

MEMORANDUM

DATE: November 4, 1994

TO: The Federal Labor Relations Authority

FROM: GARVIN LEE OLIVER
Administrative Law Judge

SUBJECT: FEDERAL AVIATION ADMINISTRATION,
NORTHWEST MOUNTAIN REGION
RENTON, WASHINGTON

Respondent

and Case No. DE-
CA-20484

NATIONAL AIR TRAFFIC CONTROLLERS
ASSOCIATION

Charging Party

Pursuant to section 2423.26(b) of the Rules and Regulations, 5 C.F.R. § 2423.26(b), I am hereby transferring the above case to the Authority. Enclosed are copies of my Decision, the service sheet, and the transmittal form sent to the parties. Also enclosed are the transcript, exhibits and any briefs filed by the parties.

Enclosures

FEDERAL AVIATION ADMINISTRATION, NORTHWEST MOUNTAIN REGION RENTON, WASHINGTON Respondent	
and NATIONAL AIR TRAFFIC CONTROLLERS ASSOCIATION Charging Party	Case No. DE-CA-20484

NOTICE OF TRANSMITTAL OF DECISION

The above-entitled case having been heard before the undersigned Administrative Law Judge pursuant to the Statute and the Rules and Regulations of the Authority, the undersigned herein serves his Decision, a copy of which is attached hereto, on all parties to the proceeding on this date and this case is hereby transferred to the Federal Labor Relations Authority pursuant to 5 C.F.R. § 2423.26(b).

PLEASE BE ADVISED that the filing of exceptions to the attached Decision is governed by 5 C.F.R. §§ 2423.26(c) through 2423.29, 2429.21 through 2429.25 and 2429.27.

Any such exceptions must be filed on or before **DECEMBER 5, 1994**, and addressed to:

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

GARVIN LEE OLIVER
Administrative Law Judge

Dated: November 4, 1994
Washington, DC

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

FEDERAL AVIATION ADMINISTRATION, NORTHWEST MOUNTAIN REGION RENTON, WASHINGTON Respondent	
and NATIONAL AIR TRAFFIC CONTROLLERS ASSOCIATION Charging Party	Case No. DE-CA-20484

Richard D. McCurdy
Counsel for the Respondent

Hazel E. Hanley
Counsel for the General Counsel, FLRA

Gary R. Molen
Representative of the Charging Party

Before: GARVIN LEE OLIVER
Administrative Law Judge

DECISION

Statement of the Case

The unfair labor practice complaint alleges that Respondent violated section 7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute (the Statute), 5 U.S.C. §§ 7116(a)(1) and (5), by selecting color schemes and designs and installing carpeting, carpet tile, wall finishes, and related design features at the new Denver International Airport's Terminal Radar Approach Control (TRACON) and Tower facilities without providing the Charging Party (NATCA or Union) adequate advance notice or the opportunity to bargain over the substance, impact, or implementation of the changes affecting bargaining unit employees.

Respondent defends on the basis that it did fulfill its obligation when it notified the then local Union president of the need to provide Union input in decoration decisions.

A hearing was held in Denver, Colorado. The Respondent, Union, and the General Counsel were represented and afforded full opportunity to be heard, adduce relevant evidence, examine and cross-examine witnesses, and file post-hearing briefs. The Respondent and General Counsel filed helpful briefs. Based on the entire record,¹ including my observation of the witnesses and their demeanor, I make the following findings of fact, conclusions of law, and recommendations.

Findings of Fact

In late August 1989, Federal Aviation Administration (FAA) officials at the Denver Tower were advised by FAA officials in Seattle that an interior designer for the architect of the new Denver airport would be meeting with them the next day so that decorating selections could be made. FAA Denver was advised that the information was needed within a couple of days "no matter what it takes."

The designer arrived with a sample board of such things as carpet, tile, and paint, and was accompanied by an FAA project officer. The designer stated that selections would have to be made within the next day and a half.

Carl Dean, FAA Denver Tower Manager at the time, testified that when they arrived, he arranged for the release of the Union representative. Dean testified that he explained the short time frame and requested that the representative do whatever he could to get as many people involved in making a decision concerning colors in the new TRACON. Dean stated that he "wanted some input from them." Dean was somewhat hesitant about the identity of the Union representative. Based on his memory, he "thought it was Jim Brawner."

Dean testified that after his meeting with Brawner, he heard nothing from him regarding Union choices or complaints about the matter. The samples were viewed by others in the facility, including secretaries and controllers. Dean evaluated the input and called in the selections.

