

DEPARTMENT OF THE AIR FORCE WARNER ROBINS AIR LOGISTICS CENTER, ROBINS AIR FORCE BASE, GEORGIA Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 987 Charging Party	Case No. AT-CA-40563

NOTICE OF TRANSMITTAL OF DECISION

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

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

Any such exceptions must be filed on or before MAY 30, 1995, and addressed to:

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

WILLIAM B. DEVANEY
Administrative Law Judge

Dated: April 27, 1995

Washington, DC

MEMORANDUM

DATE: April 27, 1995

TO: The Federal Labor Relations Authority

FROM: WILLIAM B. DEVANEY
Administrative Law Judge

SUBJECT: DEPARTMENT OF THE AIR FORCE
WARNER ROBINS AIR LOGISTICS
CENTER, ROBINS AIR FORCE BASE,
GEORGIA

Respondent

and

Case No. AT-CA-40563

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 987

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
OFFICE OF ADMINISTRATIVE LAW JUDGES
WASHINGTON, D.C. 20424-0001

DEPARTMENT OF THE AIR FORCE WARNER ROBINS AIR LOGISTICS CENTER, ROBINS AIR FORCE BASE, GEORGIA Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 987 Charging Party	Case No. AT-CA-40563

Brenda S. Mack, Esquire
For the Respondent

Richard S. Jones, Esquire
For the General Counsel

Mr. Jim Davis
For the Charging Party

Before: WILLIAM B. DEVANEY
Administrative Law Judge

DECISION

Statement of the Case

This proceeding, under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the United States Code, 5 U.S.C. § 7101, et seq.¹, and the Rules and Regulations issued thereunder, 5 C.F.R. § 2423.1, et seq., concerns whether Respondent failed and refused to negotiate a change in smoking policy prior to implementation and/or whether Respondent repudiated a national agreement by implementing a change, in violation of §§ 16(a)(5) and (1) of the Statute.

¹

For convenience of reference, sections of the Statute hereinafter are, also, referred to without inclusion of the initial "71" of the statutory reference, i.e., Section 7116 (a)(5) will be referred to, simply, as, "\$ 16(a)(5)".

This case was initiated by a charge filed on May 3, 1994 (G.C. Exh. 1(a)), which alleged violations of §§ 16(a)(1), (5) and (6). The Complaint and Notice of Hearing issued on August 30, 1994 (G.C. Exh. 1(c)), alleging violations of §§ 16(a)(1) and (5) only, and set the hearing for a date, time and place to be determined. By Order dated September 7, 1994 (G.C. Exh. 1(d)) the hearing was set for November 9, 1994, in Warner Robins, Georgia, pursuant to which a hearing was duly held on November 9, 1994, in Warner Robins, Georgia, before the undersigned. All parties were represented at the hearing, were afforded full opportunity to be heard, to introduce evidence bearing on the issues involved, and were afforded the opportunity to present oral argument, which each party waived. At the conclusion of the hearing, December 9, 1994, was fixed as the date for mailing post-hearing briefs and each party timely mailed a brief, received on, December 12, 1994, which have been carefully considered. Upon the basis of the entire record, I make the following findings and conclusions:

Findings

1. The American Federation of Government Employees, AFL-CIO (AFGE), is the exclusive representative of a nationwide consolidated unit of employees of the Air Force Logistics Command (AFLC).

2. American Federation of Government Employees, Local 987 ("Union") is an agent of AFGE for the purposes of representing employees at Robins Air Force Base, Georgia.

3. In 1987, AFGE [Council 214] and AFLC reached an agreement on smoking policy (G.C. Exh. 2). The 1987 agreement authorized smoking in designated areas, and further provided that smokers would not be required to smoke outdoors. The 1987 agreement also provided that where the interests of smokers and non-smokers conflict, the non-smokers' right to breathe smoke-free air would prevail. The parties continued to be governed by the 1987 agreement for several years, through the use of dedicated smoking rooms and a smoking committee committed to resolve disputes between smokers and non-smokers (Tr. 20). Some employees were even allowed to construct their own indoor smoking areas (Tr. 34).

