

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

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| AIR FORCE MATERIEL COMMAND WARNER ROBINS AIR LOGISTICS CENTER ROBINS AIR FORCE BASE, GEORGIA Respondent and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 987 Charging Party | Case No. AT-CA-70064 |
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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 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 MARCH 9, 1998, and addressed to:

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

WILLIAM B. DEVANEY

Administrative Law Judge

Dated: February 6, 1998
Washington, DC

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY

Office of Administrative Law Judges

WASHINGTON, D.C. 20424-0001

MEMORANDUM

DATE: February 6, 1998

TO: The Federal Labor Relations Authority

FROM: WILLIAM B. DEVANEY
Administrative Law Judge

SUBJECT: AIR FORCE MATERIEL COMMAND
WARNER ROBINS AIR LOGISTICS CENTER
ROBINS AIR FORCE BASE, GEORGIA

Respondent

and Case No. AT-
CA-70064

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 987

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 filed by the parties.

Enclosures

**FEDERAL LABOR RELATIONS AUTHORITY
OFFICE OF ADMINISTRATIVE LAW JUDGES
WASHINGTON, D.C. 20424-0001**

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| AIR FORCE MATERIEL COMMAND WARNER ROBINS AIR LOGISTICS CENTER ROBINS AIR FORCE BASE, GEORGIA Respondent and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 987 Charging Party | Case No. AT-CA-70064 |
| | |

C.R. Swint, Jr., Esquire
For the Respondent

Richard S. Jones, 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. 1, and the Rules and Regulations issued thereunder, 5 C.F.R. § 2423.1, et seq., concerns whether Respondent issued a memorandum instructing supervisors to clean up the work areas and discard excess supplies and furniture, including filing cabinets and their contents, and thereafter removed filing

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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)".

cabinets and discarded their contents, without prior notice to the Union and without affording the Union an opportunity to bargain, in violation of §§ 16(a) (5) and (1) of the Statute.

This case was initiated by a charge filed on October 28, 1996 (G.C. Exh. 1(a)) and the Complaint and Notice of Hearing issued on May 28, 1997, and set the hearing for July 15, 1997, in Atlanta, Georgia at a place to be determined. (G.C. Exh. 1(c)). By Order dated June 5, 1997, the place for the hearing in Atlanta was fixed (G.C. Exh. 1(d)). By Order dated June 20, 1997 (G.C. Exh. 1(h)), the Regional Director, pursuant to § 2423.22(b) of the Rules and Regulations, transferred Respondent's motion (G.C. Exh. 1(e)) for a detailed accounting of all evidence intended to be introduced and the precise legal theories relied upon, together with General Counsel's Response (G.C. Exh. 1(g)), to the Chief Administrative Law Judge. By Order dated June 24, 1997 (G.C. Exh. 1(i)), the hearing was rescheduled for July 16, 1997, in Warner Robins Air Force Base. By Order dated June 27, 1997 (G.C. Exh. 1(k)), Respondent's motion was denied. By Order dated July 10, 1997 (G.C. Exh. 1(o)), the hearing was further rescheduled for September 9, 1997, at the Bibb County Courthouse, Macon, Georgia, pursuant to which a hearing was duly held, following completion of the hearing in Case AT-CA-70283, on September 9, 1997, in Macon, Georgia, 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 all parties waived. At the conclusion of the hearing, October 9, 1997, was fixed as the date for the mailing post-hearing briefs and Respondent and General Counsel each timely mailed an excellent brief, received on, October 15, 1997, 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 American Federation of Government Employees ("AFGE") is the exclusive representative of a command-wide unit of employees of the Air Force Materiel Command and American Federation of Government Employees, Local 987 ("Union"), is the delegated agent of AFGE for the representation of bargaining unit employees at Warner Robins Air Logistics Command ("Respondent").

2. This case involves the Special Operations Forces Directorate at Respondent, which organization is known by the letter symbol "LU" (Tr. 11, 12). Colonel Henry Mason is

in charge of LU. In total, LU, with all its sub-organizations, has about 250 employees (Tr. 143).

3. One of the sub-organizations of LU is "LUJ". The letter, per se, do not stand for anything; but this organization handles the H-53 Helicopter (Tr. 11). LUJ provides management and engineering support and from August, 1995, until June 30, 1997, was headed by Lt. Colonel Kent A. Mueller² (Tr. 122). In 1995, LUJ had 38 employees; but it absorbed other systems and employees so that by 1997 it had about 50 employees (Tr. 141).

4. Since about November or December, 1995 (Tr. 53, 55), Mr. C.R. Benson has been a Program Manager in LUJ, i.e., the H-53 Helicopter, and in about May or June, 1996 (Tr. 12-13), became "community" steward for LUJ (Tr. 12). Mr. Benson described the duties of a Program Manager as follows:

". . . A program manager is kind of the leader, the quarterback, the conductor of the team, which consists of all the key functional areas of logistics in an AMC. We are responsible for the equipment specialists who have all the technical expertise and tech data, etcetera. We are responsible for the engineering. We are responsible for the engineer; the item manager, which does the inventory management; the production management, which has the buying; repair, the contractor organic repair, and the modifications, and for the contracting officer. We're just the focal point, the leader of everything. We have total supportability of the weapons system." (Tr. 12).

After Mr. Benson arrived at LUJ, other Program Managers in LUJ left, e.g. Chuck Idone³ and Wayne Duffy (Tr. 24), and Mr. Benson inherited their programs. One of his inherited programs was a collapsible bladder fuel tank for the TH-53A Helicopter, a training version of the H-53, manufactured by Robinson Aviation (Tr. 24); another was the VRILS, a navigational system (Tr. 26).

2

Since then, Col. Mueller has headed another sub-organization of LU, namely "LUG" which handles production of the C-130 gun ship (Tr. 91, 121).

