UNITED STATES OF AMERICA

FEDERAL LABOR RELATIONS AUTHORITY

Office of Administrative Law Judges

WASHINGTON, D.C. 20424-0001

MEMORANDUM DATE: April 3, 2002

TO: The Federal Labor Relations Authority

FROM: PAUL B. LANG
Administrative Law Judge

SUBJECT: DEPARTMENT OF THE AIR FORCE
RANDOLPH AIR FORCE BASE
SAN ANTONIO, TEXAS

Respondent

and Case No. DA-CA-01-0465

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 1840, 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

DEPARTMENT OF THE AIR FORCE RANDOLPH AIR FORCE BASE SAN ANTONIO, TEXAS Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1840, AFL-CIO Charging Party	Case No. DA-CA-01-0465

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 **MAY 6, 2002**, 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: April 3, 2002

Washington, DC

OALJ 02-31

FEDERAL LABOR RELATIONS AUTHORITY

Office of Administrative Law Judges
WASHINGTON, D.C.

DEPARTMENT OF THE AIR FORCE RANDOLPH AIR FORCE BASE SAN ANTONIO, TEXAS Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1840, AFL-CIO Charging Party	Case No. DA-CA-01-0465

Robert Bodnar, Esquire
For the General Counsel

Phillip G. Tidmore, Esquire
Christopher C. vanNatta, Major, USAF
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 by the American Federation of Government Employees, Local 1840, AFL-CIO ("Union") against the Department of the Air Force, Randolph Air Force Base, San Antonio, Texas ("Respondent"). The General Counsel subsequently issued a Complaint alleging that the Respondent violated §§7116(a)(1) and (8) of the Federal Service Labor-Management Relations Statute ("Statute") by conducting a formal discussion on or about March 12, 2001, without having provided the Union with advance notice and an opportunity to be represented as required by §7114(a)(2)(A) of the Statute.

A hearing was held in San Antonio, Texas on January 23, 2002, before the undersigned Administrative Law Judge. This Decision is based upon consideration of the evidence as well as the demeanor of witnesses and the post-hearing briefs of the respective parties.

Position of the General Counsel

The General Counsel contends that, on March 5 and 12, 2001, the Respondent conducted formal discussions with certain of its employees in the Lodging Department. During the course of those discussions management representatives announced that the employees would be required to conduct daily inventories of amenities (such as coffee, shampoo and mouthwash) in the guest rooms. Prior to that time inventories were to be conducted only twice a week.[1] Management representatives also introduced new forms for the inventory of amenities and linens. Those discussions were held without notice to the Union which was thereby deprived of the opportunity to send a representative to protect its interests as well as those of the employees in the bargaining unit.

The General Counsel acknowledges that the Complaint, like both the original and amended unfair labor practice charge, refers only to the discussion on March 12, 2001. However, the General Counsel argues that the Respondent should also be held accountable for the events of March 5, 2001, because the significance of those events was fully litigated at the hearing.

Position of the Respondent

The Respondent has not specifically addressed the meeting of March 5, 2001, but maintains that the housekeeping staff has never been required to inventory amenities more than twice a week. The meeting on March 12, 2001, was no more than a regular monthly training session during which management representatives emphasized the importance of pre-existing procedures and standards such as wearing clean uniforms, not overloading carts and using telephone codes to report when each room had been cleaned. New forms were introduced for the inventory of amenities and linens, but they were closely similar to the previous forms and did not cause a change in the duties or working

[1] The General Counsel alleges that the new inventory procedure was introduced at the March 5 meeting and was discontinued "a few days" after the filing of the unfair labor practice charge on March 12. The only changes allegedly introduced at the March 12 meetings were two inventory forms.

conditions of the employees. Therefore, the March 12 meeting was not a formal discussion within the meaning of the Statute.

Findings of Fact

On March 12, 2001, a training meeting of the housekeeping staff was held behind Building 118. Such meetings had been routinely held on a monthly basis for the past 13 years. Housekeeping employees learned of the meeting by means of a notice on the bulletin board as well as by oral notification from their supervisors. Such meetings were mandatory for all housekeeping employees who were scheduled to work at the time. The supervisors would brief absent employees upon their return. The meeting was conducted by Sharon Smith the Housekeeping Manager and was attended by Mary Cantu, the Assistant Housekeeping Manager. The meeting lasted for about 45 minutes. It apparently followed a prearranged agenda, but there is no evidence that the agenda was published to the employees or that official notes were taken.

Discussion was largely devoted to a review of the results of a recent Innkeeper Inspection. Some emphasis was placed on the need to exercise better control of inventory; new storage room and linen inventory forms were introduced. There was also discussion regarding adherence to pre-existing work rules covering such subjects as dialing in when each room has been cleaned, maintenance of uniforms, wearing of name tags and attendance.

