UNITED STATES OF AMERICA

FEDERAL LABOR RELATIONS AUTHORITY

Office of Administrative Law Judges

WASHINGTON, D.C. 20424-0001

MEMORANDUM DATE: October 8, 1999

TO: The Federal Labor Relations Authority

FROM: WILLIAM B. DEVANEY
Administrative Law Judge

SUBJECT: U.S. DEPARTMENT OF TREASURY
INTERNAL REVENUE SERVICE

Respondent

and Case No. CH-CA-80709

NATIONAL TREASURY EMPLOYEES UNION

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

UNITED STATES OF AMERICA

FEDERAL LABOR RELATIONS AUTHORITY

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WASHINGTON, D.C. 20424-0001

U.S. DEPARTMENT OF TREASURY INTERNAL REVENUE SERVICE Respondent	
and NATIONAL TREASURY EMPLOYEES UNION Charging Party	Case No. CH-CA-80709

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 **NOVEMBER 8, 1999**, 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: October 8, 1999
Washington, DC

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

U.S. DEPARTMENT OF TREASURY INTERNAL REVENUE SERVICE Respondent	
and NATIONAL TREASURY EMPLOYEES UNION Charging Party	Case No. CH-CA-80709

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For the Charging Party

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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 violated §§ 16(a)(5) and (1) of the Statute by refusing to negotiate the movement of nine Statistics of Income (SOI) employees at the Detroit Computing Center from the ninth floor to the third floor. Respondent notified the Union of the intended movement but refused to negotiate because, it asserted, reassignment, or realignment, of employees is covered by Article 15 of the National Agreement, NC-V, between the parties.

This case was initiated by a charge filed on July 28, 1998 (G.C. Exh. 1(a)); the Complaint and Notice of Hearing issued on February 18, 1999 (G.C. Exh. 1(b)), and set the hearing for April 13, 1999, in Detroit, Michigan at a place to be determined. On March 29, 1999, General Counsel moved that the hearing be postponed until June 22, 1999, with which all other parties joined (G.C. Exh. 1(f)) and, for good cause shown, by Order dated March 29, 1999 (G.C. Exh. 1 (h)), the hearing was rescheduled for June 22, 1999, at a place to be determined. On May 28, 1999, Respondent moved to further postpone the hearing until August (G.C. Exh. 1 (j)); General Counsel opposed Respondent's Motion (G.C. Exh. 1(l)); by Order dated June 3, 1999, Respondent's Motion was denied (G.C. Exh. 1(n)); and by Notice dated June 9, 1999, the place of hearing was fixed (G.C. Exh. 1(p)), pursuant to which a hearing was duly held on June 22, 1999, in Detroit, Michigan, 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, July 22, 1999, was fixed as the date for mailing post-hearing briefs, which time, subsequently was extended, on motion of Respondent, to which the other parties did not object, for good cause shown, to August 13, 1999. Respondent, Charging Party and General Counsel each timely filed an excellent brief, received on, or before, August 16, 1999, which have been carefully considered. Upon the basis of the entire record, I make the following findings and conclusions:

FINDINGS

1
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)".

1. National Treasury Employees (hereinafter, "NTEU") is the certified exclusive representative of a nationwide unit of employees which includes the Detroit Computing Center. National Treasury Employees Union, Chapter 78 (hereinafter referred to as, "Union") is the agent of NTEU for the purposes of representing the bargaining unit employees at the Detroit Computing Center.

2. The Internal Revenue Service and NTEU entered into a National Agreement, effective July 1, 1998, for a four year term (NC-V), which covers ten or eleven Service Centers and the Detroit Computing Center (G.C. Exh. 3; Tr. 114). The prior National Agreement between the parties had been NC IV, Article 15 of which was introduced as General Counsel Exhibit 4.

