423.26(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 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 TREASURY INTERNAL REVENUE SERVICE GULF COAST DISTRICT BIRMINGHAM DISTRICT OFFICE NEW ORLEANS, LOUISIANA Respondent	
and NATIONAL TREASURY EMPLOYEES UNION Charging Party	Case No. AT-CA-70139

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. § 2423.26(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 **FEBRUARY 23, 1998**, and addressed to:

Federal Labor Relations Authority
Office of Case Control
607 14th Street, NW, 4th Floor
Washington, DC 20424-0001

SAMUEL A. CHAITOVITZ

Judge

Dated: January 22, 1998
Washington, DC

FEDERAL LABOR RELATIONS AUTHORITY

Office of Administrative Law Judges

WASHINGTON, D.C. 20424-0001

DEPARTMENT OF THE TREASURY INTERNAL REVENUE SERVICE GULF COAST DISTRICT BIRMINGHAM DISTRICT OFFICE NEW ORLEANS, LOUISIANA Respondent	
and NATIONAL TREASURY EMPLOYEES UNION Charging Party	Case No. AT-CA-70139

Richard Jones, Esquire
For the General Counsel

Larry Laatsch, Esquire
For the Charging Party

Garry Wade Klein, Esquire
For the Respondent

Before: SAMUEL A. CHAITOVITZ
Chief Administrative Law Judge

DECISION

Statement of the Case

This case arose under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the United State Code, 5 U.S.C. § 7101, et seq. (the Statute).

Based upon an unfair labor practice charge filed by the Charging Party, National Treasury Employees Union (NTEU/the Union), a Complaint and Notice of Hearing (as subsequently amended) was issued by the Regional Director for the Atlanta Region of the Federal Labor Relations Authority. The complaint alleges that the Department of the Treasury, Internal Revenue Service, Gulf Coast District, Birmingham District Office, New Orleans, Louisiana (the Respondent) violated section 7116(a)(1) and (5) of the Statute by refusing to negotiate with the Union to the extent required by the Statute concerning the decision to move a unit employee's work station. Respondent's answer admits that it refused to bargain, but denies that a change in working conditions occurred which required negotiations. The answer further alleges that there was no duty to negotiate because of the Union's failure to initiate negotiations in the appropriate manner.

A hearing was held in Birmingham, Alabama. The parties were represented and afforded full opportunity to be heard, adduce relevant evidence, examine and cross-examine witnesses, and file post-hearing briefs. Counsel for the Respondent and the General Counsel filed timely 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

A. Background

The Internal Revenue Service (IRS) and NTEU are parties to a national collective bargaining agreement which covers Ernie Henderson and the other employees at the Birmingham post-of-duty involved in this case.¹ In Article 47 of their agreement, the parties authorized mid-term bargaining at the local level under certain circumstances. Thus, Article 47, Section 4 provides in pertinent part:

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The record reflects that, prior to October 1, 1996, the IRS maintained a District Office in Birmingham, but that as part of a reorganization effective on the above date, the Birmingham District became the Birmingham post-of-duty within the newly-created Gulf Coast District headquartered in New Orleans, Louisiana. Richard Moran, the District Director, is located in the headquarters office.

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A. Local representatives of the parties
authorized to bargain over Employer-
initiated mid-term changes, other
specifically delegated to them by
Agreement, and Union-initiated
proposals.

* * * *

conditions
be served
hand
or joint
appropriate.

C. Notice of proposed local changes in
of employment by the Employer will
upon the Union by certified mail or
delivery to the chapter president
council chairperson, as

conditions
served on
first class
delivery to the local

D. Notice of proposed local changes in
of employment by the Union will be
the Employer by certified mail,
mail, facsimile, or hand
head of office.

E. Within seven (7) calendar days of receipt of
proposed changes, the party receiving such
proposals will either request to negotiate or
request a briefing.

of
negotiate, or the
is later), the
changes will submit

F. Within fourteen (14) calendar days
submission of a request to
date of a briefing (whichever
party receiving proposed
its proposals.

Additionally, at the local level in the Birmingham office,
the parties had an agreement and a longstanding practice
whereby employees reassigned to new positions or duties
related to the work of an organizational group within the
office, other than the one to which they had previously been
assigned, were required to move their work stations to the
area occupied by the new group so that all employees doing
the same work would be physically located together and as
close as possible to their group manager. Within each
group, reassigned employees would choose their new work
stations by seniority from the available (i.e., unoccupied)
work space in that area.²

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The local agreement was not introduced into evidence, but
the undisputed testimony of witnesses for both parties and
documents submitted in evidence establish the existence of
such practice.