3

The spelling varies, for example, "Idone" at Tr. 24; G.C. Exh. 3; but Mr. Benson spelled it: "Iodone" (Tr. 41).

5. Mr. Robert Evans is an 860 Program Manager in LU-8 (Tr. 71), the 860 being another helicopter, and also is the LU Directorate steward, a position he has held for about five years. As Directorate steward he occupies a higher position in terms of the Union hierarchy than Mr. Benson. Within the Union, he is the counterpart of the manager in charge of LU [Colonel Mason] (Tr. 79) and it would be Mr. Evans, as Directorate steward, who would negotiate with Colonel Mason (Tr. 79).

6. When Lt. Colonel Mueller took over LUJ in August, 1995, he found hundreds of obsolete, out-dated files from the 1960s and 1970s relating to rotor systems no longer installed, etc., which had no bearing to the current configuration of the H-53 (Tr. 126-127). As Colonel Mueller explained, the airplane began as an HH or a CH-53 helicopter in the late 1960s. Beginning in 1987 and intensifying in 1991, it underwent a series of modifications to make it into the variant it is today, which meant different drive train, engines, emission equipment and structural changes. Technically, the MH-53J and the trainer, TH-53A, are different airplanes, as about 85,000 parts have been changed, replaced or modified (Tr. 123-124). The modification process was completed in July, 1995 (Tr. 124).

Because the obsolete files contained great quantities of documents and engineering drawings relevant only to earlier versions of the airplane, Col. Mueller deemed it essential to safety considerations that outdated information be removed (Tr. 124, 125). Moreover, LUJ was getting an Lectriever, which is a mechanical, vertical storage device that rotates (Tr. 56, 104, 127) and accommodates the storage of files in one area rather than in multiple file cabinets. Accordingly, in 1995, Col. Mueller issued directions to the employees of LUJ: first, that they, as the managers of individual parts of the program, look through the files and all active and current files be prepared for movement to the Lectriever. Second, if a file were not current or active but was still of value in operating or executing a program, or keeping tabs on engineering issues, then place such material in boxes, which he had made available, for staging, i.e., after appropriate marking for identification and indexing, put into boxes for placement in storage, where the boxes would remain for five years at which the inventory lists and documents would be reviewed and, if still of use, the period of retention would be extended; but if not of further use, they would then be disposed of. Third, all material not of further value they should dispose of. Fourth, all file cabinets that could be emptied would be removed (Tr. 127-130, 159-161).

Although Mr. Benson stated that before September, 1996, he did not know of any file cabinets having been removed (Tr. 28-29), the record plainly shows that in March, 1996, 59 file cabinets were turned in by LU (Res. Exh. 1, Tr. 103-107) and Mr. Benson later recanted and said that file cabinets were removed, "Throughout the entire year. It was not a one-time deal." (Tr. 64).

Indeed, Mr. R.C. Hardy, a Program Manager of the AC-130-H gunship, LUG (Tr. 90-91), who preceded Mr. Evans as LU Directorate steward (Tr. 93), conceded that: (a) in LUG, employees were given the options of keeping files; sending files to the staging area for storage; or disposing of them (Tr. 95); and (b) each individual was told that we had to reduce our filing space; that we must go through out files; and that he did so (Tr. 95-96). Ms. Eythl Marie Millican, now a supervisor in the Financial Management Branch of LU (Tr. 102), but previously in operations (Tr. 102), stated that she had been with LU since 1987 and as long as she could remember, ". . . we have purged files, and we have removed cabinets . . . it has been ongoing as long as I can remember in the Special Operations Forces and anywhere I've ever worked." (Tr. 103). Further, Mr. Evans conceded that removal of excess material, including file cabinets, was an ongoing process, "I'm saying this is an ongoing process. Your question was, would it surprise me to know 50-some-odd cabinets were removed. It wouldn't surprise me to know that because they were always constantly getting replaced." (Tr. 88).

7. On September 4, 1996, Colonel Henry M. Mason, Director of LU, sent an electronic message to all supervisors and to all employees (Tr. 13), re: "Clean Up", in which he stated, part, as follows:

". . .
"I expect to find the minimum necessary file cabinets containing only clearly marked essential files.

. . .

"Now, how do you do that? Well, that is where the supervisors comes in. I expect each supervisor to work with their employees and find new, novel and innovative ways to deal with this tasking" (G.C. Exh. 2).

Colonel Mason advised that, "On Friday 27 September I am going to inspect each team and staff agency area. I expect nothing short of an 'amazing transformation.'" (id.)

While not sent to the Union, per se, Mr. Benson (Tr. 13) and Mr. Evans (Tr. 72) each most assuredly received the e-mail on September 4. Mr. Benson thought Colonel Mason, ". . . was talking down to us . . . we were being belittled" (Tr. 13). Accordingly, he, Benson, went to Mr. Allen Mathias, the chief civilian in LU, and said to him, ". . . this is kind of bad. How about talking to him? The tone of it and the attitude is really poor, and a lot of people expressed to me like I feel, that it's poor. How about talking to him and seeing if you can't get him to tone it down a little bit?" (Tr. 14) (Emphasis supplied). Mr. Benson said that Mr. Mathias said he would talk to Colonel Mason, ". . . about the tone of the memo." (Tr. 14) (Emphasis supplied). Mr. Benson did not request bargaining at any time after he received the e-mail (G.C. Exh. 2) because, he said, "I didn't think it was necessarily (sic). I thought Alan Mathias was going to take enough action on himself to correct everything that needed to be corrected" (Tr. 15).

Mr. Evans made no bargaining request, nor did any one else because, ". . . There was not any direction other than, you know, he was going to clean out the area." (Tr. 73); that he saw nothing in the September 4, 1996, message that required any negotiation (Tr. 80); and that "He [Col. Mason] had just arrived within the LU Directorate, and I really didn't consider it to be a direction so much as, you know, establishing turf." (Tr. 80).

