UNITED STATES OF AMERICA

FEDERAL LABOR RELATIONS AUTHORITY

Office of Administrative Law Judges

WASHINGTON, D.C. 20424-0001

MEMORANDUM DATE: February 25, 2002

TO: The Federal Labor Relations Authority

FROM: RICHARD A. PEARSON
Administrative Law Judge

SUBJECT: U.S. DEPARTMENT OF VETERANS AFFAIRS
WASHINGTON REGIONAL OFFICE

Respondent

and Case No. WA-CA-00229

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 25, AFL-CIO

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

U.S. DEPARTMENT OF VETERANS AFFAIRS WASHINGTON REGIONAL OFFICE Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 25, AFL-CIO Charging Party	Case No. WA-CA-00229

NOTICE OF TRANSMITTAL OF DECISION

The above-entitled case having been heard before the undersigned Administrative Law Judge pursuant to the Statute and the Rules and Regulations of the Authority, the undersigned herein serves his Decision, a copy of which is attached hereto, on all parties to the proceeding on this date and this case is hereby transferred to the Federal Labor Relations Authority pursuant to 5 C.F.R. § 2423.34(b).

PLEASE BE ADVISED that the filing of exceptions to the attached Decision is governed by 5 C.F.R. §§ 2423.40-2423.41, 2429.12, 2429.21-2429.22, 2429.24-2429.25, and 2429.27.

Any such exceptions must be filed on or before **MARCH 27, 2002**, and addressed to:

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

RICHARD A. PEARSON
Administrative Law Judge

Dated: February 25, 2002
Washington, DC

OALJ 02-20

FEDERAL LABOR RELATIONS AUTHORITY

Office of Administrative Law Judges
WASHINGTON, D.C.

U.S. DEPARTMENT OF VETERANS AFFAIRS WASHINGTON REGIONAL OFFICE Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 25, AFL-CIO Charging Party	Case No. WA-CA-00229

Jeanne Marie Corrado, Esquire
Sara L. Walsh, Esquire
For the General Counsel

Carol Lane Borden, Esquire
Roberto D. DiBella, Esquire
For the Respondent

Before: RICHARD A. PEARSON
Administrative Law Judge

DECISION

Statement of the Case

The General Counsel of the Federal Labor Relations Authority (the Authority), by the Regional Director of the Washington Regional Office, issued an unfair labor practice complaint on September 28, 2000, alleging that the U.S. Department of Veterans Affairs, Washington Regional Office (Agency/Respondent) violated § 7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute (the Statute), by implementing a policy concerning operating procedures for employees of the Veterans Service Center (VSC) at the Washington Regional Office without completing bargaining with the Charging Party regarding this change. Respondent's answer denies that it violated the Statute.

A hearing was held in Washington, D.C. on February 15, 2001. The parties were represented and afforded full opportunity to be heard, adduce relevant evidence, examine and cross-examine witnesses, and file post-hearing briefs. Based on the entire record, including my observation of the witnesses and their demeanor, I make the following findings of fact, conclusions of law, and recommendations.

Findings of Fact

The American Federation of Government Employees, AFL-CIO (AFGE), a labor organization as defined by 5 U.S.C. § 7103(a)(4), is the exclusive representative of a unit of Respondent's VSC employees appropriate for collective bargaining. AFGE Local 25 (Charging Party/Union) is an agent of AFGE for the purpose of representing employees at the VSC.

The VSC processes veterans' compensation and pension claims and makes eligibility determinations for other veterans' benefits. Douglas Wallin became VSC manager and Douglas Bragg became Assistant VSC Manager in 1999, shortly after the VSC had been the subject of unfavorable newspaper publicity concerning organizational problems there. When Wallin and Bragg came to the VSC, there were no written policies for operational procedures such as work schedules, leave, personal appearance, and other workplace matters. This case involves the Operations Policy drafted by Mr. Bragg in order to satisfy Mr. Wallin's goal of establishing written workplace guidelines for VSC employees.