In 1995, well before the events which gave rise to the instant dispute, IRS and NTEU negotiated National Workspace Furniture and Occupancy Standards and Rent Containment Guidelines in anticipation of downsizings and reorganizations throughout the agency. Under those standards and guidelines, taxpayer service representatives (TSRs) were to be allotted 42.5 square feet of work space set off by 5-foot-high partitions. Shortly thereafter, in November 1995, the Birmingham office relocated to a new building. The taxpayer service area in the new building contained a series of partitioned offices consistent with the above-described space guidelines. In addition, there was one interview room 140 square feet in size, set off by floor-to-ceiling walls, a door which could be opened and closed, and windows on two sides. The interview room was designed in that manner to ensure the privacy of taxpayers who walked into the office without appointments in response to "collection notices" identifying delinquencies in their tax payments. The interview room was the only location within the taxpayer service area where the Respondent's employees could conduct confidential discussions with taxpayers regarding their tax liabilities.³

B. Henderson's Arrival at the New Building

Although the new Birmingham office opened in mid-November 1995, Ernie Henderson did not report there until mid-December because he was attending TSR training in Jackson, Mississippi, at the time of the move.⁴ On Henderson's first day of work at the new location, he was escorted to the interview room by his manager, Vera Posey, who told him that he would be working there. Henderson was then the most senior and therefore the "primary" office collection representative (OCR). As such, he conducted most of the walk-in taxpayer interviews. I credit the testimony of Henderson as well as Thomas M. Owens, Jr., who was then the Field Branch Chief of the Collection Division in the Birmingham District Office, that Henderson had a private

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Although there were other private offices elsewhere in the new building, they were unavailable for taxpayer interviews because such offices had to be reserved in advance and, by definition, it was impossible to know in advance when a taxpayer would walk in to discuss his or her collection notice.

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Taxpayer service representatives work behind the counter in the taxpayer service area and assist taxpayers by providing them with tax forms and publications upon request, as well as technical advice and assistance.

office in the old building and had exclusive use of the interview room in the new building for several months to conduct confidential collection discussions with taxpayers.⁵

On rare occasions, other employees conducted confidential taxpayer interviews in the private interview room, but only when Henderson was sick, on vacation, at training, or busy with another customer.⁶

C. Reorganization of the Birmingham Office Leads to Henderson's Reassignment

Effective March 19, 1996, as part of a reorganization of the Birmingham office, three office collection representatives, Ernie Henderson, Cassandra Busby and Denise LaBranch were reassigned from the Taxpayer Service "walk in" area to the Revenue Officer (RO) group at the opposite end of the District Office. The employees were to assume the duties of RO Aides under the supervision of Marilyn Toney. By memo dated March 8, 1996, Ms. Toney notified Union

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Carolyn Lowder, who became Henderson's manager in October 1996, testified that she had heard Henderson described as the senior OCR in the office, but that she did not recall him having a private office in the old building since she did not know of any employee who had a private office. I find that Lowder's testimony creates a semantic rather than a real conflict with the testimony credited above. Thus, it appears that Lowder was not disputing that Henderson conducted virtually all of the taxpayer interviews or that such interviews were conducted in the private interview room set aside for such purpose. Rather, Lowder was merely expressing her understanding that Henderson's performance of the taxpayer-interview function did not mean that the room in which the interviews were conducted was his private office.

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Although the record is not completely clear concerning the applicable office procedure when Henderson was busy with one taxpayer and others were waiting to be interviewed, I find that this situation arose very rarely. I further find that when this unusual circumstance existed, the second taxpayer waited until Henderson and the private interview room were available. Only when Henderson's customers got "backed up" would two other OCRs, Cassandra Busby and Denise LaBranch work with these taxpayers. On such very rare occasions, the other OCRs would interview the taxpayers in less private "booths" located in the lobby of the Birmingham office.

Steward Joe Cobia of the upcoming reassignment; advised him of the available workstations in the RO area; and suggested that the three transferred employees should select a workstation from the available options temporarily. By memo dated March 11, 1996, Cobia notified Toney that the Union wanted to bargain concerning workstations for the three employees; designated W.D. Abrams as the Union's chief spokesman; and requested a briefing as called for by the parties' national agreement. According to Cobia, no negotiations took place because Abrams was physically located in Montgomery rather than Birmingham, and Cobia was on sick leave.

