UNITED STATES OF AMERICA

FEDERAL LABOR RELATIONS AUTHORITY

Office of Administrative Law Judges

WASHINGTON, D.C. 20424-0001

MEMORANDUM DATE: January 27, 2003

TO: The Federal Labor Relations Authority

FROM: PAUL B. LANG
Administrative Law Judge

SUBJECT: DEPARTMENT OF VETERANS AFFAIRS
MEDICAL CENTER
SHERIDAN, WYOMING

Respondent

and Case No. DE-CA-01-0911

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 1219

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
Office of Administrative Law Judges
WASHINGTON, D.C. 20424-0001

DEPARTMENT OF VETERANS AFFAIRS MEDICAL CENTER SHERIDAN, WYOMING Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1219 Charging Party	Case No. DE-CA-01-0911

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 **FEBRUARY 26, 2003**, and addressed to:

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

PAUL B. LANG
Administrative Law Judge

Dated: January 27, 2003
Washington, DC

OALJ 03-16

FEDERAL LABOR RELATIONS AUTHORITY

Office of Administrative Law Judges
WASHINGTON, D.C.

DEPARTMENT OF VETERANS AFFAIRS MEDICAL CENTER SHERIDAN, WYOMING Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1219 Charging Party	Case No. DE-CA-01-0911

Bruce E. Conant, Esquire

For the General Counsel

Aleksander Radich, Esquire
For the Respondent

Before: PAUL B. LANG
Administrative Law Judge

DECISION

Statement of the Case

This case arises out of an unfair labor practice charge filed by the American Federation of Government Employees, Local 1219 ("Union") against the Department of Veterans Affairs Medical Center, Sheridan, Wyoming ("Respondent") on July 23, 2001, and amended on June 28, 2002. On July 26, 2002, the Regional Director of the Denver Region issued a Complaint in which it was alleged that the Respondent had committed an unfair labor practice in violation of §7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute ("Statute") in July of 2001 by refusing to bargain with the Union concerning a change in working conditions which was caused by the admission of increased

numbers of psychiatric patients with behavioral

difficulties to Unit 8 without affording the Union advance notice or an opportunity to request bargaining.[1]

A hearing was held in Sheridan, Wyoming on October 16, 2002, at which each of the parties appeared with counsel. This Decision is based upon consideration of all of the evidence, including the demeanor of witnesses, and the post-hearing briefs submitted on behalf of the parties.

Positions of the Parties

The General Counsel maintains that in July of 2001 the Respondent changed its admission policy and began accepting significantly larger numbers of psychiatric patients from other Veterans Affairs facilities, especially from the Denver facility, who required a higher level of supervision from the staff assigned to Unit 8. Many of these patients required such measures as restraint, seclusion or the maintenance of a suicide watch. The result of the revised admission policy was a significant change in the working conditions of bargaining unit employees assigned to Unit 8. The Respondent committed an unfair labor practice by implementing the new admission policy without giving the Union advance notice and the opportunity to bargain. Furthermore, the Respondent refused a request by the Union to bargain over the change in working conditions.

The Respondent maintains that there was no change in the working conditions of bargaining unit employees assigned to Unit 8 such as would trigger an obligation to bargain. Unit 8 had been designated as a locked acute psychiatric unit well before June of 2001. Although the Respondent as a whole began admitting a greater number of patients, none were of a type which had not previously been received into Unit 8. Although there might have been a change in the amount of time which bargaining unit employees devoted to various duties, the greater number of

---

[1] On October 9, 2002, the Under Secretary of Veterans Affairs for Health exercised his delegated authority under 38 U.S.C. §7422(b) by exempting from the jurisdiction of the Authority in this case all employees appointed under Title 38 of the United States Code. Accordingly, this Decision applies only to employees covered by Title 5.

admissions caused no change either in working conditions or

working hours. If there was a change in working conditions, the change was *de minimis*.

Findings of Fact

The Nature of Respondent's Operations

On or about February 14, 1996, the mission of Respondent's Unit 8 was changed so as to make it a locked treatment facility for acutely ill psychiatric patients.[2] That mission has remained unchanged. The Respondent bargained with the Union regarding the impact and implementation of the change both before and immediately after it was put into effect. During that time period, the parties negotiated items such as architectural changes to promote safety and security.

Since 1995 the Respondent has been part of a regional grouping of Veterans Affairs Medical Centers known as the Rocky Mountain Veterans' Integrated Service Network ("VISN"). The purpose of the VISN is to coordinate the delivery of medical services so as to eliminate the unnecessary duplication of resources. The Respondent was designated as a treatment center for severely ill psychiatric patients in the geographic area serviced by the facilities which were part of the VISN.