In a memorandum dated November 8, 1999, Wallin notified the Charging Party's President, Ida Wise Jefferson,[1] of the Respondent's intent to make a number of changes at the VSC, including the establishment of an operations policy, and attached to the memorandum a draft of the proposed policy. Agency Exhibit A. The parties met on November 16, 1999 to discuss the issues cited in the November 8 memorandum. Although a number of matters were discussed at the meeting, the VSC Operations Policy was not discussed in detail, because the Union had not yet studied the policy.

On November 19, 1999, the Union submitted a formal request to bargain on the VSC Operations Policy prior to implementation, and the parties met to discuss the Agency's draft proposal on December 13, 1999. As a basis for their discussions, the parties used a December 8, 1999 draft of the VSC Operations Policy that had been presented to the

[1] Ms. Jefferson is also referred to in the transcript as Ida Wise.

Union prior to the meeting. G.C. Exhibit 3. Despite a lengthy meeting, the parties were unable to agree on any portions of the policy; in fact, they covered only the first of seven sections of the policy at that time, and they agreed to schedule another meeting.

The third and final meeting between the parties occurred on January 5, 2000. Wallin, Bragg, Labor Relations Specialist James Coyne and Jeanette Anderson represented the Agency, and Jefferson, steward Beverly Smith and Tonya Robinson represented the Union. The alleged unfair labor practice dispute in this case results from the differences in the parties' positions regarding the matters to which they agreed and did not agree at this bargaining session, and, in that regard, the matters included in the final policy implemented by the Agency on January 18, 2000.

Several facts regarding the January 5 negotiations are not in dispute. The Charging Party and Respondent agree that they conducted negotiations based on the draft of the policy that had been discussed at the December 13, 1999 meeting. They exchanged views on the entire document, proceeding section by section until they reached the end of the Agency's draft. Although one person from each side (Jefferson for the Union and Coyne for management) took notes during the session, the parties did not establish any formal mechanism for keeping track of which provisions were agreed upon and which issues were not (e.g., by initialing or signing a draft). But they agree that the issues of lunch periods and breaks (in the Work Schedules section) were particularly contentious, and that it was agreed on January 5 to table those proposals and submit them to mediation. Most of the witnesses also agreed that at the conclusion of the negotiation session on January 5, there was no explicit discussion regarding an implementation date or regarding whether partial implementation of the policy (with the exclusion of the tabled issues) would be permissible. Transcript (Tr.) 45-46, 248-49, 384-85.[2] Further, the parties concur that at the conclusion of the meeting, Coyne agreed to provide Jefferson a new copy of the proposed policy reflecting the changes agreed to at the January 5 session.

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[2] Mr. Coyne disagreed with the union witnesses as well as the other management witnesses on this matter. According to Coyne, Ms. Jefferson agreed that "those items concerning mediation would take months, and that the policy could be implemented; that the policy would be implemented prior to mediation." Tr. 349.

There are significant matters in dispute, however, regarding the January 5 negotiations and what the parties agreed to on that date. The central dispute in this case involves the Agency's stated belief that at the end of the session the parties were in full agreement on all terms of the operations policy except the two issues that would be tabled for mediation, while the Union contends that many parts of the policy were still unresolved. Also noteworthy is the discrepancy in the parties' perceptions of what constituted "agreement." Even the Agency's witnesses differed in their perceptions on this point. Wallin, when asked how the parties indicated agreement on particular sections of the policy, testified: "I think 'does everyone agree with this now?' something to that, to that extent." Tr. 378. In response to a similar question, Bragg testified: "I thought an agreement was when we talked about a paragraph and if they had language they wished changed, if they wanted explanation, when we got to the end of the discussion on that paragraph, I thought that we had agreement because I got back from them like, 'We're okay with that.'" Tr. 265. In his testimony, Coyne stated that he kept track of agreements by writing "okay" or by inserting agreed-upon changes in his notes. Tr. 314; *see also* Agency Exhibit D. He also explained that he believed agreement was reached when the parties moved to a new paragraph, because "[w]e did not move on to another section without getting -- without having an agreement." Tr. 318. Union President Jefferson testified that she, like Coyne, kept track of the status of each issue by making notes, in which she recorded "OK" or "did not agree" or other descriptions of the negotiations. G.C. Exhibit 4.