8. On Friday, September 27, 1996, following his inspection, Colonel Mason sent another electronic message to all employee, re: "Clean up results", in which he stated, in part, as follows:

"Tremendous improvement! We have really come a long ways fast. I see evidence of hard work most everywhere. I know may of you put in a lot of effort and the results are outstanding. I saw things I never expected to see. I saw aisles you could actually walk through! I saw neat orderly areas, even some professional looking ones. I saw Marie Milligan and Chuck Idone's desk tops! . . . LUJ 'Most improved team' . . . Thanks. really!

Now, where do we go from here. First, we are going to go much further in ridding ourselves

of excess stuff. We will continue with 'the file cabinet war'. I want 50 percent of them gone. The guiding rule is to only maintain essential, current information within our area. Stage whatever can be staged. Recycle whatever we do not need. Make sure every drawer of every file cabinet we keep is filled with mission essential material. We are going to reclaim our aisles! And get rid of the ugly cabinets first.

. . . ." (G.C. Exh. 3)

Colonel Mason had also said, in part,

Third, Refrigerators. I am in a bit of a quandary here. I am close to an edict that we will not have them anymore based on the condition of most of them. We'll hold off on this for now. But take this as a warning"

Colonel Mason closed with the statement, ". . . Next inspection where wondrous progress will be expected is 18 October." (id.)

9. As to the September 27th e-mail, Mr. Evans said, ". . . I just naturally felt that it was demeaning and belittling to the employees. It was an e-mail that basically stated that he was going about to issue an edict, which I felt was, you know, not in his prerogative to issue edicts; only dictators do that or nobility." (Tr. 74); that, Well, it's just the general tone of the message, I think, that was primarily belittling.' (Tr. 81).

On Monday, September 30, 1996, Mr. Benson responded to Colonel Mason, by e-mail, as follows:

"Just received your note. Thanks for the compliments for the hard work. I certainly applaud your efforts to keep the directorate clean and orderly.

"However, further comments are necessary.

"You have committed a unilateral change in the workplace. I request that you do not remove any more file cabinets, without first negotiating with AFGE Local 987 - the Union.

"As far as refrigerators are concerned,
you, Colonel, should also
'Take this as a warning'

"Our use of refrigerators will continue
within LU. If they are old and unsightly, you
should have used a portion of the \$100,000
spent on the new LU palace construction to
purchase new ones. By the way, you have a
refirgerator (sic) in your office - are you
threatening to take you own away?

"Just in case there is doubt in anyone's
mind all in LU should have no fear - the
refirgerators (sic) will stay and be in sof
long after this colonel, and many other (sic)
after him are long gone and forgotten." (G.C.
Exh. 3).

Mr. Benson received no response to his request to negotiate;

Respondent did not bargain about the file cabinet issue (Tr.
16, 17), and Mr. Benson said Respondent went ahead and did
what they wanted to do and moved these [files] and got on
with it." (Tr. 17).

However, Mr. Benson's testimony does not show whether
files were, or were not, removed on or after September 30,
1996, the date of Mr. Benson request that no more files be
removed, ". . . without first negotiating with AFGE Local
987 - the Union . . ." (id.). Indeed his testimony about
missing files is rather strange in that, according to him,
it happened to other people whose projects he later
inherited (e.g., a
MTI flight-line test set which Mr. Luther McKinley had had
(Tr. 21, 22); the ABQ-158 radar which Mr. Jim Scoffield had
(Tr. 22); the APM-468 test set (Tr. 23); the TH-53 crash-
worthy battle fuel tank which Mr. Wayne Duffy and Mr. Chuck
Idone had (Tr. 24-25, 41); and the MX-53J VRILS navigational
system which Mr. Benson got in July, 1997 (Tr. 26), but not
to any files, or file cabinets, he had, "The ones that were
in my very immediate locale didn't get
bothered . . ." (Tr. 18). Although he said, ". . . we had
some that defended their documents, some that saved
theirs." (Tr. 18). Mr. Benson said he ". . . did not see
who threw the documents away . . ." (Tr. 44); but he
attributed it to ". . . Mueller and his crew . . ." (Tr.
44).

Mr. Evans appears to have said that in LU8 they put all
of their old files in boxes for staging [storage]. Thus, he

stated, ". . . It should have been the responsibility of the responsible person, whoever had those files, to go through them, but as it turned out, we were told to get rid of so many files, and they were kind of like ravenous buzzards, you know. People just started picking up files and throwing them in boxes We didn't have time to review them prior to their going to staging" (Tr. 83-84). However, he also said, ". . . I believe that someone [he never saw anyone doing it (Tr. 87)] just came by and dumped the files, put them in boxes, and I don't even know what happened to them . . . I don't know whether they were going to staging or where." (Tr. 84). Mr. Evans stated that ten external rescue hoists for the 860 helicopter are missing; that the records of the serial numbers of each hoist were gone and they could not locate the missing hoists. Accordingly, they are now in the process of buying ten new hoists at a cost of about \$40,000.00 each (an increase of \$10,000.00 over the initial cost of \$30,000.00 each (Tr. 76-77)). Mr. Evans said the supplier, Queens Eastern Corporation, N.J., did not retain a list of the serial numbers (Tr. 77).

Mr. Hardy said that in LUG they were told to: keep the file; send it to staging; dispose of it (Tr. 95); and that is what he did (Tr. 95-96). However, with two programs he later acquired, the APQ-150A Radar (target-acquisition) and the ASD-5A (Direction-finding Set) files were missing and he did not know whether they had been thrown away or sent to staging (Tr. 96-97), although he stated that he was able to retrieve, ". . . some ASD-5A files before they were thrown away or removed" (Tr. 97).

