UNITED STATES OF AMERICA

FEDERAL LABOR RELATIONS AUTHORITY

Office of Administrative Law Judges

WASHINGTON, D.C. 20424-0001

MEMORANDUM DATE: October 31, 1996

TO: The Federal Labor Relations Authority

FROM: SAMUEL A. CHAITOVITZ
Chief Administrative Law Judge

SUBJECT: U.S. DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT, ROCKY MOUNTAIN
AREA, DENVER, COLORADO

Respondent

and Case No. DE-
CA-50202

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 3972

Charging Party

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

Enclosures

UNITED STATES OF AMERICA

FEDERAL LABOR RELATIONS AUTHORITY

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WASHINGTON, D.C. 20424-0001

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, ROCKY MOUNTAIN AREA, DENVER, COLORADO Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 3972 Charging Party	Case No. DE-CA-50202

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 under-signed 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 2, 1996**, and addressed to:

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

SAMUEL A. CHAITOVITZ
Chief Administrative Law Judge

Dated: October 31, 1996
Washington, DC

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

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, ROCK MOUNTAIN AREA, DENVER, COLORADO Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 3972 Charging Party	Case No. DE-CA-50202

Laurie L. Martin, Esq.
For the Respondent

Timothy J. Sullivan, Esq.
For the General Counsel

Steven L. Hensley, President
For the Charging Party

Before: SAMUEL A. CHAITOVITZ
Chief Administrative Law Judge

DECISION

Statement of the Case

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

Based upon an unfair labor practice charge filed by the Charging Party, American Federation of Government Employees, Local 3972 (the Union), a Complaint and Notice of Hearing was issued by the Regional Director for the Denver Region of the Federal Labor Relations Authority. The complaint alleges that the U.S. Department of Housing and Urban Development, Rocky Mountain Area, Denver, Colorado (the Respondent) violated section 7116(a)(1) and (5) of the Statute by changing the sign-in-out procedure and the timing for signing in and out for the Union's president without

providing the Union with notice and an opportunity to negotiate the substance and the impact and implementation of the change. Respondent's answer denies that a breach of the duty to bargain occurred in the circumstances of this case and raises a series of affirmative defenses.

A hearing was held in Denver, Colorado, on March 5, 1996, at which all parties were afforded a full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence.[1] The General Counsel and the Respondent filed timely post-hearing briefs.[2] Thereafter, over the General Counsel's objection, the undersigned granted the Respondent's motion for special permission to file a reply brief and provided the General Counsel an opportunity to respond thereto. The parties' briefs, the Respondent's reply brief, and the General Counsel's response to the Respondent's reply brief all have been carefully considered.[3]

Based upon the entire record, including my observation of the witnesses and their demeanor, I make the following findings of fact, conclusions and recommendation.

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[1] The General Counsel's unopposed motion to correct the transcript of the proceedings is hereby granted.

[2] Respondent's motion for a two-week extension of time within which to file post-hearing briefs was granted over the General Counsel's opposition.

[3] General Counsel filed a motion to strike Attachment A to the Respondent's post-hearing brief on the basis that the documents at issue could have been but were not offered into evidence at the hearing and therefore should not be considered part of the record. Respondent opposed the motion to strike, asserting that the undersigned either should take official notice of the documents or reopen the record to receive the two documents into evidence. In an Order dated May 6, 1996, the undersigned (1) refused to take official notice of the documents inasmuch as they were deemed to be outside the "traditional matters of judicial notice" within the meaning of section 2423.19(o) of the Authority's Rules and Regulations, but (2) gave the parties two weeks to file statements addressing the Respondent's request to reopen the record. No statement was received from either party. Under these circumstances, in the absence of any justification from the Respondent of its failure to introduce the documents into evidence at the hearing, the request to reopen the record is denied and the motion to strike Attachment A of the Respondent's brief is granted.