4. In February, 1994, AFMC² notified AFGE Council 214 of its intent to implement a tobacco reduction policy (G.C. Exh. 3). Mr. Albert Perez, Acting Civilian Personnel Chief, reminded the activities of their obligation to negotiate with the Union, and that, "Currently designated indoor smoking

Although referred to in the Complaint, and at times herein, as Air Force Logistics Command (AFLC), AFLC has become the Air Force Materiel Command (Tr. 35).

areas should not be eliminated until outdoor smoking areas have been negotiated." (G.C. Exh. 3). At some point, AFMC announced to Council 214 that it planned to unilaterally implement a new smoking policy; Council 214 took exception and filed an unfair labor practice charge over the matter and the unfair labor practice charge was dropped after the parties ultimately reached an agreement on April 1, 1994 (Tr. 23; G.C. Exh. 7, Attachment).

5. In the meantime, Mr. Michael Gavin, the Union's negotiator, unaware that negotiations on AFMC's Tobacco Reduction Policy were proceeding at the national level, began local negotiations at Robins. The parties negotiated on Respondent's proposal (Res. Exh. 1), agreed to some provisions and the Union proposed change on the remaining provisions. Mr. Gavin learned of the ongoing national negotiations and by letter dated March 28, 1994, advised Mr. Paul Palacio, President of Council 214, that he had met with Respondent to consider the attached proposal, which appears to have been an earlier version of Respondent Exhibit 1, and further stated,

" . . . I am going to advise the Committee that Negotiations over this issue are on going at this time and it would be improper to negotiate this issue at the local level until this issue is finalized at the Command Level. . . ." (G.C. Exh. 5).

6. As noted above, AFMC and Council 214 reached agreement on April 1, 1994, and Mr. Gavin by letter dated April 8, 1994, to Mr. Dale Foster, Respondent's representative in the local smoking policy negotiations, stated in part, as follows:

"As of April 5, 1994, we have become informed of a Council 214 agreement concerning this topic [Smoking Policy] and it is included³ . . . In light of the Council 214 agreement I suggest that the attached and simplified Counter Proposal will be more agreeable to management. . . ." (G.C. Exh. 7).

Mr. Gavin's attached counter proposal, entitled "Memorandum of Agreement, Smoking on RAFB", was as follows:

"1) Both parties agree to adhere to the agreement signed on April 1, 1994, between Mr. Rush (management) and Mr. Nickerson (Union). [i.e., the AFMC-Council 214 Agreement]

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The AFMC - Council 214 Memorandum of Agreement, which was attached, is discussed hereinafter.

"2) Designated indoor smoking areas shall not be eliminated until such time as other smoking areas (sic) have been designated (should be accomplished by the smoking committee).

"3) Designated smoking areas will provide protection against the elements, seating, tables, handicap access, and signs marking the areas as a designated smoking area.

"4) Designated smoking areas will be within a reasonable distance of the work areas as compared to current break areas." (G.C. Exh. 7, Attachment).

Mr. Gavin had signed the proposed MOA on April 7, 1994.

7. The AFMC-Council 214 Memorandum of Agreement, AFMC Tobacco Reduction Policy, of April 1, 1994, provides, in part, as follows:

"2. The parties agree to remain status quo with the current Memorandum of Agreement signed by AFGE Council 214 and AFMC on 29 April 1987 and with all existing activity level agreements accommodating the smoker and smoking facilities relative to smoking/ non-smoking until such time as the matter has been subject to the negotiation process consistent with the Labor Statute.

"3. Any bargainable matters left to the discretion of the local commanders such as providing shelter from the elements will be negotiated at the local level.

. . .