The notes taken by Coyne and Jefferson indeed reflect the parties' differing perceptions concerning their understanding of what occurred during the negotiation session. *Compare* G.C. Exhibit 4 and Agency Exhibit D. As noted above, both sets of notes reflect that portions of the Work Schedules section of the draft policy would be tabled. *Id.* However, Jefferson's notes indicate that many other items were not agreed to by the Union; nevertheless, many of these same items appeared in the Agency's final policy. *Compare* G.C. Exhibits 4 and 5. For example, by writing "No" in her notes next to the text of the last sentence of section 1(a) of the Leave Policy, Jefferson clearly indicated a lack of agreement on that issue. By contrast, Coyne wrote "OK" next to section 1(a), except for an unrelated change in wording in a prior sentence; accordingly, Coyne included the last sentence of section 1 (a) in the final policy. Regarding section 1(b), Jefferson's notes say "was agreed to delete." Coyne's notes

indicate only a partial deletion of 1(b), and Coyne's version of that section is

included in the final policy. Further comparison and analysis of Jefferson's and Coyne's notes reveal many more discrepancies with regard to what the parties did or did not agree. G.C. Exhibit 4, Agency Exhibit D.

What occurred immediately following the January 5, 2000 negotiations is also important to this case, and the parties' accounts again diverge. The parties agree that on January 12, 2000, the Agency provided to Ms. Jefferson a memorandum from Mr. Wallin stating that a revised draft of the operations policy and Coyne's notes from the January 5 negotiation session were attached. It explained that Wallin's goal was to "issue this policy next week to VSC staff." The memorandum also stated, "Let me know if Mr. Coyne's changes to the policy are not reflective of your notes." G.C. Exhibit 6.

Mr. Bragg testified that he dropped the memorandum and its attachments on Jefferson's desk. Ms. Jefferson testified that she found the memorandum on her chair on January 12, 2000, but that it did not include the attachments. On January 12, according to Jefferson, she contacted Coyne, and in a five to six minute conversation with him she explained the Union's objections to the memorandum. Ms. Jefferson maintains that Coyne said he would talk to Wallin and get back to her. Mr. Coyne, however, does not believe that he spoke with Jefferson at all on January 12, 2000, or at any time prior to the implementation of the VSC Operations Policy. This testimony raises two credibility issues.

Crediting the testimony of Ms. Jefferson, I find first that she did have a conversation with Coyne on January 12, 2000 regarding the Agency's proposed implementation of the "final" draft of the policy. Jefferson's testimony at the hearing was consistent with the affidavit she gave in May 2000 (incorporated into the record at Tr. 118-22). Further, she remembered significant details regarding the conversation, such as location, length of the conversation, and matters discussed. Mr. Coyne, by contrast, testified that he had no recollection of the conversation or any contact with Jefferson regarding this matter. In response to the initial question as to whether he spoke with Ms. Jefferson about this policy, Coyne answered "I do not <u>believe</u> I did." Tr. 352 (emphasis added). This is consistent with Coyne's limited recall throughout his testimony. *See, e.g.*, Tr. 335-338; 341-42 (Coyne could recall few details about the January 5 negotiations). Moreover, on several occasions, Coyne's testimony conflicted not only with that of the union witnesses, but also with the Agency's. In any event, Coyne

never presented the Union's objections to Wallin or Bragg, and Jefferson likewise admits that she never responded to Wallin or Bragg orally or in writing after she received the January 12 memo. Thus I find that a representative of the Agency was aware of the Union's objections to portions of the proposed final draft on January 12.