Findings of Fact

A. The Parties' Relationship and the Terms of Their Agreement

The American Federation of Government Employees, AFL-CIO (AFGE) is the certified exclusive bargaining representative of a nationwide consolidated unit of employees in the Department of Housing and Urban Development (HUD) appropriate for collective bargaining, including the employees located at the Respondent's facilities in the Rocky Mountain Area. The Union, AFGE Local 3972, is an agent of AFGE for purposes of representing the Respondent's employees.

HUD and AFGE negotiated a national collective bargaining agreement which became effective in June 1990 for a three-year period. By its terms (Art. 41), "[t]he provisions of this Agreement shall continue in full force and effect until a new Agreement goes into effect." The national agreement (Art. 34) also provides that "any [local] supplements to this Agreement shall not delete, modify, or otherwise nullify any provision
. . . in this Agreement; nor . . . conflict with . . . any provision of this Agreement . . . ."

As pertinent to the issues in this case, the national agreement further provides as follows:

ARTICLE 17

HOURS OF DUTY - ALTERNATE WORK SCHEDULES

Section 17.01 - Introduction. All employees are covered by this program and shall be governed by the provisions set forth in this Article.

*   *   *   *   *   *   *   *

Section 17.05 - Timekeeping.

(1) Employees shall, on a daily basis, use the Attendance Record Sheet in Appendix F (hereinafter referred to as the sign in/sign out register) to record their arrival and departure times. This form cannot be modified at the local level.

(2) Employees shall sign in immediately prior to

beginning work. They shall sign out immediately upon completion of their workday. All sign in and

sign out shall be sequential.[4] Employees shall not be required to sign in or out for the lunch period.

Section 17.06 - Employee Responsibilities.

*   *   *   *   *   *   *   *

(2) Each employee shall be responsible for recording and certifying his/her arrival and departure times each day on the sign in/sign out register referred to in Section 17.05(1).

At the time of the hearing in this case, HUD and AFGE were in the process of negotiating a new national agreement. The start of such negotiations was delayed until May 1995, pending completion of a major agency-wide reorganization, although the parties had previously agreed in their ground rules to be bound by the terms of the national agreement which expired in 1993.

B. Respondent's Sign In/Sign Out Procedures

The record evidence indicates that all of Respondent's employees in the Denver office were required to--and in fact did--follow the sign in/sign out procedures specified in Article 17 of the national agreement until late February

4 As explained at the hearing and made more obvious by examination of the sign in/sign out register incorporated in the national agreement at Appendix F, "sequential" means that the first employee reporting for work each day is required to sign in at the top line of the form and set forth the time of arrival; the second employee to arrive signs in just below the first and records his or her time of arrival (which is the same as or later than the first employee's time of arrival), and so forth. The same procedure is followed at the end of the workday in a separate column on the same form: the first employee to leave signs at the top of the column and indicates the time of departure; the second employee to leave signs on the next line and sets forth his or her departure time, etc.

1994. At that time, as a result of the nationwide reorganization of HUD referred to above, the Union's president, Steven Hensley, was authorized to be on 100% official time so that he could travel extensively in connection with issues arising from the reorganization. In recognition of Hensley's erratic schedule, his supervisor at that time (Gary Mundt) permitted him to avoid the sign in/sign out requirements as long as Hensley left a telephone number where he could be reached.

That practice ended in July 1994, when the Respondent's Housing Director, Ron Bailey, decided to have Hensley report to Larry Sidebottom (a third-level supervisor) for sign in/ sign out purposes since Hensley was traveling so much due to the reorganization. Sidebottom set up a procedure whereby Hensley was required to sign in and out but could do so on a separate form kept in Sidebottom's office rather than sequentially with all of the Respondent's other employees on a sign in/sign out sheet located centrally in an area outside Sidebottom's office. Hensley followed this procedure from July through December 1994, at which time Sidebottom was promoted and Sheryl Miller became Hensley's supervisor.

Miller notified Hensley by memorandum dated January 3, 1995, that she was his new supervisor and that he would be required to sign in and out sequentially with all of the Respondent's other employees effective immediately. Hensley requested bargaining on behalf of the Union, but Miller declined on the basis that the national agreement required all non-supervisory employees to sign in and out sequentially and that the sign in/sign out procedures previously followed by Hensley did not conform to the requirements of the national agreement or accurately reflect his office work time. Hensley thereafter began signing in and out on the centrally-located form used by all the other employees, but not sequentially as directed.[5]

C. HUD is Notified of Respondent's Sign In/Sign Out Problem and Takes Action to Resolve the Matter

The record evidence is unclear as to what happened next.