"6. When there are any conflicts or disputes arising over the Tobacco Reduction Policy, it will be resolved in favor of the non-smoker. However, designated indoor smoking areas shall not be eliminated until such time as outdoor smoking areas have been subject to the negotiation process pursuant to the Labor Statute.

. . ." (G.C. Exh. 7, Attachment) (Emphasis supplied).

8. At some time, Respondent revised its earlier proposed Memorandum of Agreement (Res. Exh. 1) and produced a new version which incorporated the sections the Union had

accepted as well as adopting the Union's proposed changes, which is Respondent Exhibit 2; however, the record does not show when Respondent Exhibit 2 was prepared or that it ever was presented to the Union.⁴

9. Although Mr. Judson L. Rigsby, Jr., Labor Relations Section, Civilian Personnel Division, who did not attend or participate in the negotiations, said that Respondent Exhibit 2 was "sent" as Respondent's "last best offer" (Tr. 49), the record does not show when it was prepared, when it was sent to Mr. Gavin, that it was designated as Respondent's "last best offer", or that it was ever discussed. Clearly, it was not signed.

By the same token, the record shows that Respondent never responded to Mr. Gavin's letter of April 8, 1994 (Tr. 38).

10. By memorandum dated April 4, 1994, Respondent's Vice Commander, Colonel Michael C. Kostelnik (Tr. 51), advised, in part, as follows:

"1. In compliance with the Department of Defense (DOD) ban on indoor smoking in the workplace, Headquarters United States Air Force (USAF) has given authority to AFMC to implement its tobacco reduction policy. . .

"2. In order for Robins Air Force Base to implement the ban to the maximum extent possible, certain obligations with the local labor union must be met. Therefore, each addressee is tasked with providing 653 ABG/XP a list of current and planned outdoor designated smoking areas for buildings under their control not later than 8 April 1994. Present indoor smoking areas should not be eliminated until outdoor smoking areas have been negotiated with the union. Exterior smoking shelters may be provided if organization funding is available. Entrances to buildings will not be designated as smoking areas. . . ." (G.C. Exh. 6) (Emphasis supplied).

At least one supervisor, Mr. John W. Edell, Jr., responded to Colonel Kostelnik's memorandum (G.C. Exh. 6, Attachment; and Mr. Rigsby stated, "I would imagine a lot of people did [responded] but I don't know for sure (Tr. 52)).

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Mr. Davis' testimony references to changes by Respondent in its proposed MOA (Tr. 29, 30) is ambiguous and might have referred to changes in the version forwarded to Council 214 on March 28.

11. Without meeting further with the Union and without responding to the Union's letter of April 8, on April 13, 1994, Respondent sent Mr. Gavin the following letter,

"Since we are at impasse on accommodations to be made for smokers and in the interest of the health of the employees at Robins AFB, effective 18 April 1994, all smoking indoors and at the entrances of buildings will cease. Other issues related to smoking will continue to be addressed through our long established Smoking Committee. . . ." (G.C. Exh. 8).

12. Mr. Gavin immediately faxed a copy of the April 13 letter to Mr. Jim Davis, President of the Union (Tr. 24, 38) who was at Wright-Patterson Air Force Base, Ohio, together with Mr. Dale P. Foster, Respondent's negotiator in the local negotiations and in whose name the letter of April 13 had been issued, for master labor agreement negotiations (Tr. 24). Mr. Davis prepared a response (G.C. Exh. 9), dated April 14, 1994, addressed to Mr. Foster, which he faxed to Mr. Gavin for delivery to the Labor Relations Office (Tr. 24, 39) and Mr. Davis also personally served Mr. Foster with a copy (Tr. 24). In his letter of April 14, 1994, Mr. Davis stated, in part, as follows:

"As you know we have had a long standing smoking policy which was negotiated to address the concerns of smokers and non-smokers alike.