3. Article 15 of NC-V is the portion of the current National Agreement in dispute in this case. The pertinent portions of Article 15 are set forth in full as follows:

> "Article 15
> Reassignments and Voluntary Relocations
>
> "Section 1
> Purpose and Definitions
>
> "A.
> This article establishes procedures for making certain changes in employees' work assignments, subject to applicable law, rule, and regulation, including, but not limited to 5 CFR 330, Subpart F.
>
> "B.
> For the purposes of this article:
>
> "1."Position" means a set of duties requiring the full or part-time employment of one (1) person, as described in the position description.
>
> "2."Reassignment" means a permanent change in an employee's position or a permanent change in the Post-of-Duty (POD) to which the employee is assigned, without promotion or demotion.
>
> "3."Commuting Area" as defined by the Employer for purposes of this Agreement.

"4.A "Satellite" office is considered to be a POD.

"5."Enter on Duty" (EOD) date is defined as the date the employee entered on his/her current appointment with the IRS.

"Section 2
Reassignments

"A.
For reassignments within a POD, the following procedures will apply:

"1.The Employer will designate the impacted employees and solicit for volunteers for reassignments from among qualified employees.

"2.If there are more volunteer than needed, the employee(s) with the earliest EOD will be reassigned.

"3.Where there are not enough volunteers, the least senior employee(s), using EOD, will be reassigned.

"4.The designated employees will receive five (5) workdays notice.

"B.
For reassignments outside of a POD, but within the commuting area, the following procedures will apply:

. . .

"C.
For reassignments outside the commuting area, the following procedures will apply:

. . .

"Section 3
Directed Reassignments Expedited Resolution Process

"A.
The parties agree to use the following process to resolve impasses that result from the negotiations provided in subsections 2B and 2C.

"1.The parties will contact by telephone the designated Factfinder (one (1) East Coast, one (1) West Coast), that has been selected by the National parties, to advise the Factfinder of the dispute. This contact will be on the last day of scheduled bargaining or when the parties reach impasse, whichever is earlier. The parties will submit their final proposals and any supporting documentation to the Factfinder within three (3) workdays of the initial telephone contact.

"2.The Factfinder is empowered to assist the parties in reaching agreement. The Factfinder shall determine the appropriate resolution process, including last and best offer (article by article or issue by issue) or amendment of final offers.

"3.The Factfinder may contact the parties via conference calls to discuss the offers and will recommend a resolution to the dispute within two (2) weeks. The recommended resolution will be in writing. In no case may the Factfinder intrude on the Employer's right to reassign.

"4.Any disputes remaining after submission to the Factfinder will be resolved pursuant to 5 USC 7119, or other appropriate provisions of 5 USC 7101, et. seq. The party that moves such remaining disputes to the statutory impasse resolution process carries the burden of proof regarding the reasons the Factfinder's report does not resolve the issue at impasse.

"5.If the Union seeks impasse resolution pursuant to 5 USC 7119, the reassignment will be implemented while the Union pursues the statutory impasse process. If the Employer seeks impasse resolution pursuant to 5 USC 7119, the reassignment will be delayed pending resolution of the disputed issues, unless exigencies are present. If a party seeks impasse resolution, the parties will ask the Federal Services Impasses Panel (FSIP) to expedite the matter and place a burden on the objecting party.

"6.If a dispute moves to the statutory process, the objecting party will pay the full costs of the Factfinder who produced the decision. Should neither party object, the costs of the Factfinder will be shared by the parties.

"Section 4
Reassignments - General Provisions

"A.
The parties jointly commit to work together in minimizing the adverse impact on employees involuntarily reassigned under this article. The parties further commit to fully exploring a variety of options which minimize adverse impact such as Flexiplace, Alternative Work Schedules, and Telecommuting.

. . .

"Section 5
Hardship Reassignments

. . .

"Section 6
Voluntary Relocations Within a Single Appointing Office

. . .

"Section 7
The Employer has determined that employees in the same occupational classification series, with the same specialty area, if applicable, and at the same grade levels may swap positions, absent just cause.

. . .