On the other hand, I find that Ms. Jefferson was provided the attachments to the January 12 memorandum. Although Jefferson claims that she did not receive the attachments (Tr. 49), she also testified that in her conversation with Coyne on January 12, she "showed him this policy" and asked "what was going on" (Tr. 51-52). Jefferson also did not ask for a copy of the attachments when she spoke with Coyne that day. Further, although Jefferson said in her May 2000 affidavit that she did not receive the attachments, elsewhere in the affidavit she stated that "some of the changes were missing and some of the things we agreed on or disagreed on were not contained in the memo." Tr. 121. The January 12 memorandum (absent the attachments) does not cover specific proposals in the kind of detail that would justify such a statement by Jefferson. In addition, testimony of and evidence from Union steward Smith also suggest that Jefferson received the attachments. Smith testified that she saw the final policy and that Jefferson discussed the final policy with her prior to January 18. Smith also testified that she had no reason to believe that Jefferson did not receive the attachments along with the January 12 memorandum. Finally, in an e-mail to the Director of the Washington Regional Office, Rowland Christian, objecting to implementation of the final policy, Smith wrote that "Bragg gave Ida [Jefferson] a final draft" of the proposed policy on, she believed, January 12. G.C. Exhibit 8.

At 5:47 a.m. on January 18, 2000, which was the Tuesday following the Monday Martin Luther King, Jr. federal holiday, Bragg sent an e-mail to all employees attaching the VSC Operations Policy and stating that it was "effective immediately."[3] G.C. Exhibit 7. Shortly thereafter, at 6:55 that same morning, Ms. Smith sent her e-mail to Regional Office Director Christian, stating the Union's objection to implementation of the VSC Operations Policy prior to completion of bargaining. The Union filed a ULP charge regarding this matter on January 19, 2000.

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[3] The disputed issues in the Work Schedules section that the parties had previously agreed to table, pending mediation, were not included in the implemented policy.

Discussion and Conclusions

A. Positions of the Parties

The General Counsel alleges that the Respondent had a statutory duty to bargain with the Union regarding the VSC Operations Policy. By implementing the policy before completion of mandatory bargaining, it is argued that the Agency violated the Statute. In this regard, the General Counsel explains that bargaining was not completed because there was no meeting of the minds between the parties regarding a final VSC Operations Policy. The General Counsel seeks a *status quo ante* remedy and make whole relief for any employees adversely affected by implementation of the policy.

Respondent does not challenge its statutory duty to bargain over the VSC Operations Policy. However, the Respondent contends that it bargained in good faith and reached final agreement with the Charging Party prior to implementation of the policy. During the negotiations on January 5, 2000, it argues, agreement was reached on the entire Operations Policy except for the two tabled portions concerning work schedules. The final draft of the policy given to the Union on January 12 conformed fully with the Agency's understanding of the agreement. Therefore, when the Union failed to raise any objections to management's final draft by January 18, the Respondent says it acted reasonably in implementing it. Respondent presents no arguments opposing the General Counsel's requested remedy.

B. Analysis

1. Legal Framework of Statutory Duty to Bargain

Before implementing a change in conditions of employment affecting bargaining unit employees, an agency is required to provide the exclusive representative with notice of, and an opportunity to bargain over, those aspects of the change that are within the duty to bargain. *Federal Bureau of Prisons, Federal Correctional Institution, Bastrop, Texas,* 55 FLRA 848, 852 (1999). Parties must then "satisfy their mutual obligation to bargain before implementing changes in conditions of employment." *Id.*

Pursuant to § 7114(a)(4) of the Statute, an agency and an exclusive representative are required to "meet and negotiate in good faith for the purposes of arriving at a collective bargaining agreement." If an agreement is reached, section 7114(b)(5) requires the parties "to execute on the request

of any party to the negotiation a written document embodying the agreed terms. . . ." An agreement, for purposes of § 7114(b)(5), "is one in which authorized representatives of the parties come to a meeting of the minds on the terms over which they have been bargaining." *U.S. Department of Transportation, Federal Aviation Administration, Standiford Air Traffic Control Tower, Louisville, Kentucky*, 53 FLRA 312, 317 (1997). The Authority looks at the "totality of the circumstances in a given case" to determine whether a party has fulfilled its bargaining obligation. *Id.*

2. **The Parties Did Not Reach an Agreement**

The General Counsel maintains that there was no meeting of the minds on the terms of the VSC Operations Policy, and that Respondent committed an unfair labor practice by implementing the policy on January 18, 2000. Based upon consideration of the totality of the circumstances, as the Authority's precedent requires, I conclude that the preponderance of the evidence supports the General Counsel's position.