When Cobia returned to the office following his illness, he wrote a memo to the District Director of the Birmingham District dated April 16, 1996, complaining that management had not complied with the parties' agreement concerning seat selection by seniority when Henderson and the other OCRs were reassigned to Toney's RO group. The next day, Cobia was telephoned by and met with Tom Owens, Chief of the Collection Division.⁷ Cobia and Owens essentially testified to the same effect concerning the meeting: Cobia argued that Henderson and the other OCRs should not be required to be physically located in Toney's RO area; Owens indicated that while the employees were serving as RO Aides, their workstations had to be located there rather than in the Taxpayer Service area, but that their reassignment to the RO group was "temporary." The subject of Henderson's entitlement to exclusive use of the interview room in the Taxpayer Service area never came up for discussion.

Henderson remained physically located in Toney's RO area until approximately December 1996, although his service as an RO Aide ended in June 1996 when he, Busby and two other employees received new position descriptions as OCR/TSRs.⁸ During the period that Henderson was physically

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At the time, Owens was Toney's supervisor and the Union was objecting to the manner in which Toney assigned workstations to the transferred employees.

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When Henderson inquired about his changed position description, Cobia informed him that the change which would require him to provide behind-the-counter assistance to the public as well as share the taxpayer interviews with other OCR/TSRs had been fully negotiated with the Union. Although LaBranch had left the IRS by this time, four employees including Henderson and Busby were assigned to the OCR/TSR position and given responsibility to conduct taxpayer interviews.

located in the RO area and assisting the Revenue Officers, he returned to the interview room in the Taxpayer Service area only when it was his turn by rotation to interview a walk-in taxpayer. When the other OCRs were assigned to interview taxpayers, they also conducted the interviews in the privacy of the interview room.

D. The Reorganization of IRS as of October 1, 1996 and its Effect on Henderson

As part of an ongoing and extensive reorganization within IRS which included the closing of some offices and the consolidation of others, the Birmingham District became a post-of-duty within the newly-created Gulf Coast District headquartered in New Orleans as of October 1, 1996. Within the Birmingham office, as applicable to this case, the walk-in area's office collection function (i.e., taxpayer interviews conducted by OCRs) was merged with the Taxpayer Service functions performed by TSRs, and Carolyn Lowder was named to manage the combined Office Collection group. The Union was fully briefed on the entire reorganization and its specific effect on the Birmingham office, and had the opportunity to negotiate at both the national and the local levels on all negotiable matters, before the reorganization plan was announced in September. For the local negotiations, which took place in New Orleans, Beverly Thompson a Birmingham office employee and Union Steward, represented the Union.⁹

Among other things, the reorganization plan specified the four employees who would be performing both OCR and TSR duties, and allocated training funds to teach these employees how to perform their newly-acquired responsibilities. As of October 1, four employees (including Henderson) were designated to perform both the TSR and OCR duties. However, Carolyn Lowder testified that five employees were doing both functions at the time of the hearing, and that she anticipated as many as 10 employees would be trained to conduct taxpayer interviews as well as TSR duties in 1998.

When the reorganization plan was implemented in the Birmingham office on October 1, Ernie Henderson apparently learned for the first time that he would not be occupying the interview room in the walk-in area. Lowder testified credibly that she informed the employees in her group that they all would need to share the interview room to conduct their taxpayer interviews in privacy and with confidentiality. Since Henderson would no longer be the

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Thompson did not testify at the hearing.

exclusive or even the primary interviewer of walk-in taxpayers, he was advised that he could not use the interview room as his private office. Instead, as Lowder testified, consistent with the local agreement between the Respondent and the Union, the employees were to choose unoccupied workstations in Lowder's area according to their relative seniority. Because there were not enough workstations in Lowder's area to accommodate all of the employees under her supervision, and Henderson's workstation was then still located in Marilyn Toney's RO area, it was decided that Henderson would remain in the RO area until suitable accommodations could be obtained for him in Lowder's area. Accordingly, Henderson's workstation remained in the RO area until December, even though he was assigned to Lowder's group, and he occupied the interview room in the walk-in area only when it was his turn to conduct a taxpayer interview.