Discussion and Analysis

The Meeting of March 5

The General Counsel relies upon *Bureau of Prisons, Office of International Affairs, Washington, D.C. and Phoenix, Arizona, et al.*, 52 FLRA 421 (1996), in support of the proposition that the Respondent should be held to account for its conduct at the meeting of March 5 in spite of the fact that only the March 12 meeting was cited in the Complaint. In that case the Authority reiterated its prior holding that:

> . . . the test of full and fair litigation was one of whether the respondent knew what conduct was at issue and had a fair opportunity to present a defense (*Id.* at 429).

The General Counsel has not met that test in this instance. Both the original and the amended unfair labor

practice charges (General Counsel's Ex. 1(a) and (c)) refer only to the meeting which took place "on or about" March 12. Furthermore, the General Counsel did not move to amend the Complaint either at the hearing or within 10 days after the close of the hearing in accordance with §2423.21(b)(3) of the Rules and Regulations of the Authority. Although there was evidence concerning the meeting of March 5, the Respondent was not put on notice that the earlier meeting was at issue. In view of the fact that the alleged change in the inventory procedure (a change which is denied by the Respondent) was rescinded soon after its introduction on March 5, the Respondent was entitled to assume that this proceeding concerned only the events of March 12. Accordingly, the General Counsel's arguments concerning the meeting of March 5 will not be considered.

The Meeting of March 12

Both the General Counsel and the Respondent have correctly cited the same criteria for determining whether a meeting is a formal discussion within the meaning of §7114 (a)(2)(A) of the Statute. Among the criteria are: (1) the position in the management hierarchy of the individual who held the meeting, (2) whether other management representatives attended, (3) where the meeting took place (*i.e.*, a supervisor's office, an employee's work station or elsewhere), (4) how long the meeting lasted, (5) whether the meeting was called by means of an advance written notice, (6) whether a formal agenda was established, (7) whether employee attendance was mandatory, and (8) the manner in which the meeting was conducted (*i.e.*, whether employees' comments were noted or transcribed). See, for example, *U.S. Dept. of Justice, Bureau of Prisons, Federal Correctional Institution, Bastrop, Texas*, 51 FLRA 1339, 1343 (1996). Furthermore, the parties agree, again correctly, that the above criteria are not to be applied mechanically. Rather, the totality of fact surrounding the meeting must be examined to determine whether it was a formal discussion, *Marine Corps Logistics Base, Barstow, California*, 45 FLRA 1332, 1335 (1992).

The meeting of March 12 had four of the eight aforementioned indicia of a formal discussion. It was conducted and attended by management representatives, it was announced by an advance written notice and attendance was mandatory, although employees were not required to give up or rearrange their days off in order to attend. However, the location of the meeting was where routine informational meetings were often held. It was not lengthy considering the number of topics which were addressed. There was no

formal agenda and no official notes were made or transcribed.

In considering the meeting as a whole, it is clear that its main purpose was to review the results of the inspection and to remind employees of existing procedures. To be sure, those topics are employment-related as are all matters discussed at meetings conducted by supervisors and attended by rank and file employees. However, the Authority has recognized that, in the absence of communications concerning grievances or discipline, such meetings are informational only and are not to be considered as formal discussions, *Dept. of Veterans Affairs, Veterans Affairs Medical Center, Gainesville, Florida*, 49 FLRA 1173, 1175 (1994). Indeed, it could not rationally be otherwise. If the introduction of any employment-related subject were all that was necessary to transform a meeting between supervisors and employees into a formal discussion, agencies would be required to give unions advance notice of *all* meetings with employees. It cannot seriously be argued that such a result is within the contemplation of the Statute.

The only new material that was even arguably introduced were revised versions of the supply room and linen inventory forms. The revised supply room form (Respondent's Ex. 2) differs from the previous form (General Counsel's Ex. 2) only in that the revised form is aligned down the long ends of the paper, that it no longer requires the inventory of "HOT COCO" and that it contains the number of each item that should be kept on hand. Neither the contents of these forms nor the evidence presented at the hearing suggests that the use of the new supply room inventory form has any appreciable impact on members of the bargaining unit. Additionally, employees sometimes still use the old inventory forms.

The original linen inventory form (Respondent's Ex. 3) differs from the revised version (Respondent's Ex. 1) in that the revised form is aligned down the long ends of the paper and, unlike the original, only lists linens by type (bath towel, hand towel, etc.) rather than also by color. In fact, the revised form appears to be easier to use. In any event, there has been no evidence that the change in this form resulted in a change in how bargaining unit employees were required to perform their duties.

In view of the foregoing, I have concluded that the meeting of March 12, 2001, was not a formal discussion within the meaning of the Statute. Therefore, pursuant to §2423.34 of the Rules and Regulations of the Federal Labor

Relations Authority, I recommend that the Authority issue the following order:

ORDER

IT IS HEREBY ORDERED that the Complaint be, and hereby is, dismissed.

Issued, Washington, DC, April 3, 2002.

_____
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. DA-CA-01-0465, were sent to the following parties in the manner indicated:

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

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Dated: April 3, 2002
Washington, DC