10. Ms. Millican explained that every cubicle, i.e., each Program Manager's office, has a minimum of two and some have as many as four, personal file cabinets (Tr. 19; see, also, Tr. 135) for whatever files are needed to perform the manager's daily work (Tr. 120-121) and none of the personal file cabinets were involved in the file reduction program (Tr. 120).

11. Lt. Col. Mueller very credibly testified that there was never a time he and/or a bunch of other people threw out files (Tr. 129); that he did not decide what files were to be kept. He testified, in part, as follows:

". . . During the process, files were reviewed by the owners, questions came through supervision. There were times when I asked questions of the supervisors and the supervisors ask the owners of the files. There was cooperation in examining files. Like I took particular

interest in the mishap files, and I asked our safety employee that manages our safety files about what files he wanted to keep and whether they had any relevance, and we collectively reviewed some of the mishap files, many of which were Vietnam combat-related incidents where an airplane was actually lost to gunfire.

"Once again, those all were versions of the airplanes which bear little or no resemblance to the model as it exists today, but I would say at its best, it was an individual effort, and at times it was a cooperative effort where questions were asked and we consulted and then made decisions. But I must say, throughout the whole process, even though instructions and staging materials were available, at no point did we have employees identify any of these ancient files a candidates to stage.

"We had 100 boxes available, and my secretary sent out e-mails and I sent out e-mails and talked with everyone to make sure that everyone understood that any file that had any particular relevance could be staged for five years." (Tr. 129-130).

Lt. Col. Mueller said that when Col. Mason's e-mail messages of September, 1996, came out, ". . . in my area we already had been under way for some time, and so we merely, you know, revisited the files that had yet to be reviewed, and the process continued." (Tr. 130-131). As to Mr. William D. (Sonny) Brown (Tr. 162), he said,

". . . Sonny had a lot of -- in some of our vertical files (Res. Exhs. 2-5; Tr. 166) Sonny had airplane parts, wiring, and modification drawings and stuff from previous engineering changes to the airplane which were no longer current, and he does like to hang onto stuff, so I probably -- I had a few conversations with him about the need to get those items into another type of storage; but as far as having a fit, no." (Tr. 131)

Mr. Thomas Lamb, who became a supervisor in May, 1996 (Tr. 158), previously having been the Program Manager for the MH-53 JIS MAT (Tr. 159), testified as to Mr. Brown as follows:

"A I think there was one equipment specialist that he wanted to make sure nothing of his that was important got thrown away. His name was Sonny Brown.

. . .

"A Well, we made sure that the things he needed didn't get tossed.

"Q Did he pitch a fit?

"A No. He just talked to me about it. He didn't need to pitch a fit.

"Q It was taken care of.

"A Yes." (Tr. 161-162).

Concerning Mr. Williams (see, G.C. Exh. 4, September 4, 1997), Col. Mueller, stated as follows:

"A Larry Williams was assigned relatively late in my tenure at the LUJ as the engineer for the 158 radar.

. . .

"A The APM-468 is a test set that supports the 158 radar.

"Q Okay. Do you know anything about files being lost or misplaced because of moving these file cabinets for either of those, the APM-468 or APQ --

"A That was never brought to my attention as an issue.

"Q No one ever told you about it.

"A No one ever brought to my attention as an issue that any files were lost in any way relating to our review of our file system.

. . .

"A And also be advised the 158 system transferred from the avionics area to my area, so its record keeping had been across the hall in another organization called LUA, Avionics. So the engineering responsibility for the radar itself was across the hall, as were the records for the radar. So if in transferring -- and I believe he had responsibility, engineering responsibility across the hall -- if in the process of transferring across the

hall there was some perturbation in the records of the 185, it had nothing to do with the process that we had going on, and it was not brought to my attention.

"Q Okay. So you're saying the 158 program, that came to LUJ late in the day.

"A Right.

"Q Like when?

"A Like, oh, shortly after the first of the year.

"Q Of '97.

"A Right.

. . .

"Q Now, did Mr. Williams come with the program?

"A Right.

"Q All right. So we don't know -- it was never brought to your attention that those files are missing.

"A No. As a matter of fact, the engineer, Williams, seemed to be doing a good job at lining up and resolving problems, longstanding problems that existed in the test set. It seemed to me that he was actually making progress where progress had not been made before, so I had not been apprised that there had been any problem with record keeping.

"Q Or any missing files or anything.

"A Right." (Tr. 131-133).

With regard to the TH-53 crash worthy Battle Tanks (collapsible bladders), Col. Mueller stated, in part, as follows:

"A Well, one thing that we haven't said up to this point that needs to be said is that desk files --

. . .

-- there are, I would say, not extensive, but very good desk-file spaces in each of the employees' own working areas. So the review and refinement of the files maintenance of the old, five-drawer and four-drawer files was not -- it did not invade the desk files of the program managers, item managers, or production management specialists. They were encouraged to bring those up to date as part of

maintaining their files and having the correct files on hand.

"Duffy's files on the TH helicopter and on the Robertson crash-worthy tanks were desk files, so when Duffy left, his desk files were available in total to the new guy.

"Q So why can't Mr. Benson find them, or do you know?

"A I have no idea." (Tr. 134).

Mr. Lamb very credibly testified that shortly after he arrived, Col. Mueller embarked on a program of getting rid of old files (Tr. 159). He stated, in part, as follows:

"A Col. Mueller asked me to move it along. I guess things were moving along slowly, and Col. Mueller asked me to move it along for the team. Many and all disciplines are in the team, and I asked folks to revisit their files, look in there again, get rid of things and move those things into the Lectriever that they still needed and get rid of the old cabinets that were dilapidated, get rid of the old files that just didn't apply in the current configuration anymore.

"Q And all this was happening before Col. Mason's memo in September of '96?

"A Oh, yes. I believe that's the truth.

"Q Okay. Are you aware of any important documents being thrown away?

"A No.

"Q Any documents being lost?

"A Not in my hands." (Tr. 161).