E. Henderson's Dissatisfaction With His Workstation and the Union's Attempt to Negotiate a Solution

Lowder's first indication that Henderson was displeased with his workstation occurred when she found a handwritten note from Henderson dated October 3, 1996, stating, "I have decided to keep my work station over here (known as OCR office). I am going to see Joe about my rights to retain my work space." Later that day, Joe Cobia sent a memo to Lowder requesting a briefing and an opportunity to negotiate over Henderson's removal "from his current workstation on the basis that only TSS's [i.e., GS-9 Taxpayer Service Specialists] are entitled to windows."¹⁰ Since Lowder was not in the office until the following week and thus did not respond to Cobia's October 3 memo, Cobia sent a second memo dated October 15, 1996, again requesting to be briefed and to negotiate "on the issue of moving Ernie Henderson from his work station." Lowder responded by memo the same day, setting a meeting for October 18.

¹⁰

Cobia testified that Henderson told him that Lowder's justification for denying him exclusive use of the interview room was that Henderson's grade level (GS-7) did not entitle him to a window office. Lowder denied that her reason for denying Henderson exclusive use of the interview room had anything to do with whether he had the right to a window office. I credit Lowder's version that her expressed reason was the need to keep the interview room available for all the OCR/TSRs who would be conducting private and confidential taxpayer interviews by rotational assignment.

Cobia and Lowder met alone in her office on October 18, as scheduled, to discuss Ernie Henderson's workstation.¹¹ The two versions of the meeting are not significantly different. Cobia testified that Lowder took the position that Henderson had been reassigned, and thus the matter was nonnegotiable. Cobia replied that Henderson had not been reassigned because the move was not permanent either in terms of Henderson's position or his place of employment. Cobia argued that Henderson's duties were not changing as of October 1, and that his geographic post-of-duty also was remaining the same. Lowder testified that after Cobia explained the Union's position at the meeting, she responded that the interview room had to be available for all the employees in her group to conduct taxpayer interviews in private; that the interview room could not be set aside for the exclusive use of one individual, otherwise the performance of the office's work and the accomplishment of its mission would be impeded; and finally that the office realignment had already been negotiated with the Union, so there was nothing for them to negotiate. The matter was not resolved at the October 18 meeting, so Cobia and Lowder met again on October 31. At that meeting, Cobia restated his earlier position that Henderson had not been reassigned under the contractual meaning of that term, and that the interview room was Henderson's office both before and after his move. Once again, the matter was unresolved. At the conclusion of the second meeting, Lowder sent Cobia a memo dated October 31, with respect to the Union's request to negotiate. The memo stated:

On October 18, 1996, I met with you to provide information regarding my decision in identifying seating arrangements, including placement for Ernie Henderson. At that time I stated to you that I did not consider the meeting to be negotiations, as Ernie's situation is a reassignment on which NTEU had been briefed.

As I stated in this meeting and our meeting of October 31, 1996, during which you provided additional information, use of the Collection Interview room is based on assignment. Plans to provide Ernie Henderson with an assigned desk in close proximity to this area are in process.

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Henderson testified that he had authorized Cobia to discuss the matter with Lowder on his behalf, and had indicated his willingness to abide by whatever they decided to do.

As previously found, Henderson's workstation remained in the RO area until December, when he was moved to a workstation within Lowder's walk-in area. Henderson has used the interview room only when it was his assignment to conduct a collection interview with a taxpayer.

Discussion and Conclusions

A. Preliminary Procedural Issue

As a threshold matter, the Respondent contends that it had no duty to bargain with the Union over the change in Henderson's workstation because Cobia sought to bargain with Carolyn Lowder rather than with the local head of office, Richard Moran. In support of this contention, the Respondent relies on the language of Article 47, Section 4D of the parties' national agreement. Under that provision, as set forth above, "[n]otice of proposed local changes in conditions of employment *by the Union* will be served on the Employer by certified mail, first class mail, facsimile, or hand delivery to the local head of office." (Emphasis added).

I conclude that the foregoing language is inapplicable to the instant dispute. Thus, Article 47, Section 4D of the parties' agreement only applies when *the Union* proposes to change local conditions of employment. In this case, it was *the Respondent* that decided to reorganize the Birmingham office and move employees' workstations. Accordingly, the Respondent was required to serve notice of the proposed changes on the Union. The Union's only obligation under the agreement was to request negotiations (or a briefing) within 7 calendar days after receiving notice of the proposed changes (Article 47, Section 4E) and then to submit its proposals within 14 days after requesting negotiations or a briefing, whichever is later (Article 47, Section F). It is undisputed that the parties negotiated over the proposed reorganization of the Birmingham office at the local level in September 1996, so the parties must have submitted notices and proposals to the appropriate officials within the contractual time frames.