"On 1 April 94 Council 214 and AFMC Headquarters entered into a Tobacco Reduction Policy agreement. In Para. 6 it states that designated indoor smoking areas shall not be eliminated until such time as outdoor smoking areas have been subject to the negotiated process pursuant to the Labor Statute. It is an Unfair Labor Practice to implement an agency regulation contrary to a pre existing agreement . . .

"To date negotiations on outdoor smoking areas have not been completed. AFGE Local #987 does not believe we are at impasse, for the simple reason the parties have not had the assistance of a federal mediator.

"Please be advised it is a violation of the Labor Statute to implement a change in the working conditions prior to, or before the completion of negotiations. . .

. . .

"We request/suggest you remain status quo until we can complete the negotiation process. . . ." (G.C. Exh. 9).

13. Respondent did not reply in any manner to Mr. Davis' letter. Rather, it implemented its ban on all indoor smoking on April 18, 1994 (Tr. 25).⁵

In the meantime, the Union on April 15, 1994, contacted Federal Mediator John Tucker (G.C. Exh. 10; Tr. 25, 39), but Mr. Tucker was not free to meet with the parties until May 4, 1994, when he met with Mr. Gavin and Mr. Rigsby. Mr. Gavin testified without contradiction that Mr. Tucker,

". . . told Mr. Rigsby that they needed to stop what they were doing. They needed to revert back to status quo, that they should give the environmental people a chance to do their job . . . and allow the smoking committee the opportunity to review this information and then to continue some negotiations." (Tr. 25-26).

Conclusions

1. Respondent Refused to Bargain in Good Faith

Smoking policy is a substantively negotiable condition of employment, National Association of Government Employees, Local R14-32 and Department of the Army, Fort Leonard Wood, Missouri, 26 FLRA 593 (1987); National Treasury Employees Union and Internal Revenue Service, Los Angeles District, 32 FLRA 182 (1988); U.S. Department of the Air Force, 832D Combat Support Group, Luke Air Force Base, Arizona, 36 FLRA 289 (1990), and Respondent unilaterally implemented a ban on all indoor smoking without completing bargaining. The record shows that the parties met; that Respondent Exhibit 1 was discussed and, it would appear, an earlier version (G.C. Exh. 5, Attachment); and that some provisions were agreed to and others were rejected by the Union which made proposed changes. The record further shows that on March 28, 1994, when Mr. Gavin, the Union's local negotiator, learned of the national negotiations, he advised Council 214 that he had met with Respondent, enclosed a copy of what appears to have been an earlier version of Respondent Exhibit 1 (G.C. Exh. 5, Attachment), and stated that he would advise the Smoking

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Subsequently, General Hallin, Base Commander, lifted the ban on indoor smoking with respect to certain areas, including the Officer's Club and the NCO Club (G.C. Exh. 11; Tr. 26, 51).

Committee that national negotiations were in progress and that it would be improper to continue local negotiations until negotiations at the Command Level were completed (G.C. Exh. 5). The record shows no further meeting or discussion with Respondent; however, Council 214 and AFMC reached Agreement on April 1, 1994; Mr. Gavin learned of the Agreement on April 5 and on April 8, 1994, sent a letter to Respondent in which he stated, in part, that, "In light of the Council 214 agreement I suggest that the attached and simplified Counter Proposal will be more agreeable" (G.C. Exh. 7). The only responses shown on the record to the Union's counter-proposal of April 8, 1994, were: (a) Mr. Rigsby's statement that Mr. Davis, President of the Union, wanted outside smoking shelters built and General Hallin had told him that was not possible. "And so when he came back with that proposal on the 8th, it contained a provision that we had to build those. And he had already been told that wasn't going to be possible." (Tr. 54); (b) that Respondent's letter of April 13, ". . . was a result of the instructions back from the general: This is the way I want it to go." (Tr. 54); but the General's response and the letter of April 13, 1994, had nothing to do with the Union's proposal of April 8 (Tr. 54); (c) Respondent by its letter of April 13, 1994 (G.C. Exh. 8), declared an impasse and announced that effective April 18, 1994, ". . . all smoking indoors and at the entrances of buildings will cease."