"Section 8
When the Employer determines to have positions which will be rotational in nature, the local parties may enter into negotiations on impact and implementation." (G.C. Exh. 3)

4. The language of Article 15, Section A and Section B, subsections 1 and 2 of NC-V (G.C. Exh. 3) was carried over verbatim from NC IV (G.C. Exh. 4), indeed, as Mr. Frank

Ferris, Director of Negotiations for NTEU since 1980 (Tr. 113), stated, Section 1B(1) and (2), ". . . were rollover sentences from previous agreements, several generations actually." (Tr. 126). Only Section 1A and 1B(1) and (2), Section 2A and Section 4A of Article 15 of NC-V (G.C. Exh. 3) are applicable to involuntary reassignments within a Post of Duty (POD), as involved in this case.[2]

5. All parties agree that, for the purpose of Article 15, the words "reassignment" and "realignment" are used interchangeably (Res. Exh. 1; Tr. 67, 68, 121-122). Nevertheless, "realignment" [reassignment], ". . . means a permanent change in an employee" position . . . ." (G.C. Exh. 3, Art. 15, Section 1B(2)) and, in turn, "position", ". . . means a set of duties . . . as described in the position description." (id., 1B(1)). That is, absent a change in duties, as described in a position description, there is no "reassignment" (realignment) within the meaning of Article 15, Section 1B, 1. and 2. and Section 2A (id.) (Tr. 122, 123). Indeed, Mr. Ferris testified, both credibly and without contradiction, as follows:

> "Q So when you were talking about involuntary reassignment or voluntary (sic) [realignment], you're still talking about assignments that were either meant to change in position description or change in post of duty; is that correct?
>
> "A That's correct.
>
> . . .
>
> "Q During the negotiations of Article 15 did the parties agree that Article 15 would apply to moves like those at issue in this case? That is, would Article 15 apply to where you have a physical move . . . if no PD changes, no position description changes?

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2 Section 1(B)(3) "Commuting Area", (4) '"Satellite" office', (5) "Enter on Duty" are not material; Section 2B (reassignments outside a POD but within the commuting area), Section 2C (reassignments outside the commuting area); Section 3 applies only to reassignments under Section 2B and 2C, Section 5 "Hardship Reassignments", Section 6 "Voluntary Relocations Within a Single Appointing Office" (Emphasis supplied); Section 7 (job swapping) and Section 8, rotational positions, are wholly inapplicable to this case.

"A We never agreed that Article 15 would apply to a simple move. . . ." (Tr. 123) (See, also, Tr. 118, 119-120, 123).

6. Under NC-V (G.C. Exh. 3), there have been negotiations over office moves that did not involve changes of position descriptions. Thus, NTEU Chapter 67, which represents bargaining unit employees at the Ogden Service Center, negotiated and entered into oral agreements concerning the impact and implementation of such moves (Tr. 132, 134, 135, 136-137).

7. As at Ogden, this case involves the move of employees within a POD without change of position descriptions. The Tax Systems Division is one of two programing divisions, the other being the Applications Systems Development Division (Tr. 103), and does program systems applications for about 60 nationwide programs. (Tr. 102). The Tax Program Branch is part of the Tax Systems Division (Tr. 44, 107). Ms. Karen Bahnke is Chief of the Tax Program Branch (Tr. 23, 103, 108) which has three sections, each headed by a Section Chief. The section involved in this case was the Statistics of Income (SOI) section (unit) which was scattered on the east wing of the ninth floor in at least five different aisles areas in three different branches of the Applications Systems Development Division (Tr. 103, 104). The SOI Section Chief (manager), Ms. Mabel Scates (Tr. 45, 103), was not located close to her employees but was located in the southwest wing of the ninth floor. The other two sections of the Tax Program Branch, one headed by Ms. Shellie Ubbelohde and the other by Ms. Valerie Anderson, were located on the third floor. Indeed, the Tax Systems Division was located on the third floor (Tr. 46, 103).