Similarly, when Cobia asked Lowder for a briefing and an opportunity to negotiate with respect to Henderson's workstation on October 3, 1996, he was not seeking a mid-term change in conditions of employment but rather a chance to bargain with Henderson's manager over the impact and implementation of the Respondent's decision to reorganize the Birmingham office. In my view, nothing in the parties' agreement required the Union to submit such request to the

Director of the Gulf Coast District in New Orleans, as the Respondent asserts.

B. The Respondent Had No Obligation to Bargain With Cobia Over the Change in Henderson's Workstation

A separate question is whether the Respondent had a duty to bargain over the change in Henderson's workstation as requested by Cobia in his memo dated October 3, 1996. I conclude that the Respondent had no such obligation for two reasons.

1. As previously found, the reorganization/realignment which affected the Birmingham office was negotiated with the Union at both the national and the local levels. An employee from Birmingham, Beverly Thompson, represented the Union in the local negotiations which were held in New Orleans before the plan was announced in September. The Union was well aware of which employees would be affected by the realignment in the Birmingham office, either because their job duties would be changing or their work groups were being combined with others, or, as in Henderson's situation, both. The record indicates that the local parties negotiated over the realignment, but does not reflect that the Union ever sought to bargain over "impact and implementation" matters such as the workstations of affected employees. In my judgment, if the Union had wanted to negotiate with respect to such issues, it had an obligation under the Statute to request bargaining after being notified and briefed about the reorganization plan but before the implementation date of October 1, 1996. See *Department of the Air Force, Air Force Materiel Command, Wright-Patterson Air Force Base, Ohio*, 51 FLRA 1532, 1536 (1996) (AFMC); *Division of Military and Naval Affairs, State of New York, Albany, New York*, 8 FLRA 307, 320 (1982). Moreover, it had a contractual obligation as set forth above to request bargaining within 7 days after receiving notice of the prospective reorganization. Having taken no steps in that regard until after the plan went into effect, the Union waived whatever right it had to bargain over unit employees' work stations. See AFMC, 51 FLRA at 1536; *Bureau of Engraving and Printing, Washington, D.C.*, 44 FLRA 575, 582-83 (1992).

2. Even if Cobia's October 3 request to negotiate over the change in Henderson's workstation were timely, I conclude that the Respondent had no duty to bargain in the circumstances of this case because the reorganization did not change established practice concerning unit employees' work stations. To be sure, the 1996 upheavals in the

Birmingham office affected Henderson considerably. As the year began, Henderson moved from his private office in the old Birmingham District building into the interview room adjacent to the walk-in area of the office in the new building. After only a few months, he was reassigned to the Revenue Officers group as an RO Aide under the supervision of a different manager, Marilyn Toney. In June, he received a new position description designating him as an OCR/TSR, and in October he was again reassigned to a combined Office Collection group under the supervision of Carolyn Lowder. Finally, his work station again was moved, this time from the RO area to the Office Collection area.

Henderson's duties also changed considerably in 1996. When the year began, Henderson was the senior OCR with the "primary" if not the "exclusive" responsibility for interviewing walk-in taxpayers who had received collection notices and wanted to discuss their circumstances. The record indicates that taxpayer interviews constituted Henderson's sole job duty, and that he did virtually all of them until his reassignment as an RO Aide in March 1996. Of course, since taxpayer interviews require privacy and confidentiality, all such interviews were conducted in private office space set aside and designed for that purpose. In the new building, that space was the 140 square foot interview room in the walk-in area equipped with floor-to-ceiling walls, a door, and windows on two sides, the only one of its kind. Because Henderson was conducting all the taxpayer interviews in the old building and carrying over into the new one, he occupied the private office space in both locations set aside for such interviews as his workstation.

However, in March 1996, when Henderson was reassigned as an RO Aide, his job duties and workstation changed. Henderson still continued to do taxpayer interviews on a rotational basis, but shared that duty with at least two other OCRs in the Birmingham office. All of the OCRs used the private interview room when conducting such interviews. Henderson no longer had exclusive control over the interviewing function or the interview room. Instead, he only used it when interviewing taxpayers, and used his assigned work station in the RO area when performing his duties as an RO Aide or working on other assigned projects. Similarly, when he became an OCR/TSR under Lowder's supervision in October, Henderson was required to provide tax forms and other direct assistance to the public at the service counter of the walk-in area as well as conduct taxpayer interviews on a rotational basis as one of four OCR/TSRs under Lowder's supervision.