Plainly, the record shows no basis whatever for the legitimate assertion that the parties had reached an impasse in negotiations⁶. There were at least two outstanding and unresolved proposals. First, Respondent's Exhibit 1; second, Union's counter-proposal of March 8, 1994. The record shows no meeting or discussion after the meeting at which Respondent Exhibit 1 initially had been discussed. In the meantime, AFMC and Council 214 had reached Agreement on the smoking reduction matter at the national level. The Union's counter-proposal of March 8 specifically took into consideration the AFMC-Council 214 Agreement. Possibly, Respondent had also "thrown into the hopper" its revised, proposed MOU (Res. Exh. 2). With no discussion whatever and no use of mediation, nothing in the record shows that the parties had been unable to reach agreement. Indeed, the record fails to show that there had

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The Regulations define "impasse" as follows:

"(e) The term 'impasse' means that point in the negotiation of conditions of employment at which the parties are unable to reach agreement, notwithstanding their efforts to do so by direct negotiations and by the use of mediation or other voluntary arrangements for settlement." (5 C.F.R. § 2470.2(e)).

been any direct negotiations at which the parties were unable to agree. To the contrary, the only direct negotiations shown on the record reflected areas of agreement and Union proposed changes (which Respondent subsequently accepted, [Res. Exh. 2] although the record does not show that that its acceptance was communicated to the Union).

Not only does the record show the absence of impasse, it shows a total lack of good faith bargaining by Respondent. Thus, according to Mr. Rigsby, who signed the letter of April 13 for Mr. Foster, Respondent ignored the Union's proposal in declaring impasse, "It was not in response to that" [the Union's April 8 proposals] (Tr. 54). Mr. Rigsby's further comment, to the effect that General Hallin had already told Mr. Davis that it wasn't going to be possible to build outside smoking shelters but it was contained in the proposal of April 8th, is puzzling in light of his assertion that Respondent's letter of April 13 was not in response to the Union's April 8 proposals; but if it were assumed, contrary to Mr. Rigsby's denial, that General Hallin's instruction to declare an impasse and to implement the ban on indoor smoking was in direct response to the Union's renewal of its proposal that Respondent build outdoor smoking shelters, which he had previously rejected, Respondent's declaration of impasse was, nonetheless, in bad faith. At the outset, proposals are not "set in concrete"; and here, in particular, Respondent had proclaimed variously that: ". . . Exterior smoking shelters may be provided if organization funding is available. . . ." (Vice Commander's memorandum of April 4, 1994); "9. Exterior smoking shelters may be provided . . . Further, organizations may consider use of the Self Help program for construction of exterior smoking shelter." (Res. Exh. 2, Par. 9). Moreover, the controlling AFMC-Council 214 Agreement of April 1, 1994, provided, in part, that, "Any bargainable matters left to the discretion of the local commanders such as providing shelter from the elements will be negotiated at the local level (G.C. Exh. 7, Attachment). Nevertheless, Respondent, without meeting or discussing the Union's counterproposal, blithely claimed "impasse". Indeed, Mr. Rigsby's testimony as to General Hallin's response, "This is the way I want it to go", indicates a pervasive mind set to brush aside any obstacle such as the Union's niggling insistence on bargaining, and impose his will. The totality of the circumstances show that Respondent did not bargain in good faith, that it declared "impasse" without responding to the Union's counterproposal, and that it unilaterally changed conditions of employment, and thereby violated §§ 16(a)(5) and (1) of the Statute. U.S. Government Printing Office, 13 FLRA 203, (1983); U.S. Department of the Air Force, Headquarters, Air Force Logistics Command, Wright-Patterson Air Force Base, Ohio, 36 FLRA 524, 531, 533 (1990); U.S. Department of the Air Force, Headquarters, Air Force

Logistics Command, Wright-Patterson Air Force Base, Ohio, 36 FLRA 912, 915, 916-917 (1990); U.S. Department of The Treasury, Customs Service, Washington, D.C., 38 FLRA 875, 880 (1990); Ogden Air Logistics Center, Hill Air Force Base, Utah, 39 FLRA 1381, 1391 (1991); U.S. Equal Employment Opportunity Commission, 40 FLRA 1147, 1154 (1991).