Ms. Phyllis Ann Goldsworthy, Chief of the Tax Systems Division (Tr. 102), testified credibly, and without contradiction, that in April, 1998, she made the decision to move the SOI Section to the third floor because,

"We had transitioned work into the Center and needed to balance the workload between the Applications Systems Development Division and the Tax Systems Division. It was decided that to move the SOI unit from the Applications Systems area to the Tax Systems area would help us to be more effective and to balance the workloads better between the two divisions." (Tr. 103-104).

After the move, the three sections of the Tax Program Branch were re-designated: Section A, Ms. Ubbelohde's Section (Tr. 45); Section B, Ms. Scates' Section, previously designated SOI (Tr. 41, 42, 45); and Section C, Ms. Anderson's Section (Tr. 45).

8. On April 20, 1998, Ms. Goldsworthy gave the Union written notice of the planned move of the SOI Section from the ninth floor to the third floor (G.C. Exh. 5; Tr. 104-105) and the Union, on April 27, 1998, gave written notice of, ". . . exercise its right to negotiate all legally negotiable matters, e.g., substance, impact and implementation, associated with the following:

> ". . .
> SOI Section Move."
> . . . . (G.C. Exh. 6)

In addition, the Union requested briefing and designated Ms. Sharon Watson as Chief Spokesperson (G.C. Exh. 6). The briefing took place on June 18, 1998, in the Office of Ms. Bahnke, with Ms. Bahnke, Ms. Ubbelohde, Ms. Anderson and Ms. Scates present for Respondent and Ms. Watson present for the Union (Tr. 23). Ms. Watson was told the reason for the move[3] and was given a seating chart and a layout of the third floor (G.C. Exh. 7). At the end of the meeting, Ms. Watson stated that she would discuss the move with the employees (Tr. 24). Ms. Watson met with the SOI employees, as well as the third floor employees who were going to have to move to make room for the SOI employees, and no employee wanted to move (Tr. 24). The employees were concerned about their equipment, whether equipment would be functional immediately, effect of the move in meeting project schedules which already were behind, and their evaluations being affected (Tr. 24-25).

9. On June 30, 1998, the Union submitted to Ms. Bahnke the following proposal,

> "All employees remain in their current seating." (G.C. Exh. 8, page 2).

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[3] Ms. Watson did not elaborate, but Ms. Loretta Margaret Lewis, an employee in the SOI (now "B") Section and area Vice President of the Union (Tr. 41-42), said ". . . the spot we were in on the ninth floor was allocated to another division. They were saying that they needed the space to move other people into it. We should move down on the third floor where everyone else was located in our division, in our branch at the time. . . . (Tr. 46)

On July 2, 1998, Ms. Bahnke responded, in pertinent part, as follows:

> "I have read your proposal which basically states that everything remain status quo. Under the NORD/NC V CONTRACT Changes it is my understanding this would be covered under reassignments, which the definition includes realignments for moves within a POD.
>
> "The realignment were [sic] speaking of is moving employees from floor to floor within the same POD without changing position descriptions. My understanding, under the contract negotia-tions, is that procedures were established with NTEU when reassigning employees. Under the conditions noted above negotiations are not required for this type of reassignment.
>
> . . .
>
> "Since you have not brought up any issues relating to the proposal put forward we will proceed with the move. A schedule will be established and you will be provided a copy." (G.C. Exh. 8, page 1)

10. In June, 1998, Ms. Scates gave the SOI employees a floor plan for the third floor and asked them to select their seats (Tr. 47). The employees declined to make selections because they had not seen the third floor, so, Respondent gave them a tour of the third floor and the employees then selected their seats (id.). Two of the employees had window seats on the ninth floor and there were two window seats on the third floor (Tr. 109), chosen by seniority, but Ms. Loretta Margaret Lewis, who had a corner window seat on the ninth floor (Tr. 48), notwithstanding her 36 years of seniority, was only the third highest seniority person and did not get a window seat on the third floor (Tr. 48).