5
On June 20, 1995, Hensley was notified by Housing Director Bailey that he was being suspended for five days as a result of his failure to follow Miller's instructions, including his failure to sign in and out sequentially. It appears that the matter of Hensley's suspension was submitted to arbitration and remains pending.

Miller testified that Hensley's failure to comply fully with her directive concerning the proper sign in/sign out procedures caused her to telephone Jo Anne Simms, who was then HUD's Acting Deputy Director of Human Resources.[6] Simms testified that she first became aware of the deviation from the national agreement's sign in/sign out procedures when the matter was brought to her attention by Jim Harrell, AFGE's top official for HUD employees at that time. Harrell was an employee in HUD's Seattle office who also had a side agreement with local management under which he could sign in and out on a separate form rather than sequentially with the other employees in that office. What is undisputed is that Simms learned of the sign in/sign out issue for the first time in February 1995.[7]

When the matter came to her attention, Simms set up a conference call which included Hensley and Miller, among others, as participants. Simms insisted that there could be no deviations by local parties from the sign in/sign out procedures set forth in the national agreement, and gave Miller and Hensley two weeks to work things out. When they were unable to do so, Simms set up a second conference call which included local management officials as well as Hensley, Harrell and Deborah Dye--a union official on 100% official time as an employee in HUD's Jacksonville office who also was not following the national agreement's sign in/sign out procedures. Simms objected to local management's deviation from the national agreement without consulting and getting approval from HUD headquarters, indicated that they had no authority to do so, and directed that the situation be corrected. Thereafter, Hensley has been complying with the national agreement's sign in/sign out procedures.[8]

6
Simms became HUD's Director of Human Resources in May 1995, with responsibility for the agency's labor relations policy nationwide as well as the interpretation and application of the national agreement with AFGE.

7
It is clear from the unchallenged testimony of Sidebottom and Miller that the various changes in the manner that Hensley's time and attendance was treated by the Respondent's managers and supervisors between February and December 1994 all resulted from decisions by management locally without the knowledge of HUD officials at the national level.

8
Harrell lost his position as a union official on 100% official time shortly after the second conference call, and thus his private arrangement with local management in Seattle became moot. The record is silent with regard to Dye.

Discussion and Conclusions of Law

A. Preliminary Issues

Respondent moved to dismiss the complaint in this case at the outset of the hearing on two grounds which were not raised in its post-hearing briefs. Nevertheless, rulings on the motions were reserved for discussion in this decision and are appropriate for resolution at this time.

The first ground on which the Respondent asserts that the complaint should be dismissed is that a provision in the parties' national agreement requires the dispute to be resolved through arbitration. More specifically, Respondent contends that under Section 5.05 of the agreement, where a mid-term bargaining proposal is alleged to be inappropriate for local bargaining on the sole ground that it conflicts with the national agreement, the matter must be resolved through arbitration. The argument is that the Union has proposed a different sign in/sign out procedure for employees who are representing the Union on 100% official time; that Respondent has rejected this proposal as inconsistent with Article 17 of the national agreement; and that such dispute must be resolved through arbitration rather than in an unfair labor practice proceeding. The difficulty with this creative assertion is that the complaint herein does not involve an allegation that Respondent unlawfully refused to bargain over a mid-term Union proposal which the Authority has previously found to be substantively negotiable. Rather, the complaint alleges that Respondent changed an established practice of permitting the Union president to deviate from the sign in/ sign out procedure set forth in the national agreement without providing the Union notice and an opportunity to bargain over the change. Under these circumstances, the complaint may properly be resolved in this unfair labor practice proceeding.