1 **The January 5 negotiations**

The parties' recollections regarding the negotiations on January 5 demonstrate that there was no meeting of the minds. Most witnesses agree that there was no discussion during the negotiations regarding a date for implementing the operations policy. Testimony of the parties also reveals that there was no common understanding of how the parties indicated agreement on particular issues. Further, the many discrepancies between the bargaining session notes of Coyne and Jefferson show that the parties had divergent views as to precisely which issues and what language they agreed to and did not agree to on January 5.[4]

The Agency argues "[i]t was Management's good faith belief that at the conclusion of the January 5 meeting, the parties had reached a meeting of the minds regarding the provisions in the policy with the exception of the tabled issues." Respondent's Posthearing Brief at 14 (emphasis added). As Mr. Bragg testified: "Nobody stood up to declare, 'okay. We agree,' but there was consensus in the room that, yes, we were finished, and yes . . . we did have agreement." Tr. 223. Unfortunately, Respondent's "belief"

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In this regard, it is not necessary to determine who is correct regarding specific agreement and disagreement, because the discrepancies themselves work against finding a meeting of the minds.

that there was an agreement is not sufficient for a finding that there was a meeting of the minds, especially if the Union did not share this belief. In this regard, National Labor Relations Board (NLRB) law is instructive.[5] An "objective standard" is used by the NLRB to determine whether an agreement was reached, and thus Respondent's subjective "belief" is not sufficient to demonstrate a meeting of the minds. *Warehousemen's Union Local No. 206 v. Continental Can Co.*, 821 F.2d 1348, 1350 (9th Cir. 1987), *cited by* the Authority in *IRS*, 55 FLRA at 222.

In finding that there was no meeting of the minds on January 5, I do not believe that the Agency witnesses were lying; it appears they honestly thought they left the table that day with an agreement. But the parties' vastly divergent notes of the January 5 session speak louder than any witness' words. The discrepancies in those notes are so frequent
and so substantial that they can only be interpreted as representing two contradictory understandings of the status of negotiations. For instance, at page 2 of Ms. Jefferson's notes (G.C. Exhibit 4), next to the language "The maximum number of Leave Requests approved etc. . ." she wrote "No" and "Conflict with the Master Agreement." Yet the Agency's final policy includes the cited language. On page 3 of the Union's notes, next to the section titled "When potentially unavailable for work", Jefferson wrote, "Review Again. Union did not agree." Just below this, referring to a "Note" in the draft policy, Jefferson again wrote "Union did not agree." Again, the final Agency policy incorporates these provisions with only minor changes. Numerous other examples can be found within the parties' notes. These discrepancies reflect major differences in the understandings of the parties at the close of negotiations.

Moreover, even if the Agency's notes (Agency Exhibit D) are read in isolation, they do not support the testimony of the management witnesses. Mr. Coyne did indeed write "OK" in the margins next to many sections of the draft policy, but several sections of the draft do not reflect the Union's agreement. For instance, Coyne's notes regarding section 2 (b) of the Leave Policy, "When potentially unavailable for work", contain some language changes, but there is no indication (such as "OK") that the Union agreed to the original text or the altered text. As noted above, the

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As the Authority has noted, the NLRB "applies similar standards for determining when parties reach agreement." *See*, *Internal Revenue Service*, *North Florida District, Tampa Field Branch, Tampa, Florida*, 55 FLRA 222 (1999) (*IRS*).

Union's notes reflect disagreement on this section. In the Appearance section of the Agency's policy, Mr. Coyne's notes do not indicate the Union agreed to anything except a minor change in the prohibited clothing for women; the Union's notes reflect several disputes. Thus Mr. Coyne's notes cannot directly serve to refute the Union's assertion on these points. This is also true in other portions of the draft policy. Therefore, while the Agency's witnesses testified that they did not proceed to the next section of the policy until agreement was achieved on the previous section, the Agency's notes do not reflect such agreement.