2. Respondent Repudiated National Agreement

As noted above, AFMC and Council 214 on April 1, 1994, entered into an Agreement on AFMC's Tobacco Reduction Policy which provided, in part, as follows:

"2. The parties agree to remain status quo with the current Memorandum of Agreement signed by AFGE Council 214 and AFMC on 29 April 1987 and with all existing activity level agreements accommodating the smoker and smoking facilities relative to smoking/non-smoking until such time as the matter has been subject to the negotiation process consistent with the Labor Statute.

"3. Any bargainable matters left to the discretion of the local commanders such as providing shelter from the elements will be negotiated at the local level. . . ." (G.C. Exh. 7, Attachment) (Emphasis supplied).

This Agreement required Respondent to maintain the April 29, 1987, Agreement, and any local agreement it had with regard to smoking facilities, until the matter of smoking facilities, including specifically providing shelter from the elements, had been negotiated consistent with the Statute. Moreover, the Union, as paragraph 1 of its April 8, 1994, counter-proposal, proposed that,

"1) Both parties agree to adhere to the agreement signed on April 1, 1994. . . ." (G.C. Exh. 7, Attachment).

Nevertheless, Respondent ignored the Union's counterproposal altogether and wholly repudiated the AFMC-Council 214 Agreement of April 1, 1994, by refusing to maintain the status quo under the 1987 Agreement until outdoor smoking facilities had been negotiated "consistent with" the Statute, by refusing to negotiate concerning "shelter from the elements", and by unilaterally implementing a ban on all indoor smoking and at entrances of buildings effective April 18, 1994 (G.C. Exh. 8) and thereby violated §§ 16(a)(5) and (1) of the Statute. Rolla Research Center, U.S. Bureau of Mines, Rolla, Missouri, 29 FLRA 107, 115 (1987); Department of Defense, Warner Robins

Air Logistics Center, Robins Air Force Base, Georgia,
40 FLRA 1211 (1991).

Remedy

General Counsel seeks a status quo ante remedy. The Authority has made it clear that,

"When an agency violates the Statute by changing a negotiable condition of employment without fulfilling its obligation to bargain on that change, the Statute requires the imposition of a status quo ante remedy, in the absence of special circumstances." Department of The Navy, Naval Aviation Depot, Naval Air Station Alameda, Alameda, California, 36 FLRA 509, 511 (1990).

I fully agree with General Counsel that this remedy is appropriate here even though some prior smoking areas may have been converted to office use. Respondent implemented the change before completing bargaining; refused to bargain, as I have found in bad faith; repudiated the Agreement of AFMC and Council 214; wholly without justification declared an impasse; and unilaterally changed existing conditions of employment, all in willful violation of the Statute. There is nothing in the record, that shows that a status quo ante remedy would disrupt or impair the efficiency or effectiveness of Respondent's operations, nor has Respondent suggested any disruption or impairment in its Brief. As I have found on other occasions, the matter of smoking facilities presents real and serious concerns to smokers which are more than de minimis, U.S. Department of the Navy, Naval Station, Mayport, Florida and American Federation of Government Employees, Local 2010, Case No. 4-CA-10595 (September 25, 1992), 105 Adm. Law Judge Dec. Rep., November 6, 1992.

I further agree with General Counsel that because this case involves substantively negotiable conditions of employment, it is not necessary to consider the criteria for a status quo ante remedy set forth in Federal Correctional Institution, 8 FLRA 604 (1982), Long Beach Naval Shipyard, Long Beach, California, 17 FLRA 511, 514 n.6 (1985); however, if the criteria of Federal Correctional Institution, supra, were applicable, all were met.