Respondent's related contention that the dispute in this case involves differing and arguable interpretations of the national agreement and therefore should be resolved by an arbitrator rather than the Authority similarly is wide of the mark. Thus, where an agency seeks to defend its unilateral change in negotiable conditions of employment on the basis that such action is authorized by the terms of a g overning agreement, the Authority does not dismiss the complaint as more appropriate for resolution by an arbitrator but instead interprets the language of that agreement to determine whether the agency's assertion is correct. If so, the agency's action does not constitute an

unfair labor practice; otherwise it does. *See Internal Revenue Service, Washington, D.C.*, 47 FLRA 1091, 1103-05 (1993). Accordingly, having rejected the Respondent's motions to dismiss the complaint as more appropriate for resolution by an arbitrator, I now turn to the substance of the alleged violation.[9]

B. Respondent's Insistence on the Union President's Compliance with the Sign In/Sign Out Procedures Set Forth in the National Agreement Did Not Violate The Duty to Bargain in the Circumstances Presented

As previously indicated, the complaint in this case alleges that since at least July 1994, the Union's president used a separate sign in/sign out sheet to record his time and attendance; that such practice continued with the knowledge and/or acquiescence of the Respondent's management officials and supervisors; that Respondent unilaterally changed the practice in January 1995 by requiring the Union president to sign in and out sequentially with other employees located at the worksite; and that such change was implemented without notice to or bargaining with the Union in violation of section 7116(a)(1) and (5) of the Statute. For the reasons stated below, I conclude that the General Counsel has failed to prove that the Respondent's actions constituted a violation of the Statute as alleged, and that the complaint therefore should be dismissed.

1. The General Counsel's theory of a violation rests on unsubstantiated assertions.

The General Counsel asserts that a past practice was created when the Respondent's managers and supervisors allowed Union president Hensley to use a separate form to sign in and sign out between July and December 1994, which practice could not be changed unilaterally to require him to sign in and out sequentially with the other employees at the workplace. In the circumstances of this case, I disagree that a binding past practice was created as alleged.

The General Counsel correctly points out that procedures governing whether and how employees will sign in

9 Respondent also moved for dismissal of the complaint at the conclusion of the General Counsel's case in chief, contending that the elements of a violation had not been established. In view of my ultimate disposition of the complaint herein, I find it unnecessary to rule upon the Respondent's motion to dismiss based on the General Counsel's failure to sustain the burden of proof.

and sign out are substantively negotiable conditions of employment. *See 92 Bomb Wing, Fairchild Air Force Base, Spokane, Washington*, 50 FLRA 701, 703-04 (1995); *Overseas Education Association, Inc. and Department of Defense Dependents Schools*, 29 FLRA 734, 757-60 (1987)(Proposal 15). It is equally well settled that a past practice may be established concerning such a negotiable condition of employment where it is consistently exercised over an extended period of time with the knowledge and express or implied consent of "responsible management" within the agency. *See Norfolk Naval Shipyard*, 25 FLRA 277, 286-87 (1987); *U.S. Department of Labor, Washington, D.C.*, 38 FLRA 899, 907-10 (1990); *Defense Distribution Region West, Tracy, California*, 43 FLRA 1539, 1559-60 (1992). Such a past practice may be established under these circumstances even where it is inconsistent with the terms of the parties' agreement. *See Defense Distribution Region West, Lathrop, California*, 47 FLRA 1131, 1133-34 (1993); *U.S. Department of the Navy, Naval Avionics Center, Indianapolis, Indiana*, 36 FLRA 567, 570-71 (1990).

In the instant case, therefore, a consistent practice over a period of at least 6 months whereby the Union president was permitted to sign in and out on a separate form rather than sequentially with the Respondent's other employees might have constituted a past practice but for one significant fact: "responsible management" did not know about or acquiesce in such practice. The record clearly establishes that when Hensley was authorized to be on 100% official time as a result of HUD's nationwide reorganization, and Respondent's management officials and supervisors worked out special arrangements for Hensley to follow in reporting his time and attendance, "responsible management" officials at the national level--i.e., HUD headquarters--never were consulted, informed, or asked for their approval. Thus, only Respondent's Housing Director Ron Bailey and Hensley's third-level supervisor Larry Sidebottom were involved in establishing the arrangement whereby Hensley would sign in and out each day on a separate form located in Sidebottom's office rather than sequentially with Respondent's other employees on a form centrally located in the corridor outside Sidebottom's office.