James W. Brawner was president of the Union's consolidated Local at the time. Brawner testified that he

¹

Counsel for the General Counsel's motion to correct the transcript is granted; the transcript is corrected as set forth therein.

never met with the interior designer, FAA project officer, or Mr. Dean concerning the selection of samples or design features and never received notice that a selection had to be made in August 1989. Based on all the evidence bearing on the credibility of Mr. Brawner, as well as that surrounding the selection of design features in August 1989, as presented by the General Counsel and Respondent, I credit Mr. Brawner's testimony in this respect. There is no evidence that any other appropriate Union representative at the time received such notice.

On December 7, 1989, Gary Molen, NATCA Regional Vice President, wrote a letter to Mr. Temple Johnson, Jr., FAA Air Traffic Division Manager, Northwest Mountain Region. Mr. Molen stated that the Denver controllers felt they were being "left out of the loop in the decision making process" concerning the new airport. Mr. Molen suggested the formation of a committee to deal with technical procedures. He cautioned that "[c]are must be taken when discussing personnel policies and procedures or changes in working conditions. These should be dealt with between management and the union on a local level."

By letter dated December 23, 1989, Mr. Johnson replied to Mr. Molen. Mr. Johnson stated that the Denver Manager and Denver NATCA representative had met and concurred with a plan to form a core group, designate a plans and procedures specialist, and provide periodic briefings to all personnel. Mr. Johnson did not otherwise respond to Mr. Molen's statement that working conditions should be dealt with between management and the Union on a local level.

Respondent made the final selections concerning color schemes and designs for carpeting, carpet tile, wall finishes, and related design features at the new Denver International Airport's TRACON and Tower facilities in the March/April 1990 time frame during the final design phases of the project. These had been developed by the architectural/engineering consulting firm of Howard, Needles, Tammen and Bergendoff (HNTB) which presented the design for Respondent's approval. The final selections were included in bid solicitation documents issued in July 1990.

From August of 1989 to April 1990 representatives of Respondent attended HNTB meetings concerning interior designs. Respondent did not advise the Union of these meetings or of Respondent's decisions concerning the design features, nor does Respondent contend that there was any effort to inform the Union or negotiate over decorating the new facilities other than the discussions described by Respondent's witnesses as occurring in August 1989.

On or about February 8, 1992, during an on site visit to the new Denver International Airport, the Union discovered that at some date unknown to the Union, Respondent had installed carpeting, carpet tile, wall finishes, and related design features at the TRACON and Tower facilities. (Tr. 8-9; General Counsel Exh. 1(c) & (d)). Union Regional Vice President Gary Molen described the new building as "very pretty, beautiful." (Tr. 59).

The unfair labor practice charge was filed March 23, 1992.

On March 5, 1992, Respondent's Air Traffic Division Manager, Northwest Mountain Region, formally notified NATCA Vice President Molen of the anticipated transition of Air Traffic Division activities from Stapleton International Airport to the new Denver International Airport. Negotiations between the parties took place thereafter. The record reflects that in late 1992 several proposals relating to the new TRACON and Tower facilities, including some concerning carpeting and decor, were escalated to the respective headquarters of the parties for resolution under Article 7, Section 2 of the NATCA/FAA collective bargaining agreement. The record does not reflect the disposition of these negotiations.

Conclusions

The selection and installation of interior design features, such as carpeting, tile, wall finishes, and related design features, at the FAA TRACON and Tower facilities at the new Denver International Airport, affected the working conditions of unit employees and constituted "conditions of employment" within the meaning of section 7103(a)(14) of the Statute. As the Authority stated in U.S. Department of Health and Human Services, Social Security Administration, Baltimore, Maryland and Social Security Administration, Fitchburg, Massachusetts District Office, 36 FLRA 655, 668 (1990);

[T]he location in which employees perform their duties, as well as other aspects of employees' office environments, are 'matters at the very heart of the traditional meaning of 'condition of employ-ment.'
Library of Congress v. FLRA, 699 F.2d 1280, 1286 (D.C. Cir., 1983). Further employees' and management's competing interests in office space 'present the sort of questions collective bargaining is intended to resolve.'
National Treasury Employees Union, Chapter 83 and

Department of the Treasury, Internal Revenue Service, 35 FLRA 398, 414 (1990).

See also Department of Health and Human Services, Region IV, Office of Civil Rights, Atlanta, Georgia, 46 FLRA 396 (1992); Internal Revenue Service, San Francisco Appeals Office, San Francisco, California, Case No. 9-CA-00173 (1991), ALJ Decision Reports, No. 97 (August 15, 1991).

Based upon the credibility resolution made above, I conclude that Respondent did not provide the Union with appropriate notice and an opportunity to bargain over the selection and installation of these interior design features and thereby violated section 7116(a) (1) and (5) of the Statute, as alleged.