Having found that Respondent violated §§ 16(a)(5) and (1) of the Statute, it is recommended that the Authority adopt the following:

ORDER

Pursuant to § 2423.29 of the Rules and Regulations, 5 C.F.R. § 2423.29, and § 7118 of the Statute, 5 U.S.C. § 7118, it is hereby ordered that the Department of the Air

Force, Warner Robins Air Logistics Center, Robins Air Force Base, Georgia, shall:

1. Cease and desist from:

(a) Failing and refusing to bargain in good faith with the American Federation of Government Employees, Local 987 (hereinafter, "Union"), the exclusive representative of its employees, concerning smoking facilities.

(b) Failing and refusing to maintain indoor smoking facilities until completion of local bargaining on the Air Force Materiel Command's Tobacco Reduction Policy.

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

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

(a) Forthwith withdraw and rescind its ban on all smoking indoors and at the entrances of buildings which it unlawfully made effective on April 18, 1994.

(b) Forthwith reopen, restore and maintain all indoor smoking facilities that existed on its facilities at Robins Air Force Base prior to April 18, 1994.

(c) Give the Union prior notice and opportunity to negotiate concerning any proposed action concerning indoor smoking facilities, upon request, bargain in good faith with the Union, and maintain all indoor smoking facilities until completion of negotiations with respect to outdoor smoking facilities.

(d) Post at its facilities at Robins Air Force Base, 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 Commanding Officer, Warner Robins Air Materiel Command, and shall be posted and maintained for 60 consecutive days thereafter, in conspicuous places, including all bulletin boards and other places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that such Notices are not altered, defaced, or covered by any other material.

(e) Pursuant to § 2423.30 of the Rules and Regulations, 5 C.F.R. § 2423.30, notify the Regional Director of the Atlanta Region, Federal Labor Relations Authority, 1371 Peachtree Street, NE, Suite 122, Atlanta, Georgia

30309-3102, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

WILLIAM B. DEVANEY
Administrative Law Judge

Dated: April 27, 1995
Washington, DC

NOTICE TO ALL EMPLOYEES

AS ORDERED BY THE FEDERAL LABOR RELATIONS AUTHORITY

AND TO EFFECTUATE THE POLICIES OF THE

FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS STATUTE

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT fail or refuse to bargain in good faith with the American Federation of Government Employees, Local 987 (hereinafter, "Union"), the exclusive representative of our employees, concerning smoking facilities.

WE WILL NOT fail or refuse to maintain indoor smoking facilities until completion of local bargaining on the Air Force Materiel Command's Tobacco Reduction Policy.

WE WILL forthwith withdraw and rescind its ban on all smoking indoors and at the entrances of buildings which it unlawfully made effective on April 18, 1994.

WE WILL forthwith reopen, restore and maintain all indoor smoking facilities that existed on its facilities at Robins Air Force Base prior to April 18, 1994.

WE WILL give the Union prior notice and opportunity to negotiate concerning any proposed action concerning indoor smoking facilities, upon request, bargain in good faith with the Union, and maintain all indoor smoking facilities until completion of negotiations with respect to outdoor smoking facilities.

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

(Activity)

Date:

By:

(Signature)

(Title)

This Notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material.

If employees have any questions concerning this Notice or compliance with any of its provisions, they may communicate directly with the Regional Director of the Federal Labor Relations Authority, Atlanta Region, 1371 Peachtree Street, NE, Suite 122, Atlanta, GA 30309-3102, and whose telephone number is: (404) 347-2324.

CERTIFICATE OF SERVICE

I hereby certify that copies of this DECISION issued by WILLIAM B. DEVANEY, Administrative Law Judge, in Case No. AT-CA-40563, were sent to the following parties in the manner indicated:

CERTIFIED MAIL:

Brenda S. Mack, Esquire
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Dated: April 27, 1995
Washington, DC