The first time that responsible HUD management learned of Hensley's sign in/sign out arrangement was in February 1995, after Hensley's new supervisor, Sheryl Miller, sought to have Hensley conform to the sign in/sign out procedures set forth in the national agreement between HUD and AFGE. When the issue was escalated to JoAnne Simms, the HUD official with responsibility for interpreting and applying

the terms of the national agreement, Simms insisted that Respondent's managers and supervisors enforce the terms of the national agreement by requiring Hensley to sign in and out sequentially with the other employees at the workplace. Moreover, when her investigation revealed two other instances where employees serving as Union officials in the Seattle and Jacksonville offices also were signing in and out on separate forms rather than sequentially, Simms put a stop to such local practices. As a result, all HUD employees covered by the national agreement negotiated with AFGE were following the sign in/sign out procedures set forth in that agreement.

It is true that the three-year national agreement expired in June 1993 and was not re-negotiated by HUD and AFGE until after the events involved in this case had occurred. Thus, it would be inaccurate to say that the *agreement* continued in effect. *United States Immigration and Naturalization Service, United States Border Patrol, Del Rio, Texas*, 51 FLRA 768, 773 (1996)(*Del Rio*). However, as the Authority recognized in its *Del Rio* decision, in accordance with long-established case law such as *Federal Aviation Administration, Northwest Mountain Region, Seattle, Washington and Federal Aviation Adminis-tration, Washington, D.C.*, 14 FLRA 644, 647 (1984):

> Provisions resulting from bargaining over mandatory subjects survive the expiration of a collective bargaining agreement, "in the absence of either an express agreement to the contrary or the modi-fication of those conditions of employment in a manner consistent with the Statute."

Del Rio, 51 FLRA at 773. Accordingly, the *procedures* set forth in Article 17 of the expired national agreement continued in full force and effect at all times relevant herein by operation of law, because the parties did not expressly provide to the contrary. Rather, as quoted above, HUD and AFGE expressly provided in Article 41 of their national agreement that "[t]he provisions of this Agreement shall continue in full force and effect [beyond its three-year duration] until a new Agreement goes into effect."[10]

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[10] The record also shows that HUD and AFGE negotiated a new national agreement which retained intact the sign in/sign out procedures of Article 17. Neither the new agreement nor its terms is relevant to the disposition of this case.

By the terms of Article 17, which I interpret in accordance with the power vested in me by the Authority's decision in *Internal Revenue Service, Washington, D.C.*, 47 FLRA 1091, 1103 (1993)(*IRS*),[11] "*[a]ll employees* are . . . governed by the provisions set forth in this Article." Thus, the sign in/sign out procedures set forth in Section 17.05 apply to all employees and contain no exemptions for employees who serve as Union representatives on 100% official time. Rather, the procedures specify that "*[a]ll sign in and sign out shall be sequential.*" Accordingly, Union president Hensley should have been signing in and out sequentially under the terms of the national agreement at all times that he was being allowed by the Respondent's managers and supervisors to sign in and out on a separate form placed in a special location. Moreover, as I interpret the terms of Article 34 governing local supplements to the national agreement, HUD and AFGE agreed that no locally negotiated supplemental agreement could "delete, modify, or otherwise nullify any provision . . . in this Agreement; nor . . . be in conflict with or duplicate any provision of this Agreement. . . ." In other words, the parties at the national level, in authorizing local supplements to their national agreement, specifically prohibited any local parties from agreeing to modify the terms of the national agreement. The practice initiated by the Respondent and the Union for employee Hensley specifically conflicted with the terms of Article 17 of the national agreement and therefore could not constitute a past practice binding upon HUD and AFGE in the absence of *their* knowledge and acquiescence. *See Department of Health and Human Services, Social Security Administration, Baltimore, Maryland,* 17 FLRA 1011 (1985); *National Association of Government Employees, Local R14-77 and U.S. Department of Veterans Affairs Medical Center, Grand Junction, Colorado,* 40 FLRA 342, 346-47 (1991). *Compare U.S. Department of Health and Human Services, Social Security Administration and Social Security Administration, Field Operations, Region*