The Alleged Change in Working Conditions

In December of 2000 Dr. Rajeev Trehan became Respondent's Chief of Staff. Shortly after assuming his post Dr. Trehan visited the other facilities in the VISN for the purpose of emphasizing the Respondent's status as a receiving facility for acutely ill psychiatric patients. He did so because of his concern that the sparse population in the area where the Respondent is located would only justify about five mental health beds (the Respondent actually had 46 mental health beds). In Dr. Trehan's opinion the Respondent would survive only if it were to receive a steady stream of referrals from the other hospitals in the VISN. Another area of concern was patient turnover. It was important that the Respondent not be considered as a "dumping ground" for acutely ill patients who would never be returned to the referring facilities, thus encumbering beds and eliminating the Respondent's ability to accept more patients. Eventually it was agreed that the referring

[2] It is undisputed that the Respondent had been primarily a psychiatric hospital for a number of years prior to the change of mission of Unit 8. The record is unclear as to the exact date of this designation.

facilities would accept the return of their patients after they had been stabilized.

Dr. Trehan's efforts to increase referrals began to bear fruit in January or February of 2001. The increased referrals affected the number, but not the type, of patients admitted to Unit 8. At the time of Dr. Trehan's arrival, Unit 8 had been a locked unit for the treatment of acute psychiatric patients.[3]

On June 22, 2001, Dr. Trehan arranged for the Respondent to host a meeting of the VISN Mental Health Council. This meeting provided the opportunity for representatives of other medical centers in the VISN to tour Respondent's facilities. The meeting also allowed Dr. Trehan to intensify his "marketing" efforts by assuring the representatives that the Respondent would accept even the most difficult psychiatric patients.[4] The meeting did not result in a change in the mission of Unit 8 or of the Respondent as a whole. The Respondent continued in its status as a receiving facility for acutely ill psychiatric patients.

Various witnesses for the General Counsel testified that the June meeting marked a turning point in the working conditions on Unit 8. According to the witnesses the acuity of the patients did not change, but there was a substantially greater proportion of dangerous and violent patients. Those patients required more time from the staff, thereby reducing their ability to perform other duties. Also, there were allegedly a greater number of employee injuries and other safety problems.

---

[3] The term "acute" is not amenable to an exact definition. It is generally considered to denote psychiatric patients whose conditions require immediate hospitalization because of tendencies to violent, suicidal or otherwise dangerous behavior.

[4] Dr. Trehan testified that the only exception to this policy was in the case of veterans who were currently incarcerated.

The same witnesses also testified that their hours of work

did not change. Moreover, there is no evidence that bargaining unit employees were required to perform work outside of their job descriptions or that they were counseled or disciplined because of failure to complete their assigned duties.

As stated above, the General Counsel submitted anecdotal evidence of increased safety problems.[5] However, there was no evidence as to the specific number of incidents before and after the meeting on June 22, 2001. Statistical reports indicate that their were two employee assaults in Unit 8 in each of fiscal years 2000 and 2001 and that there was only one employee assault in fiscal year 2002. Several of the General Counsel's witnesses testified that employees were reluctant to report injuries or safety problems because of pressure from supervisors and peers and because they could not afford the loss of time required to submit reports. However, the General Counsel did not submit evidence of specific incidents of inappropriate pressure or, more significantly, of the Union's efforts to correct the alleged deficiencies in the reporting system.

In view of the foregoing, I find as a fact that there is insufficient evidence of changes in the working conditions of bargaining unit employees in Unit 8.

The Union's Demand to Bargain

Kitty Schultz, the president of the Union, learned of the impending meeting on June 22, 2001, from a Union officer who was assigned to Unit 8. She attempted to obtain information as to the subject of the meeting and later asked to attend. Both her inquiries and her request were denied by the Respondent. In July of 2001 Ms. Schultz began receiving reports from employees on Unit 8 to the effect that they were receiving a greater number of patients who were sicker and more violent than before. The Union was concerned about safety because it was felt that the staffing of Unit 8 was insufficient to handle the increased flow of patients.

---

5 While one of the General Counsel's witnesses described an incident involving the placing of a violent patient into restraints, similar incidents also occurred prior to the alleged change in working conditions in June of 2001.

On July 18, 2001, the Union submitted a written demand to bargain (GC Exhibit 2). The document was on a form memorandum with numbered paragraphs in which details were inserted in longhand. In paragraph 1 the Union stated that it was invoking its right to bargain on:

> Mission change on Unit 8. Patient acuity, & type of patient - Dx [presumably "diagnosis"]. Forensic pts [presumably "patients"] - Dx: - appropriate arrangements.

The following language was inserted at the end of the memorandum:

> As the exclusive representative for the bue [presumably "bargaining unit employees"] at this facility, the data/info requested is needed to prepare for & to be made knowledgeable in order to negotiate the change. One area looked at is working condition changes including, program policies procedures, staffing, etc.

By memorandum to the Union dated July 20 (GC Exhibit 4), the Respondent replied that the organization and mission of Unit 8 was a management right within the meaning of §7106 (a)(1) of the Statute. The Respondent further stated that:

> Final plans with respect to mission or reorganization have not been developed to-date, but as soon as any such plans are completed the Union will receive notification and the opportunity to bargain as appropriate.