2 **Activities after January 5**

Given the uncertainty between the parties regarding what they negotiated on January 5, it is necessary to examine the events after January 5 to determine whether any meeting of the minds occurred at any point in the process. In that connection, the actions of the parties after January 5 further support a finding that there was no meeting of the minds.

Respondent maintains that it put the Charging Party on notice of its understanding of the terms of the agreement reached on January 5 and of the planned implementation date via the January 12 memorandum from Wallin to Jefferson. While Respondent did provide the Union with a revised draft of the policy to review, and indicated an intent to "issue this policy next week," neither the Respondent's actions nor the Union's indicate that an agreement had been reached.

An essential premise of the Respondent's argument is its contention that Ms. Jefferson never contacted Mr. Coyne on or after January 12 to object to management's final draft of the policy. In the Findings of Fact, however, I explained my credibility finding that the Union President did speak to Coyne on January 12, and that she did tell him that the draft did not accurately reflect the substance of the January 5 negotiations. By making this finding, I necessarily accept the General Counsel's argument that there was no meeting of the minds, and that this was conveyed to the Agency on January 12.

Nevertheless, even if the Union had <u>not</u> communicated its disagreement to the Agency on January 12, I would still find that there was no meeting of the minds, for several reasons. First, in its January 12 memorandum, Respondent indicated only an intention to issue the policy "next week," and provided no date certain. Second, Respondent actually issued the policy on the first day of the week of the "next

week," and did so at 5:47 a.m. As a result of this action by the Respondent, the Union had only from Wednesday, January 12 until Friday, January 14 to respond to Wallin's memorandum, because Monday, January 17 was a federal holiday. Nothing in Wallin's memorandum indicated such a precise implementation date. In light of the ambiguity of the planned implementation date in Respondent's memo of January 12, and the brief amount of working time that had elapsed from January 12 to 18, it cannot reasonably be inferred that the Union's silence constituted agreement with the contents of the draft policy. Finally, about an hour after receiving Mr. Bragg's January 18 memo stating that the VSC Operations Policy was being implemented immediately, the Union objected to the implementation by sending an e-mail message to Rowland Christian, Director of the VA's Washington Regional Office. Although the Union sent this message to an official who was not directly involved in the negotiations, it effectively put the Respondent on notice that the Union had not agreed to the final draft or to implementing it.6

In summary, the evidence concerning the January 5 negotiation session and the events after January 5 demonstrate that no meeting of the minds was achieved concerning the VSC Operations Policy. The widely divergent accounts of the
last negotiation session, as to what language had been agreed upon and what had not, suggest that, while the management representatives left the meeting believing that they had an agreement, the Union representatives left believing that more negotiations would be held. Either Ms. Jefferson's conversation with Mr. Coyne on January 12 or Ms. Smith's memo to Mr. Christian on January 18, standing alone, is sufficient corroboration of the Union's objections to the final draft to demonstrate that Respondent should not have implemented the policy.

Accordingly, I find that Respondent failed to fulfill its obligation to bargain with the Charging Party before implementing the VSC Operations Policy. Its failure to do so constituted a violation of § 7116(a)(1) and (5) of the Statute.

C. The Appropriate Remedy

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I view the Union's decision to send its protest memo to Mr. Christian on January 18 as a further indication that it had previously (i.e., on January 12) tried to register its objections to the Agency's negotiators and had been ignored.

Where management unilaterally changes a condition of employment that is substantively negotiable, the Authority has held that a *status quo ante* remedy is appropriate, in the absence of special circumstances. *General Services Administration, National Capital Region, Federal Protective Service Division, Washington, D.C.*, 50 FLRA 728, 737 (1995). Portions of the VSC Operations Policy, such as the rules concerning employee dress, union consultations and personal areas, are clearly negotiable as to their substance. Since the Respondent has asserted no special circumstances here and none are apparent on the record, I find that a return to the *status quo* is appropriate to remedy the Respondent's unfair labor practice.7

Moreover, make whole relief for employees adversely affected by the implementation of the VSC Operations Policy is warranted, since any adverse effects resulted directly from Respondent's failure to bargain in this case. *U.S. Department of Energy, Western Area Power Administration, Golden, Colorado*, 56 FLRA 9, 13 (2000).