The employees moved in late July, 1998, over a two week period (Tr. 33, 111), and each employee was assigned a day to move so that only a few employees moved each day during the move period (Tr. 50). About ten employees (eleven, including the manager, Tr. 108) were moved to the third floor and to accommodate them, Respondent had to move five to eight bargaining unit employees on the third floor (Tr. 34, 54).

Respondent did not coordinate the move with Facilities, the department which handles physical moves (Tr. 50), and, as a result, each employee had to move personal belongings (Tr. 53, 110, 111). The employees experienced numerous equipment problems. Thus, some computers did not operate for several days after the employees had moved to the third floor (Tr. 51) and Ms. Lewis' telephone was not operational for a week (Tr. 51). Further, the B Team (previously SOI) had numerous troubles with the Resource Access Control Facility (RACF) system for the computer network. RACF is a security system which allows employees to access only the files they are authorized to view and prevents access to unauthorized files (Tr. 51). Respondent failed to transfer B Team's RACF privileges to the third floor, and, as a result, they could not, for a time, access many necessary files (Tr. 51). This required extra overtime to finish their computer programs before the scheduled August visit from the SOI's National Office (Tr. 52, 54, 55).

No deadlines were missed because of the move, no job duties were changed, the employees were moved to modular units identical to the modular units they had occupied (Tr. 37, 104). Ms. Watson, Director of Negotiations and Lead Divisional Steward in the Systems Operation Division (Tr. 19), testified that, although employees had been concerned about their evaluations being affected by the move, she was not aware of any employee's evaluation having been affected or impacted by the move (Tr. 39). Ms. Lewis said her evaluation went down, ". . . As well as everyone else on the team." (Tr. 56) after the move (Tr. 55), which she blamed on the move (Tr. 55, 60), but conceded she, ". . . [didn't] know whether the evaluation influenced my move . . . we were told that -- we expressed to management that this could have an impact because of the area we were going into. There has been statements made by management in charge there that they did not believe that everybody on the team needed the high evaluation they got, and I figured that's probably the main reason." (Tr. 55-56). Ms. Lewis further stated,

> "Q And then she [Branch Chief] made a statement to some effect that she felt that the evaluations were overinflated or something like that?
>
> "A This is what we were told.
>
> "Q . . . then this had nothing to do with the physical move. This was just the Branch Chief's opinion. . . is that correct?

"A Yes." (Tr. 58-59).

11. Initially, the available storage (file) space was much less on the third floor. On the ninth floor, Ms. Lewis, as team leader, was required to maintain seven years of documentation and had two new storage cabinets with sliding doors (Tr. 48). Ms. Lewis was told she could have no storage cabinets on the third floor (Tr. 49); but, eventually, was given two old storage cabinets which have less capacity than those she had on the ninth floor and are in poor condition (Tr. 49).

12. The move from the ninth floor to the third floor of the Team B [SOI] employees did not involve a change of post-of-duty and did not involve any change in duties or position descriptions. Finally, as indicated above, while Respondent met with the Union on several occasions it did not negotiate concerning the impact and implementation of the move for the reason stated in Ms. Bahnke's letter to Ms. Watson as follows:

> "As management believes that the physical relocation of these employees is covered by Article 15, Section 2A, it follows that no additional local negotiations are required . . . ." (G.C. Exh. 11).

The move took place in late July, 1998 (G.C. Exh. 9; Tr. 33-34); the Union did not complete bargaining before the move took place (Tr. 34); and the Union never gave management permission to implement this change (Tr. 34).

CONCLUSIONS

A. Article 15 covers only reassignments which result in a change of duties or change of POD

There is no question that Respondent sought, in negotiating NC-V, flexibility to move employee and effectuate reorganizations (Tr. 64, 65, 66); and it is clear that Article 15 of the NC IV (G.C. Exh. 4) was extensively revised to give Respondent flexibility. For example, Section 2 of the NC IV, which covered only, "Involuntary reassignments due to staffing imbalances. . . ."(G.C. Exh. 4, Art. 15, Section 2; Tr. 121), was revised to cover all reassignments: within a Post-of-Duty (POD) (G.C. Exh. 3, Art. 15, Sec. 2A); outside a POD but within the commuting area (G.C. Exh. 3, Art. 15, Sec. 2B); and outside the commuting area (G.C. Exh. 3, Art. 15, Sec. 2C). Further, a

resolution process was provided for impasses resulting from negotiations concerning reassignments outside a POD (G.C. Exh. 3, Art. 15, Sec 2B and C) (G.C. Exh. 3, Art. 15, Sec. 3).