On July 20 the Union submitted an amended demand to bargain (GC Exhibit 5) in which it stated, in pertinent part:

> 1. Please add to the Demand to Bargain of 7/18/01 (as attached), "Appropriate Arrangements". The Union is not trying to bargain over the mission, but rather over the negative impact on BUE and personnel policy and working conditions which this Mission Change on Unit 8 entails.
>
> 2. Mr. Chester is determining this issue to be non-negotiable and yet, precedence has already been set by prior negotiations on this issue including, but not limited to patient acuity and

management's agreeing to contact the Union when patient acuity changes; repudiation of MOU.[6]

* * * * * *

4. The change of acuity of patients on Unit 8 (and there is a change) is negotiable and the impact on staff.

By memorandum of July 23, 2001 (GC Exhibit 6), the Respondent stated specifically that the mission of Unit 8 had not been changed.

Discussion and Analysis

Both the General Counsel and the Respondent have placed undue emphasis on the question of whether there was a change in the mission of the Respondent or of Unit 8 on or about June of 2001. Such a change, if it had occurred, would have fallen within the scope of management rights as defined in §7106(a)(1) of the Statute, a point which the Union acknowledged in its amended demand to bargain. The change in mission would have triggered the right of the Union to demand bargaining on "appropriate arrangements for employees adversely affected" by the change in accordance with §7106 (b)(3). As set forth above, there has been no change in mission. However, the Union was still entitled to demand bargaining regarding changes in the working conditions of bargaining unit employees regardless of the cause. The Respondent's obligation to bargain regarding such changes is set forth in §7103(a)(12) of the Statute in which "collective bargaining" is defined as the mutual obligation to meet at reasonable times in a good faith effort to reach agreement regarding conditions of employment. In either case, the Union's right to bargain is dependent upon changes in working conditions and not on the cause of the change.

The General Counsel has cited a number of cases regarding the obligation of an agency to bargain over changes in working conditions. However, the holdings in each of those cases is predicated on a finding that there actually were such changes and that the changes were evident as of the time of the demand to bargain. The General

[6] In citing an MOU the Union was apparently referring to a document which reflects the results of negotiations concluded on February 8, 1996, concerning the implementation and impact of the change in the mission of Unit 8. The document states that the Union will be promptly notified of changes in the "acuity, age, etc." of patients in Unit 8 (Respondent's Exhibit P, paragraph 43).

Counsel's witnesses provided no more than a generalized description of an increased workload and heightened safety concerns. The witnesses provided no details as to the precise nature of the changes. More importantly, there is no evidence that the alleged adverse effects were made known to the Respondent at or around the time of the Union's demand to bargain. The demand to bargain referred to a change in mission that did not occur and to the acuity of the patients which the Union witnesses admitted did not change.

As stated in *NAGE, Local R1-109 and U.S. Dept. of Veterans Affairs, Connecticut Healthcare System, Newington, Connecticut*, 56 FLRA 1043 (2001), in order for a union to establish that a proposal was an "arrangement" within the meaning of §7106 of the Statute, it must have identified the effects, or reasonably foreseeable effects, on bargaining unit employees that flowed from the exercise of a management right and must have indicated how the effects were adverse. Even if the Union had provided more details in its demand to bargain, it never submitted any proposals to the Respondent.[7] Therefore, the issue of appropriate arrangements does not arise.

In summary, the right of the Union to demand bargaining was never properly invoked. This was so, not because of the lack of change in the mission of Unit 8, but because the Union did not articulate the alleged changes in working conditions and did not propose arrangements for alleviating the adverse effects of the changes.

This decision should not be construed as denying the right of the Union to demand bargaining on the effects of changes, if any, in working conditions in Unit 8. The

---

[7] In its post-hearing brief the General Counsel has suggested that the Union's security concerns could be at least partially alleviated by the relocation of panic alarms (GC brief, p. 13). This may well be so, but there is no evidence that the relocation was ever proposed to the Respondent.

failure of the Union to effectively exercise that right in

the past does not absolve the Respondent of the duty to bargain under appropriate circumstances.

In view of the foregoing, I find that the Respondent did not violate §7116(a)(1) and (5) of the Statute and recommend that the Authority adopt the following Order:

ORDER

It is Ordered that the Complaint be, and hereby is, dismissed.

Issued, Washington, DC, January 27, 2003.

Paul B. Lang

Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of this DECISION issued by PAUL B. LANG, Administrative Law Judge, in Case No. DE-CA-01-0911 , were sent to the following parties in the manner indicated:

CERTIFIED MAIL AND RETURN RECEIPT **CERTIFIED NOS:**

Bruce E. Conant 7000 1670 0000 1175 1457
Counsel for the General Counsel
Federal Labor Relations Authority
1244 Speer Boulevard, Suite 100
Denver, CO 80204-3581

Aleksander Radich 7000 1670 0000 1175 1464
District Counsel
VAM&ROC
2360 E. Pershing Boulevard
Cheyenne, WY 82001

REGULAR MAIL

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

Dated: January 27, 2003

Washington, DC