Based on the above findings and conclusions, I conclude that the Respondent violated § 7116(a)(1) and (5) of the Statute, as alleged, and I recommend that the Authority issue the following Order:

ORDER

Pursuant to section 2423.41(c) of the Authority's Rules and Regulations and section 7118 of the Federal Service Labor-Management Relations Statute, it is hereby ordered that the U.S. Department of Veterans Affairs, Washington Regional Office, shall:

1. Cease and desist from:

(a) Failing and refusing to bargain with American Federation of Government Employees, Local 25, AFL-CIO, the exclusive representative of a unit of its employees, over

7 The Authority employs a different analysis to remedy changes in working conditions that are subject only to impact and implementation bargaining. *Federal Correctional Institution*, 8 FLRA 604, 606 (1982)(*FCI*). Arguably, portions of the VSC Operations Policy may fit this description, but the Respondent has never raised such a defense or articulated which portions of the policy warrant such analysis. Thus I do not believe that it is necessary to apply the *FCI* analysis in this case; but even if it were necessary, I would find that the *FCI* criteria warrant a *status quo ante* remedy here.

the terms and implementation of the Veterans Service Center Operations Policy.

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

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

(a) Rescind the Veterans Service Center Operations Policy implemented on January 18, 2000, to the extent that it applies to employees represented by the American Federation of Government Employees, Local 25, AFL-CIO.

(b) Notify and upon request bargain with the American Federation of Government Employees, Local 25, AFL-CIO, over the terms and implementation of the Veterans Service Center Operations Policy.

(c) Make whole all employees represented by the American Federation of Government Employees, Local 25, AFL-CIO, who were adversely affected by the implementation of the Veterans Service Center Operations Policy on January 18, 2000.

(d) Post at its facilities where bargaining unit employees of the U.S. Department of Veterans Affairs, Washington Regional Office are located, 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 Director, U.S. Department of Veterans Affairs, Washington Regional Office, 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 ensure that such Notices are not altered, defaced, or covered by any other material.

(e) Pursuant to section 2423.41(e) of the Authority's Rules and Regulations, notify the Regional Director, Washington Regional Office, Federal Labor Relations Authority, in writing, within 30 days of the date of this Order, as to what steps have been taken to comply herewith.

Issued, Washington, DC, February 25, 2002.

_____

RICHARD A. PEARSON
Administrative Law Judge

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 Veterans Affairs, Washington Regional Office, 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 fail and refuse to bargain with American Federation of Government Employees, Local 25, AFL-CIO, the exclusive representative of a unit of our employees, over the terms and implementation of the Veterans Service Center Operations Policy;

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

WE WILL rescind Veterans Service Center Operations Policy issued on January 18, 2000, to the extent that it applies to employees represented by the American Federation of Government Employees, Local 25, AFL-CIO;

WE WILL notify and upon request bargain with the American Federation of Government Employees, Local 25, AFL-CIO, over the terms and implementation of the Veterans Service Center Operations Policy; and

WE WILL make whole all employees represented by the American Federation of Government Employees, Local 25, AFL-CIO, who were adversely affected by the implementation of the Veterans Service Center Operations Policy on January 18, 2000.

_____
U.S. Department of Veterans Affairs,
Washington Regional Office

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, Federal Labor Relations

Authority, Washington Regional Office, whose address is: Tech World Plaza North, 800 K Street, NW, Suite 910, Washington, DC, 20001, and whose telephone number is: 202-482-6702.

CERTIFICATE OF SERVICE

I hereby certify that copies of this DECISION issued by RICHARD A. PEARSON, Administrative Law Judge, in Case No. WA-CA-00229, were sent to the following parties in the manner indicated:

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

Jeanne Marie Corrado Esq. 7000 1670 0000 1175 0474
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REGULAR MAIL

National President
American Federation of Government
Employees, AFL-CIO
80 F Street, NW
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Dated: February 25, 2002
Washington, DC