It is also clear that, for the purposes of Article 15 of NC-V (G.C. Exh. 3), the words, "realignment" and "reassignment" are used interchangeably (Tr. 67, 68, 122); nevertheless, it also is very clear that "realignments" and/or "reassignments" are not covered by Article 15 of NC-V unless there are changes of duties (position descriptions) or a change of POD. This is made plain by the facts that: (a) the definitions of "Position" and of "Reassignment" as they appear in Section 1 B1 and 2 (G.C. Exh. 3, Art. 15, Sec. 1 B1 and 2) are unchanged from the definition of the same terms in the prior National Agreement, NC-IV (G.C. Exh. 4, Art. 15, Sec. 1 B1 and 2), and in Agreements pre-dating NC-IV (Tr. 126); (b) Section 1 B2 specifically defines "Reassignment" ["realignment"] as, ". . . a permanent change in an employee's position [which in Section 1 B1 is specifically defined as ". . . a set of duties . . . as described in the position description."] or a permanent change in the Post-of-Duty . . . ." (G.C. Exh. 3, Art. 15, Sec. 1 B2); (c) Respondent conceded that under NC-IV local movement of employees had resulted in local negotiations (Tr. 65) and Mr. Ferris testified credibly that,

> ". . . We [Union] never agreed that Article 15 would apply to a simple move. . . . (Tr. 123)
>
> . . .
>
> ". . . Between these parties when there's a move out in the field it's done traditionally through local negotiations. . .
>
> "Q . . . At any time during the negotiations did NTEU state, or in any way indicate to management, that regardless as to what the contract says or does not say, the Union was giving up its right to negotiate over moves like the one involved in this case?
>
> "A Never." (Tr. 124-125);

(d) Under NC-V, the impact and implementation of moves, i.e., realignment or reassignment of employees without change of duties and without change of POD, have been

negotiated locally at Ogden Utah (Tr. 132-133, 134-135, 136, 137).

B. Arbitrator Vaughn's Decision Does Not Affect Definition of "Position" and "Reassignment"

As set forth above, the definition in NC-V Article 15, Section 1 B1 and 2 of "Position" and of "Reassignment" (G.C. Exh. 3) carried over without change from NC-IV, Article 15 B1 and 2 (G.C. Exh. 4) and, indeed, ". . . were rollover sentences from previous agreements, several generations actually." (Tr. 126). Mr. Ferris testified, without contradiction, that these definitions were not put before the factfinder [Arbitrator Vaughn], " . . . we settled those ourselves." (Tr. 126). Plainly, the portion of Article 15, Section B in dispute were subsections 3. ("Commuting Area"; 4. ("Satellite" office); and 5. ("Enter on Duty" date). In any event, B1 and 2 as set forth in Arbitrator Vaughn's decision (Res. Exh. 3, p. 11) are precisely as set forth in Article 15, Section B1 and 2 of NC-V (G.C. Exh. 3). In addressing Section 2 of Article 15, "Reassignments", Arbitrator Vaughn stated,

> "Although there are some differences between the Employer and Union proposals, in particular the Employer's greater latitude to reassign employees within a POD, there are similarities. The Employer's proposal better balances the competing interests, particularly in reassignments within a POD. Its adoption is recommended." (Res. Exh. 3, p. 12).