Mr. Lamb emphasized that boxes were provided, in plain sight, for anything anyone wanted to archive (stage) (Tr. 160); but that, except for Mr. Chuck Idone, who frequently sent things to staging, he did not recall anyone else sending a single thing to staging (Tr. 162).

12. On June 19, 1997, shortly before he left LUJ, Lt. Col. Mueller, a/k/a "Dark Horse Lead" (Tr. 152-153), sent the following e-mail to all employees of LUJ:

"TEAM

"Since we led the way in eliminating paper storage that was using space needed by people, we might as well be leaders in phase two of

the effort. Please re-engage the vertical files and eliminate old and useless documents and artifacts. In addition, the lectriver bins need a 'sweep' to pare down to useful document only.

"We will conduct a self inspection in mid July to assess progress. this effort is required to prepare the team for conversion to paperless processes during FY98, and in preparation for the floor move which is now again looking good for late July.

"Remember, we can 'stage' any files you just want to keep for up to five years, but so far, all reductions have been discards.

"Thanks in advance. Dark Horse Lead"
(G.C. Exh. 5)

Mr. Benson said he did not know of any files having been removed as the result of Lt. Col. Mueller's June 19, 1997, announcement (Tr. 29).

CONCLUSIONS

Although the Complaint is ambiguous (" . . . bargain to the extent required by law." (G.C. Exh. 1(c), Par. 13)), General Counsel conceded at the outset of the hearing that this case, because it concerns ". . . technology, method and means" (5 U.S.C. § 7106(b)(1)), involves only permissive substantive bargaining, i.e., pursuant to § 6(b)

(1), "at the election of the agency"⁴; nevertheless, if Respondent changes a condition of employment which has more than a de minimis impact it is, of course, required to bargain, upon request, on procedures and/or appropriate arrangements, pursuant to § 6(b)(2) and (3) of the Statute, 71 U.S.C. § 7106(b)(2) and (3). Department of Health and Human Services, Social Security Administration, 24 FLRA 403 (1986).

In September or October, 1995, shortly after his arrival as Chief of LUJ, Col. Mueller gave instructions to his employees that they look through their files to determine which were potentially outdated and which were still active or current and to move all active and current files to the new Lectriever; those files which were not current or active but which were deemed to be useful, historical material in operating or executing a program should be placed in boxes, which he made available, for removal to staging (storage) where they would be kept for five years and then reviewed; and all other files should be disposed of. While this instruction applied only to LUJ, the record shows that this was the practice throughout LU. Thus, Ms. Millican said that she had been with LU since 1987 and so long as she could remember, ". . . we have purged

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In passing, General Counsel referred to E.O. 12871 (Tr. 8) and I am well aware that §2(d) thereof provides [Ses. 2 . . . each agency . . . shall], "(d) negotiate over the subjects set forth in 5 U.S.C. 7106(b)(1)" However, Ses. 3 of E.O. 12871, specifically provides,

"Sec. 3. No Administrative or Judicial Review. This order . . . is not intended to, and does not, create any right to administrative or judicial review, or any other right, substan-tive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person." (E.O. 12871, Ses. 3 (October 1, 1993)).

Mr. Benson's September 30, 1996, ". . . I request that you do not remove any more file cabinets, without first negotiating with AFGE Local 987 - the Union." (G.C. Exh. 3), like the Complaint, is ambiguous. In any event, Respondent did not agree to substantive bargaining about the removal of filing cabinets; and the Complaint make no reference to E.O. 12871, compare: U.S. Department of Commerce, Patent and Trademark Office, 53 FLRA No. 70, 53 FLRA 858 (1997). Accordingly, I treat this case wholly as an "I & I" case.

files, and we have removed cabinets . . . So it has been ongoing as long as I can remember in the Special Operations Forces [LU] and anywhere I've ever worked." (Tr. 103); Mr. Hardy, who proceeded Mr. Evans as Chief Steward for LU, stated that it was the practice of LUG; Mr. Evans said that when Col. Mueller mentioned that he was going to clean up his area, he, Evans, said, ". . . that's fine" (Tr. 75). Moreover, the record shows that 59 file cabinets were removed from LU in March, 1996 (Res. Exh. 1).

1. Union was given adequate notice of Colonel Mason's September 4 (G.C. Exh. 2) and September 27 (G.C. Exh. 3), 1996, messages.

On September 4 and September 27, 1996 (G.C. Exhs. 2 and 3) Colonel Henry M. Mason, Director of LU, issued messages, directions, to all employees. Each of these two messages was sent by electronic mail to each employee, including supervisors, and, while not specifically directed to the Union, was received by Mr. Evans, Chief steward for LU, the authorized representative of the Union to negotiate with Col. Mason regarding LU (Tr. 79), and by Mr. Benson, steward for LUJ, and the Union, by Mr. Benson, responded to each message. Accordingly, I conclude that the Union did receive timely and adequate notice of each message, or direction, and had full opportunity to request bargaining, if appropriate, which it exercised as to the September 27, 1996, message. United States Air Force v. FLRA, 681 F.2d 466 (6th Cir. 1982); Veterans Administration, Veterans Administration Medical Center, Muskogee, Oklahoma, 19 FLRA 1054, 1056 (1985); United States Department of Health and Human Services, Region II New York, New York, 26 FLRA 814, 826 (1987); Blue Grass Army Depot, Richmond, Kentucky, 50 FLRA 643, 644, 651-652 (1995).

2. September 4, 1996, message did not change conditions of employment, but it if did, Union waived its right to bargain.

The September 4, 1996, message, as it pertained to file cabinets, provided as follows:

". . .
"I expect to find the minimum necessary file cabinets containing only clearly marked essential files.
. . . ." (G.C. Exh. 2).