The General Counsel urges as part of the remedy for the violation that, upon request of the Union, Respondent remove any and all carpeting, carpet tile, wall finishes, and other interior design features and proceed to bargain the selection and installation of such features. Respondent claims that a more appropriate remedy, in the event a violation is found, would be to utilize the existing interior for its normal economic life and provide the Union with the unilateral right to make the choices when redecoration or replacement decisions are scheduled to be made.

After viewing the new facilities for the first time, the Union representative described them as "beautiful." There-fore, I do not believe it would benefit the parties and effectuate the purposes of the Statute to afford the Union the power to ask that the the existing interior decorations be removed so that the negotiations concerning them could start from scratch. On the other hand, the "normal economic life" of the decorations, even wall finishes, would probably be several years. Therefore, in order that the opportunity to bargain not be rendered meaningless, Respondent should be required to bargain without regard to the present conditions. In other words, if the collective bargaining process results in an agreement on selections that are different from the existing ones, they should be installed upon request.

Based on the above findings and conclusions, it is recommended that the Authority issue the following Order:

ORDER

Pursuant to section 2423.29 of the Federal Labor Relations Authority's Rules and Regulations and section 7118

of the Statute, it is hereby ordered that the Federal

Aviation Administration, Northwest Mountain Region, Renton, Washington shall:

1. Cease and desist from:

(a) Unilaterally implementing changes in working conditions of unit employees in the bargaining unit represented by the National Air Traffic Controllers Association (NATCA), including the selection and installation of carpeting, carpet tile, wall finishes, and related design features at the Denver International Airport's TRACON and Tower facilities, without first notifying NATCA and affording it the opportunity to bargain to the extent consonant with law and regulation.

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

2. Take the following affirmative action in order to effectuate the purposes and policies of the Federal Service Labor-Management Relations Statute:

(a) Upon request of NATCA, bargain to the extent consonant with law and regulation concerning the selection and installation of carpeting, carpet tile, wall finishes, and related design features at the Denver International Airport's TRACON and Tower facilities without regard to the current condition of such features.

(b) Post at its TRACON and Tower facilities, 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 Air Traffic Division Manager, Northwest Mountain Region, and 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 insure that such Notices are not altered, defaced, or covered by any other material.

(c) Pursuant to section 2423.30 of the Authority's Rules and Regulations, notify the Regional Director of the

Denver Region, 1244 Speer Boulevard, Suite 100, Denver, CO

80204-3581, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

Issued, Washington, DC, November 4, 1994

GARVIN LEE OLIVER
Administrative Law Judge

NOTICE TO ALL EMPLOYEES

AS ORDERED BY THE FEDERAL LABOR RELATIONS AUTHORITY

AND TO EFFECTUATE THE POLICIES OF THE

FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS STATUTE

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT unilaterally implement changes in working conditions of unit employees in the bargaining unit represented by the National Air Traffic Controllers Association (NATCA), including the selection and installation of carpeting, carpet tile, wall finishes, and related design features at the Denver International Airport's TRACON and Tower facilities, without first notifying NATCA and affording it the opportunity to bargain to the extent consonant with law and regulation.

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, upon request of NATCA, bargain to the extent consonant with law and regulation concerning the selection and installation of carpeting, carpet tile, wall finishes, and related design features at the Denver International Airport's TRACON and Tower facilities without regard to the current condition of such features.

(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 of the Federal Labor Relations Authority, Denver Region, 1244 Speer Boulevard,

Suite 100, Denver, CO 80204-3581, and whose telephone number is: (303) 844-5224.

CERTIFICATE OF SERVICE

I hereby certify that copies of this DECISION issued by GARVIN LEE OLIVER, Administrative Law Judge, in Case No. DE-CA-20484, were sent to the following parties in the manner indicated:

CERTIFIED MAIL:

Richard D. McCurdy, Esq.
Federal Aviation Administration
Northwest Mountain Region
1601 Lind Avenue, S.W.
Renton, WA 98055-4099

Ms. Hazel E. Hanley
Counsel for the General Counsel
Federal Labor Relations Authority
1244 Speer Boulevard, Suite 100
Denver, CO 80204-3581

Mr. Gary R. Molen
Regional Representative
National Air Traffic Controllers
Association
7906 South 450 East
Sandy, UT 84070

REGULAR MAIL:

Mr. Richard Gordon, Jr.
Director of Labor Relations
National Air Traffic Controllers
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444 N. Capitol St., NW, Suite 845
Washington, DC 20001

Dated: November 4, 1994
Washington, DC