11
In this case, Respondent has raised, as an affirmative defense to an alleged unilateral change in a past practice, specific terms in Articles 41 and 34 of the national agreement between HUD and AFGE. As the Authority stated in *IRS*, "We now hold that when a respondent claims as a defense to an alleged unfair labor practice that a specific provision of the parties' collective bargaining agreement permitted its actions alleged to constitute an unfair labor practice, the Authority, including its administrative law judges, will determine the meaning of the parties' collective bargaining agreement and will resolve the unfair labor practice complaint accordingly." *IRS*, 47 FLRA at 1103.

II, 38 FLRA 193 (1990)(past practice held created in part by higher level manager's acquiescence in a local manager's actions). The record evidence indicates that HUD did not know that the local practice had been established and did not acquiesce in the practice once that knowledge was acquired.

The cases cited by the General Counsel do not require a contrary conclusion. Thus, in *Department of Health and Human Services, Social Security Administration, Baltimore, Maryland,* 19 FLRA 1085 (1985), the Authority found that management at the *national* level of exclusive recognition violated its duty to bargain when a *local* management official unilaterally changed an established past practice for employees in one field office within the nationwide bargaining unit concerning when breaks and lunch periods would be taken. There was no contention that the practice established in the field office was inconsistent with the provisions of a national agreement or national policy, or that the local practice was unknown to management at the national level of exclusive recognition. Nor does the cited case stand for the proposition that *local* management had a duty to bargain before changing the past practice in question. Absent a delegation to the parties' local representatives, that obligation remained at the national level.[12] To the same effect, *see U.S. Department of Labor, Washington, D.C.*, 38 FLRA 899 (1990).

The other cases cited by the General Counsel involve past practices established by or acquiesced in by the parties at the level of exclusive recognition and unilaterally changed by management at that level thereafter.

12
For this reason, the General Counsel's assertion that the Respondent also violated section 7116(a)(1) and (5) of the Statute by refusing to bargain over the Union's proposal to maintain the practice of having Hensley sign in and out on a separate form rather than sequentially must be rejected. The duty to bargain on that issue was expressly reserved by and for the parties at the national level of exclusive recognition.

Accordingly, such cases are inapposite to the circumstances of this case.[13]

2. The remedial issues.

Having found that the Respondent did not unilaterally change a past practice by requiring the Union president to sign in and out sequentially with all other employees at the workplace rather than on a separate form, and therefore did not violate section 7116(a)(1) and (5) of the Statute as alleged, I find it unnecessary to consider the question of an appropriate remedy. Accordingly, it is recommended that the Authority adopt the following:

ORDER

The complaint in Case No. DE-CA-50202 is dismissed.

Issued, Washington, D.C., October 31, 1996.

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SAMUEL A. CHAITOVITZ
Chief Administrative Law Judge

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13 *See U.S. Department of the Navy, Naval Avionics Center, Indianapolis, Indiana*, 36 FLRA 567 (1990)(agency's unilateral change of established practice for scheduling official time meetings requested by employees with their union represen-tatives to conform with terms of parties' agreement violated duty to bargain); *Defense Distribution Region West, Lathrop, California*, 47 FLRA 1131 (1993)(same result where agency discontinued practice of permitting employees to play radios even though parties' agreement prohibited such practice); *Defense Distribution Region West, Tracy, California,* 43 FLRA 1539 (1992)(unilateral change of consistent practice permitting employees to eat and drink in certain warehouses violated Statute).

CERTIFICATE OF SERVICE

I hereby certify that copies of this DECISION issued by SAMUEL A. CHAITOVITZ, Chief Administrative Law Judge, in Case No. DE-CA-50202, were sent to the following parties in the manner indicated:

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Dated: October 31, 1996
Washington, DC