Mr. Evans said he didn't request bargaining because, ". . . There was not any direction other than, you know, he

was going to clean out the area." (Tr. 73); that he saw noting in the September 4, 1996, message that required any negotiation (Tr. 80). Mr. Benson saw nothing to bargain about -- his only concern was the tone of the message, he felt Col. Mason, ". . . was talking down to us . . . we were being belittled . . ." (Tr. 13); and he went to Mr. Allen Mathias, the chief civilian in LU, and asked Mr. Mathias to talk to Col. Mason to see if he, Mathias, could get him, ". . . to tone it down a little bit" (Tr. 14). Further, as set forth hereinabove, it long had been the policy in LU to review files and to retain in file cabinets only necessary files and to remove unneeded file cabinets. Moreover, if, contrary to my conclusion, the September 4, 1996, memo were deemed to have changed conditions of employment, the Union, by its considered decision not to request bargaining, waived its right to bargain on the impact and implementation thereof.

3. September 27, 1996, message changed conditions of employment and Respondent unlawfully refused to bargain.

Col. Mason's September 27, 1996, message, as it pertained to file cabinets, provided as follows:

". . .

"Tremendous improvement! We have really come a long ways fast. I see evidence of hard work most everywhere. . . I saw things I never expected to see. I saw aisles you could actually walk through! . . .

"Now, where do we go from here. First, we are going to go much further in ridding ourselves of excess stuff. We will continue with 'the file cabinet war'. I want 50 percent of them gone. The guiding rule is to only maintain essential, current information within our area. Stage whatever can be staged. Recycle whatever we do not need . . . We are going to reclaim our aisles! And get rid of the ugly cabinets first.

. . .

". . . next inspection where wondrous progress will be expected is 18 October." (G.C. Exh. 3) (Emphasis supplied).

Mr. Benson, on behalf of the Union, with Mr. Evans' knowledge and consent (Tr. 81), on Monday, September 30, 1996, by electronic mail to Col. Mason, responded as pertinent,

"Just received your note. Thanks for the compliments for the hard work. I certainly applaud your efforts to keep the directorate clean and orderly.

"However, further comments are necessary.

"You have committed a unilateral change in the workplace. I request that you do not remove any more file cabinets, without first negotiat-ing with AFGE Local 987 - the Union.

. . . ." (G.C. Exh. 3) (Emphasis supplied).

Respondent did not reply to Mr. Benson's September message (Tr. 15, 16), although Mr. Benson was told about two weeks later by Mr. Dale Foster, Respondent's Chief of Labor Relations, that Col. Mason had been incensed by Mr. Benson's message and had sought to have him disciplined for use of e-mail (Tr. 16, 17), and Respondent, ". . . went ahead and did what they wanted to do and moved these and got on with it." (Tr. 17).

As the Authority has stated, "The determination of whether a change in conditions of employment occurred involves an inquiry into the facts and circumstances regarding the Respondent's conduct and employees' conditions of employment." 92 Bomb Wing, Fairchild Air Force Base, Spokane, Washington, 50 FLRA 701, 704 (1995); U.S. Department of Transportation, Federal Aviation Administration, Washington, D.C. and Michigan Airway Facilities Sector, Belleville, Michigan, 44 FLRA 482, 493 n.3 (1992). Although Col. Mason reiterated, in essence, the established standard of maintaining ". . . essential, current information within our area. Stage whatever can be staged. Recycle whatever we do not need" (G.C. Exh. 3), at the same time he undermined and limited the standard in two critical respects. First, he directed that not less than 50% of the file cabinets be eliminated. Second, he directed that this be done by October 18, 1996, i.e., by the date of his next inspection. While each of the words, "essential" and "current", has an aura of immutability, in truth, each word has a highly individual and subjective meaning that varies from person to person, each word is directly affected both by time and by space and is imprecise, uncertain and variable. Moreover, the directives would appear different to different people, e.g., "essential and current" to one person, "essential current" to another. In the former, material could be deemed "essential" even though not current, while in the

latter if not current could not be considered "essential". Whatever any program manager might have considered essential current information would change if told that only half of that material could be retained and any decision to purge would be affected by the amount of time available in which to do it. The record shows, as discussed hereinafter, that this is what occurred.

I have credited Col. Mueller's testimony that there was never a time that he and/or a bunch of other people threw out files and that he did not decide what files were to be kept, but, rather, that, ". . . files were reviewed by the owners. . . ." (Tr. 129). I have also credited Mr. Lamb's testimony that, before Col. Mason's directions of September, 1996, he had, ". . . asked folks to revisit their files, look in there again, get rid of things and move those things into the Lectriever that they still needed and get rid of the old cabinets that were dilapidated, get rid of the old files that just didn't apply in the current configuration anymore." (Tr. 161) and that he was not aware of any important documents being thrown away and certainly, "Not in my hands." (Tr. 161). I do not credit Mr. Benson's testimony in which he attributed throwing files away to ". . . Mueller and his crew" (Tr. 44), in part, because I found Col. Mueller's and Mr. Lamb's denial of such action wholly credible, in part, because Mr. Benson saw no one throw files away (Tr. 44); in part, because, Mr. Benson conceded that files, ". . . in my very immediate locale didn't get bothered" (Tr. 18); and, in part, because Mr. Larry Williams in his September 8, 1997, letter to Mr. Benson, stated, ". . . files . . . were lost due to the moving of the file cabinets" (G.C. Exh. 4). To the contrary, I credit the testimony of Mr. Evans, which was wholly uncontradicted, that,

". . . It should have been the responsibility of the responsible person, whoever had those files, to go through them, but as it turned out, we were told to get rid of so many files, and they were kind of like ravenous buzzards, you know. People just started picking up files and throwing them in boxes. . . We didn't have time to review them prior to their going to staging . . . We didn't have time to review them prior to their going to staging . . . we don't really have specific files . . . The files belong to us as an office as a whole. Okay? We do not have the time to go through each and every one of those files. In the case of the 860, for example, there's only two program managers -- that's me

and another fellow, and in the course of the day we're very, very busy, and we did not have the time to physically go through all our files prior to someone coming by and throwing them out.