Thereafter, the Arbitrator set forth the language which became "Section 2 Reassignments" of NC-V. From this, Respondent asserts,

> "Mr. Vaughn adopted the Agency's position that local bargaining was not required for reassignments/realignments within a POD. His decision had the effect of creating a bargaining waiver on this subject . . . ." (Respondent's Brief, p. 10)

I express no opinion on Respondent's asserted "bargaining waiver" (see, Tr. 127); but I agree that "reassignments" [realignments] as defined in Article 15, Sections B1 and 2, i.e., which involve a permanent change of duties or a permanent change of POD, are covered by Article 15, Section 2 of NC-V (G.C. Exh. 3) and because such

reassignments are covered by NC-V, no further bargaining would be required. Mr. Ferris agreed (Tr. 118).

Nevertheless, "reassignments" [realignments] which do not involve a change of duties nor a change of POD are not covered by Article 15. Mr. Martin, referring to this case, made Respondent's contention to Mr. Ferris when they met briefly in Washington, D.C. and Mr. Ferris rejected Mr. Martin's contention as follows:

> ". . . I told John [Martin] that if this were a reassignment as defined in our contract, his letter [Res. Exh. 5, Dated August 26, 1998] is pretty much correct.
>
> "But the Detroit situation doesn't involve a reassignment as defined in Article 15. . . ." (Tr. 118)

Accordingly, the move of SOI (now Team B) employees from the ninth floor to the third floor of the Detroit Computing Center was not a reassignment [realignment] within the meaning of Article 15 of NC-V (G.C. Exh. 3) for the reason that there was no change of the employees' duties and no change of their POD.

C. Move of SOI [Team B] employees was a right of management.

Respondent's decision to consolidate its Tax Systems Division by moving the SOI [Team B], unit, which was scattered on the east wing of the ninth floor in at least five different aisles areas in three different branches of the Applications Systems Development Division, which needed the ninth floor space for its own operations, to the third floor where the rest of the Tax Systems Division was located was a management right to determine its organization under § 2(a)(1) of the Statute. National Treasury Employees Union, Atlanta, Georgia and U.S. Department of the Treasury, Internal Revenue Service, Jacksonville District, 32 FLRA 886, 887-889 (1988). Because this move was not a "reassignment" [realignment] within the meaning of Article 15 of NC-V (G.C. Exh. 3), it was not covered by NC-V and Respondent was obligated to bargain on the impact and implementation of the move. Because it failed and refused to do so, Respondent violated §§ 16(a)(5) and (1) of the Statute.

D. Remedy

General Counsel requests that the proposed Order and Notice be signed by the Commissioner of Internal Revenue and be posted nationwide. General Counsel states,

> "A nationwide posting is necessary to effectuate the purposes and policies of the Statute. This is not a local dispute with only local ramifications. At the heart of this case, is Respondent's claim that NC V forecloses bargaining over all office moves in the nationwide unit for the life of NC V. This effects [sic] all employees in the unit and involves an essential working condition. In addition, Respondent's unlawful blanket policy of refusing to negotiate office moves was established at the national level; Respondent's national Labor Relations office distributed guidance to the field offices and service centers directing that office moves were non-negotiable under Article 15 of NC V; and Respondent's national labor relations officials advised the DCC to unilaterally implement the Team B [SOI] office move. (TR 89: 6-25; TR 105: 9-10). Since the refusal to bargain herein has nationwide effects and concerns an issue of significant import to all members of the unit, posting the Notice signed by the IRS Commissioner throughout the unit is appropriate and warranted. U.S. Department of Justice, Federal Bureau of Prisons, Office of Internal Affairs Washington, DC and AFGE Council of Prison Locals 55 FLRA 388, 394-395 (1999), FDIC, Washington, D.C. and FDIC, Oklahoma City, OK and Federal Deposit Insurance Corporation and NTEU 48 FLRA 313, 331-333 (1993) and U.S. Department of Treasury, Customs Service, Washington D.C. and Customs Service Region IV, Miami, Florida, 37 FLRA 603, 604-605 (1990)." (General Counsel's Brief, pp. 23-24).

I fully agree.