Despite the foregoing changes in Henderson's working conditions, however, I conclude that the Respondent had no duty to bargain with Cobia over the change in Henderson's work station. Thus, as previously found, the parties had a local agreement and established practice in the Birmingham office which governed the matter. The practice required employees who were reassigned to a new work group to obtain a work station in the area designated for the employees in that group, and provided the reassigned employee an opportunity to exercise seniority in choosing an available workstation in that area. As the record shows, when Henderson and others were assigned to the RO area in March, Cobia protested that the foregoing practice was not being followed by the manager of the RO area, Marilyn Toney, and the matter was resolved between Cobia and Toney's supervisor (Tom Owens) in April when Henderson was suitably placed at a work station in the RO area. Accordingly, when Henderson was again reassigned to Carolyn Lowder's group as of October 1, 1996, his workstation was to be determined under the same established procedure and Cobia had no right to demand negotiations with regard to where Henderson's work station would be located.¹² See *U.S. Immigration and Naturalization Service, Houston District, Houston, Texas*, 50 FLRA 140, 143 (1995) (reassignment of employees did not constitute change in conditions of employment); *U.S. Department of Transportation, Federal Aviation Administration, Washington, D.C. and Michigan Airway Facilities Sector, Belleville, Michigan*, 44 FLRA 482, 493-95 (1992) (employees' temporary assignment to different city did not change conditions of employment requiring impact and implementation bargaining in light of parties' agreement).

It is understandable that Henderson was displeased with the loss of what he considered to be his personal office after having had one since 1990. However, it is clear to me that Henderson occupied the taxpayer interview room in the

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In so concluding, I note that Henderson was required to maintain his workstation in the RO area even after his reassignment to Lowder's group on October 1, because there was no available workstation for him at that time within the walk-in area designated for Lowder's expanded Office Collection group. Cobia's October 3 request to bargain with Lowder had nothing to do with the foregoing problem, however, since the decision to have Henderson maintain his work station in the RO area until suitable space could be obtained for him in the Office Collection area was not made until after Cobia submitted his bargaining request to Lowder. Rather, Cobia requested a briefing and an opportunity to bargain for Henderson's workstation to be located in the walk-in area's private interview room.

past simply because he was the only OCR in the Birmingham office who conducted confidential collection interviews requiring the taxpayer privacy afforded by that work space. By position and grade level, Henderson could not have claimed the interview room as his workstation. Thus, the record indicates that Henderson, as a GS-7 OCR/TRS, was entitled to a workstation of

42.5 square feet, set off by 5 foot high partitions, rather than the 140 square foot private office he claims. Indeed, his supervisor, Carolyn Lowder, a GS-11 manager, has an office circumscribed by five-foot-high partitions. It is equally clear to me that since Henderson has not exclusively performed the function of interviewing taxpayers since March 1996, but has shared that responsibility with an ever-increasing number of employees in the Birmingham office, an order requiring the Respondent to provide Henderson with the exclusive use of the interview room would impermissibly interfere with management's right to assign work and to accomplish its tax collection mission. That is, the Respondent would be impeded in assigning the duty of conducting tax collection interviews to anyone but Henderson, since other employees would not have access to the necessary privacy of the interview room to perform that function.

Accordingly, I conclude that the Respondent did not violate section 7116(a)(1) and (5) of the Statute, as alleged in the complaint, when it refused to bargain as requested with the Union's representative, Joe Cobia, concerning unit employee Ernie Henderson's workstation after the Birmingham office realignment which became effective on October 1, 1996.

Having found that the Respondent did not violate the Statute as alleged, I recommend that the Authority adopt the following:

ORDER

The complaint in Case No. AT-CA-70139, is hereby, dismissed.

Issued, Washington, D.C., January 22, 1998.

SAMUEL A. CHAITOVITZ
Chief Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of this **DECISION** issued by Samuel A. Chaitovitz, Chief Administrative Law Judge, in Case No. AT-CA-70139, were sent to the following parties:

CERTIFIED MAIL, RETURN RECEIPT

CERTIFIED NOS:

Richard Jones, Esquire
Federal Labor Relations Authority
Marquis Two Tower, Suite 701
285 Peachtree Center Avenue
Atlanta, GA 30303

P600-695-813

Larry Laatsch, President
NTEU, Chapter 12
P.O. Box 26385
Birmingham, AL 35260

P600-695-814

Garry Wade Klein, Esquire
IRS, General Counsel Office
401 W. Peachtree Street, NW, Suite 210
Atlanta, GA 30370

P600-695-815

REGULAR MAIL:

National President
National Treasury Employees Union
901 E Street, NW, Suite 100
Washington, DC 20004

Dated: January 22, 1998
Washington, DC