"Q Threw them out. So you didn't have time to put them in staging?

"A We didn't have time to review them prior to their going to staging, no." (Tr. 83-84)

That the responsible employees, i.e., those who had the files, removed the files, notwithstanding that they did not have time to review them, is fully consistent with the testimony of Col. Mueller that he did not throw out files nor decide what files were to be kept; is fully consistent with Mr. Lamb's testimony that he did not throw any files away; is fully consistent with Mr. Hardy's testimony that they were told to go through their files (Tr. 95); and is fully consistent with Ms. Millican's testimony that everyone does their own cleanup (Tr. 119). Moreover, Mr. Evans emphasized that: (a) he was speaking of LU file cabinets in general (Tr. 87); and (b) file cabinets were removed from the aisles, in part, pursuant to Col. Mason's message, ". . . saying we want to clean this area up." (Tr. 83), and, in part, ". . . to make space available for the contractors to come in and do some renovation." (Tr. 88).

Accordingly, I conclude that Respondent's direction to reduce the number of file cabinets by 50% within a three week period and/or to clean the aisles of file cabinets had the readily foreseeable effect of causing the removal of files without an opportunity for review and the loss of information, whether forever or subject to retrieval, critical to the performance of the program managers' duties. The Authority has stated that, ". . . in assessing whether the effect of a decision on conditions of employment is more than de minimis, the Authority looks to the nature and extent of either the effect, or the reasonably foreseeable effect, of the change on bargaining unit employees' conditions of employment. . . ." General Services Administration, Region 9, San Francisco, California, 52 FLRA 1107, 1111 (1997). Here, by way of example, the loss of historical data on the VRILS, a navigational system for the MX-53J helicopter, delayed funding because of the lack of budgetary data on disposition of money already appropriated (Tr. 26-27); and the same problem arose with a "combined-altitude radar altimeter" for the TA-53A trainer (Tr. 28) and with the Standard Flight-Data Recorder for the H-53 (Tr. 28). Contracts called "government-owned contractor operator" (GOCO) contracts permit going to a contractor without going through competitive bids and the cost is based

on a contractor estimate report ("CER"). The loss of CERs, when a contractor asserts a cost increase makes it, ". . . awful difficult . . . to . . . justify whether that cost increase is valid" (Tr. 78). The loss of documents relating to the APQ-150A Radar (target-acquisition radar) and the ASD-5A Direction-finding set required the dispatch of equipment specialists to three different sites to determine, ". . . what equipment was where because this information was in those files that were thrown away. I could not properly manage my program without knowing what equipment was where." (Tr. 93). Loss of files for the AN/APM-468 test set and for the AN/APQ-158 Flight Line Test Set, ". . . means our ability to provide [engineering] support for the AN/APM-468 Radar Test Set has been permanently lost . . . because (sic.) the vendor is out of business" and ". . . when we run out of certain obsolete parts, reverse engineering is not possible. . . ." (G.C. Exh. 4). Mr. Evans pointed to the loss of serial numbers for the external rescue hoist for the 860 helicopter manufactured by Queens Eastern Corporation (Tr. 76-77). Mr. Evans said they had about 100 aircraft undergoing major modification at Pensacola and one hoist had been purchased for each, but they came up short by ten hoists. The contractor did not keep a list of all serial numbers and without the serial numbers they could not check to see if one of the missing hoists had been installed on aircraft other than the intended 860s (Tr. 77)⁵. From these, and other examples shown on the record, the impact of Respondent's change of conditions of employment plainly was more than de minimis, the Union requested bargaining on the impact and implementation and Respondent refused even to respond, and thereby violated §§ 16(a)(5) and (1) of the Statute.

4. Remedy

From the standpoint of the violation, pursuant to Federal Correctional Institution, 8 FLRA 604 (1982), a status quo ante remedy might be justified, but General Counsel noted that the traditional status quo ante remedy, ". . . is probably not available here because the documents have been destroyed." (General Counsel's Brief, pp. 12-13).

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I have grave reservations about the value of serial numbers in finding missing hoists. True, if this model hoist were found on other than an 860, the serial number could identify it as one intended for an 860; but serial numbers are not needed to identify this model hoist put to other uses or secreted for future use. Indeed, Mr. Evans said the response to a request that major commands survey their units for this model hoist had not been enthusiastic (Tr. 77).

Respondent echoes the assumed destruction of files, ". . . The evidence shows that whatever files that were removed were destroyed and that none (or very few) were sent to the staging area . . . Hence, there are no files to be returned to the work area." (Respondent's Brief, p. 12). Each relied on evidence and testimony (G.C.: Tr. 152; G.C. Exh. 5; Res.: Tr. 162) concerning LUJ and the record shows that, except for Mr. Idone who frequently sent files to staging (Tr. 162), LUJ files were not stored; but both General Counsel and Respondent ignore the unchallenged testimony of Mr. Evans that elsewhere in LU, files were sent to staging following Col. Mason's September 27, 1996, directive. Consequently, the record establishes that there may be a substantial number of files removed on, and after, September 27, 1996, and sent to staging (storage). Nevertheless, a status quo ante remedy, for reasons set forth hereinafter, would be wholly inappropriate, even as modified by General Counsel's request that the, ". . . remedy can be limited to an order directing Respondent to return file cabinets themselves to the work area (General Counsel's Brief, p. 13).