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 section 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, it is hereby ordered that the United States Department of Treasury, Internal Revenue Service, shall:

1. Cease and desist from:

(a) Implementing office moves which do not involve a change of employees' duty or a change of Post of Duty (POD) and which are not, therefore, "reassignments" /or "realignments" within the meaning of Article 15 of NC-V, the parties current national collective bargaining agreement, without first affording the National Treasury Employees Union, Chapter 78, the employees' exclusive collective bargaining representative, notice and an opportunity to negotiate.

(b) Failing and refusing to bargain with the National Treasury Employees Union, the employees' exclusive collective bargaining representative, concerning office moves which are not "reassignments" /or "realignments" within the meaning of Article 15 of NC-V.

(c) In any like or related manner, interfering with, restraining, or coercing unit employees in the exercise of their rights assured by the Federal Service Labor-Management Relations Statute.

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

(a) Upon request, bargain with the National Treasury Employees Union, Chapter 78, the employees' exclusive bargaining representative, concerning the office move implemented in July 1998 at the Detroit Computing Center.

(b) Notify and, upon request, bargain with the National Treasury Employees Union, the employees' exclusive bargaining representative, concerning office moves, which are not "reassignments" /or "realignments" within the meaning of Article 15 of NC-V, and other changes in conditions of employment.

(c) Post at all facilities of the Respondent, nationwide, where bargaining unit employees are employed, 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 Commissioner of the Internal Revenue Service, and they shall be posted and maintained for 60 consecutive days thereafter in conspicuous

places, including all bulletin boards and other places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that such Notices are not altered, defaced, or covered by any other material.

(d) Pursuant to section 2423.41(e) of the Authority's Rules and Regulations, 5 C.F.R. § 2423.41(e), notify the Regional Director, Chicago Region, Federal Labor Relations Authority, 55 West Monroe, Suite 1150, Chicago, Illinois 60603-9729, 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: October 8, 1999
Washington, DC

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

The Federal Labor Relations Authority has found that the U.S. Department of Treasury, Internal Revenue Service violated the Federal Service Labor-Management Relations Statute and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT implement office moves at the Detroit Computing Center, or at any other facility covered by NC-V, our current collective bargaining agreement, which do not involve a change of duty or a change of Post of Duty and which are not, therefore, "reassignments" /or "realignments" within the meaning of Article 15 of NC-V, without first affording the National Treasury Employees Union, the exclusive representative of our employees, notice and an opportunity to negotiate.

WE WILL NOT refuse to bargain with the National Treasury Employees Union, the exclusive representative of our employees, concerning office moves which are not "reassignments" /or "realignments" within the meaning of Article 15 of NC-V.

WE WILL NOT in any like or related manner, interfere with, restrain, or coerce employees in the exercise of rights assured by the Federal Service Labor-Management Relations Statute.

We WILL Notify and, upon request, bargain with the National Treasury Employees Union, the employees' exclusive bargaining representative, concerning proposed office moves which are not "reassignments" /or "realignments" within the meaning of Article 15 of NC-V.

U.S. DEPARTMENT OF TREASURY
INTERNAL REVENUE SERVICE

DATE: _____ BY:
_____
Commissioner of Internal Revenue

Washington, D.C.

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, Chicago Regional Office, Federal Labor Relations Authority, whose address is: 55 West Monroe, Suite 1150, Chicago, IL 60603-9729, and whose telephone number is: (312) 353-6306.

CERTIFICATE OF SERVICE

I hereby certify that copies of this DECISION issued by WILLIAM B. DEVANEY, Administrative Law Judge, in Case No. CH-CA-80709, were sent to the following parties in the manner indicated:

CERTIFIED MAIL:

Joseph F. Maselli, Esq.
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Julie K. Anderson, Esq.

Kenneth Woodberry, Esq.
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Certified Mail No. P 855 724 063

REGULAR MAIL:

National President
National Treasury Employees Union
901 E Street, NW, Suite 600
Washington, DC 20004-2037

Dated: October 8, 1999
Washington, DC