The Union was never concerned with file cabinets; but, rather, the files contained in them. Nor did the Union ever object to Col. Mueller's program in LUJ, both before September, 1996, and on, and after, June 19, 1997 (G.C. Exh. 5; Tr. 139, 150-152), that employees review their files and eliminate old and useless documents and artifacts (G.C. Exh. 5). Indeed, Mr. Benson stated, "I think that throwing the documents away without coordinating with anyone is the problem." (Tr. 60-61). Files that were destroyed, obviously, are gone, and Respondent certainly is correct, if this turns out to be true, that ". . . there is no need for a return of file cabinets to the work area" (Respondent's Brief, p. 12).

To the extent that files removed from LU on, and after, September 27, 1996, exist, Respondent should, at the request of the Union, make those files available for examination, indexing and cataloguing and, further, at the request of the Union, negotiate concerning the return of any such files as active, current, or if neither active or current, useful in operating or executing a program, and, if available file space (Res. Exh. 2-5) is inadequate, provide adequate file space for the files returned to the work area.

General Counsel's request that the Order be signed by Respondent's Commanding Officer will be granted. U.S. Department of Treasury, Customs Service, Washington, D.C. and Customs Service, Region IV, Miami, Florida, 37 FLRA 603, 605 (1990); but General Counsel's request that the Order be

posted base-wide is denied. The Order, or direction, of September 27, 1996, which violated the Statute, was issued by the Director of LU, applied only to LU and there is nothing in the record to suggest that any similar action was taken, or contemplated, outside LU. Accordingly, posting will be ordered only in LU.

Having found that Respondent violated § 16(a)(5) and (1) of the Statute, it is recommended that the Authority adopt the following:

ORDER

Pursuant to § 2423.41 of the Authority's Rules and Regulations, 5 C.F.R. § 2423.41, and § 18 of the Statute, 5 U.S.C. § 7118, the Air Force Materiel Command, Warner Robins Air Logistics Center, Robins Air Force Base, Georgia (hereinafter, "Respondent") shall:

1. Cease and desist from:

(a) Unilaterally ordering the reduction, or the removal, of files in its Special Operations Forces Directorate (hereinafter, "LU").

(b) Unilaterally ordering the reduction of file cabinets used by employees of LU.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights assured by the Statute.

2. Take the following affirmative action in order to effectuate the purposes and policies of the Statute:

(a) Give American Federation of Government Employees, Local 987 (hereinafter, "Union"), the representative of its employees, notice and opportunity to bargain on the impact and implementation of any decision to reduce, or remove, files and/or file cabinets in LU.

(b) At the request of the Union, Respondent shall:

(i) Locate and segregate for ready access all extant files removed from LU on, and after, September 27, 1996;

(ii) Provide the responsible employees, i.e., those employees now responsible for the programs to which specific files relate, the

opportunity to review, catalogue and index the files pertaining to their programs;

(iii) Negotiate with the Union concerning the return to the work area of any files as necessary, current, or, if neither active or current, useful in operating or executing a program;

(iv) If available file space is inadequate to accommodate files to be returned to the work area, provide the required file space.

(c) Post at all facilities of LU 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 Commanding Officer of Respondent and shall be posted and maintained for 60 consecutive days thereafter, in conspicuous places, including all bulletin boards and other places at Robins Air Force Base, Georgia, where notices to employees of LU are customarily posted. Reasonable steps shall be taken to insure that such Notices are not altered, defaced, or covered by any other material.

(d) Pursuant to section 2423.14(e) of the Authority's Rules and Regulations, 5 C.F.R. § 2423(e), notify the Regional Director of the Atlanta Region, Federal Labor Relations Authority, Marquis Two Tower, Suite 701, 285 Peachtree Center Avenue, Atlanta, Georgia 30303-1270, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

WILLIAM B. DEVANEY
Administrative Law Judge

Dated: February 6, 1998
Washington, DC

NOTICE TO ALL EMPLOYEES
POSTED BY ORDER OF THE
FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the Air Force Materiel Command, Warner Robins Air Logistics Center, Robins Air Force Base, Georgia, violated the Federal Service Labor-Management Relations Statute and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY ALL EMPLOYEES OF OUT SPECIAL OPERATIONS FORCES DIRECTORATE AT ROBINS AIR FORCE BASE, GEORGIA THAT:

WE WILL NOT unilaterally order the reduction, or the removal of files in the Special Operations Forces Directorate (hereinafter, "LU").

WE WILL NOT unilaterally order the reduction of file cabinets used by employees of LU.

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 Federal Service Labor-Management Relations Statute.

WE WILL give the American Federation of Government Employees, Local 987 (hereinafter, "Union"), the representative of our employees, notice and opportunity to bargain on the impact and implementation of any decision to reduce, or remove, files and/or file cabinets in LU.

WE WILL, at the request of the Union:

(i) Locate and segregate for ready access all extant files removed from LU on, and after, September 27, 1996;

(ii) Provide the responsible employees, i.e., those employees now responsible for the programs to which specific files relate, the opportunity to review, catalogue and index the files pertaining to their programs;

(iii) Negotiate with the Union concerning the return to the work area of any files as necessary,

current, or, if neither active or current, useful in operating or executing a program;

(iv) If available file space is inadequate to accommodate files to be returned to the work area, provide the required file space.

(Agency or Activity)

Date: _____ 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, Atlanta Region, Federal Labor Relations Authority, whose address is: Marquis Two Tower, Suite 701, 285 Peachtree Center Avenue, Atlanta, GA 30303-1270, and whose telephone number is: (404) 331-5212.

CERTIFICATE OF SERVICE

I hereby certify that copies of this DECISION issued by WILLIAM B. DEVANEY, Administrative Law Judge, in Case No. AT-CA-70064, were sent to the following parties in the manner indicated:

CERTIFIED MAIL:

C.R. Swint, Jr.
General Attorney
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Richard S. Jones, Esq.
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Atlanta, GA 30303-1270
P 600 696 215

REGULAR MAIL:

National President
American Federation of Government
Employees, AFL-CIO
80 F Street, NW
Washington, DC 20001

Dated: February 6, 1998

Washington, DC