UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C. 20424-0001

DEPARTMENT OF VETERANS AFFAIRS MEDICAL CENTER, DALLAS, TEXAS Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO, LOCAL 2437 Charging Party	Case No. DA-CA-60029

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 **SEPTEMBER 16, 1996**, 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: August 15, 1996
Washington, DC

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C. 20424-0001

MEMORANDUM DATE: August 15, 1996

TO: The Federal Labor Relations Authority

FROM: WILLIAM B. DEVANEY
Administrative Law Judge

SUBJECT: DEPARTMENT OF VETERANS AFFAIRS
MEDICAL CENTER, DALLAS, TEXAS

Respondent

and Case No. DA-CA-60029

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, AFL-CIO, LOCAL 2437

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 VETERANS AFFAIRS MEDICAL CENTER, DALLAS, TEXAS Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO, LOCAL 2437 Charging Party	Case No. DA-CA-60029

Catherine A. Rich, Esquire
For the Respondent

Susan E. Jelen, Esquire
Kerry J. Simpson, Esquire
For the General Counsel

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 implemented a new computer sign-in procedure for Ward Clerks prior to completion of negotiations.

This case was initiated by a charge filed on October 19, 1995 (G.C. Exh. 1(a)), and the Complaint and Notice of Hearing issued on March 7, 1996 (G.C. Exh. 1(c)) and set the hearing for April 30, 1996. By Order dated April 25, 1996 (G.C. Exh. 1(e)), the hearing was rescheduled for June 18, 1996, pursuant to which a hearing was duly held

[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)".

on June 18, 1996, in Dallas, Texas, 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, July 18, 1996, was fixed as the date for mailing post-hearing briefs and Respondent and General Counsel each has timely mailed a brief, received on, or before, July 29, 1996, which have been carefully considered. Upon the basis of the entire record, including my observation of the witnesses and their demeanor, I make the following findings and conclusions:

Findings

1. The American Federation of Government Employees, AFL-CIO (hereinafter, "AFGE") is the certified exclusive representative of a nationwide consolidated unit of employees of the Department of Veterans Affairs appropriate for collective bargaining. The American Federation of Government Employees, AFL-CIO, Local 2437 (hereinafter, "Union") is an agent of AFGE for the purpose of representing bargaining unit employees at the Department of Veterans Affairs, Medical Center, Dallas, Texas (hereinafter, "Respondent").

2. Respondent currently has 55 ward clerks, a/k/a medical clerks (Tr. 14, 58), about 30-35 of whom work on the day shifts, under two supervisors (Tr. 63), on about 20 inpatient wards (Tr. 59). Ward clerks provide administrative and clerical coverage on inpatient and outpatient wards by performing such services as: transcribing physicians orders; answering telephones; answering call boxes; keeping the ward supplied with paper and other supplies; entering physicians' orders into the computer; ordering: diets, x-rays, lab tests; reviewing medical records to ensure complete documentation; etc. (Tr. 58). Mr. Leodis Buckley, a medical clerk for about five years (Tr. 46), stated that there were about 15-20 medical clerks assigned to each supervisor. The supervisors of the medical clerks all are located in Building 2. Before September, 1995, the supervisors were on the first floor of Building 2 in an administrative area (Tr. 49, 62). In September, 1995, the supervisors were moved to the fifth floor of Building 2, which is an inpatient ward (Tr. 49, 68).

3. Ward clerks use the computer in the course of their duties (Tr. 78) and there is a computer terminal in each ward at the ward clerk's station (Tr. 82); another terminal is located at the other end of each ward, or in the break

room, for the nursing staff (Tr. 82) and another is located in the physicians' office on the ward (Tr. 82).

4. Ward clerks work on three shifts: day, which actually has two shifts: one 7:30 a.m. - 4:00 p.m. and the other 8:00 a.m. - 4:30 p.m. (Tr. 66); evening: 3:30 p.m. - 12:00 midnight; and midnight: 12:00 p.m. - 8:00 a.m. (Tr. 48).

5. To ensure full staff coverage, Respondent requires the ward clerks to sign in before each shift. The long established practice had been that each ward clerk reported in person to the office of the supervisors and signed in on a log or data log sheet (Tr. 50, 59). They did not sign out (Tr. 79). Because many work in different buildings, some found it highly inconvenient to park in the area where they work, walk to Building 2 to sign in, and then walk back to the building where they work. Accordingly, a ward clerk requested electronic (computer) sign-in (Tr. 59). This was evaluated in 1993 and was implemented in 1994 (Tr. 60); however, about two months after implementation in 1994, the Union asked that computer sign-in be discontinued because there had been no bargaining and Respondent discontinued the practice in 1994 (Tr. 60).

Nothing further was done until March 1, 1995, when Ms. Linda S. Young, Chief, Ward Administration Section, Medical Administration Service (Tr. 57), gave the Union notice of Respondent's proposed electronic sign-in procedure and asked for, ". . your comments or concerns regarding the impact and/or implementation of a different sign-in procedure for Ward Clerks. . . ." (Joint Exh. 1) (although addressed to the President of the Union, it was directed through Labor Relations and Chief, MAS, and was not transmitted to the Union until March 2, 1995, by the Office of Mr. Charles P. Brown, Chief, Human Resources Management Service, Joint Exh. 2). The Union, by memo dated March 10, 1995, addressed to Mr. Brown, demanded, ". . . to Bargain on the subject matter MAS Sign-in procedure for Ward Clerks. . . ." (Joint Exh. 3). Ms. Young stated that shortly after she gave her March 1, 1995, notice, changes in supervisory staff and receipt of new equipment in the transcription unit caused the sign-in matter to be "put on hold" (Tr. 61) and nothing further was done at that time.2

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There is no question that President Brumsey's March 10, 1995, memorandum to Mr. Brown was sent and received by Mr. Brown, however, Ms. Young testified that she received no response to her March 1, 1995, notice (Tr. 61). Apparently, because the matter was by then "on hold", Mr. Brown did not forward the Union's March 10, 1995, response to her.

6. In September, 1995, the supervisors, as noted above, were moved from the administrative area on the first floor of Building 2 to the fifth floor of Building 2 which is an inpatient ward. Because the Ward Clerks trooping in to sign-in was disruptive to patient care, on September 18, 1995, Respondent gave the Union a new notice ". . . requesting your comments or concerns regarding the impact and/or implementa-tion of a different sign in procedure for Ward Clerks. . . . the Unit Managers office has been relocated to ward 5A, room A523. As this room is located on an active inpatient care unit, it will not be possible to continue this practice [Ward Clerks reporting to the Unit Managers office at the beginning of their tour to sign in] . . . we wish to have the Ward Clerks send a mailman message to their supervisor as soon as they arrive on their assigned ward. . . ." (Joint Exh. 4). The Union again, by memorandum also dated September 18, 1995, requested, ". . . to Bargain on the Subject matter, Change in Signing Procedures, M.A.S. Ward Clerks. . . ." (Joint Exh. 5).

7. The parties met on September 25, 1995, at the Union's office (Tr. 17, 63). The Union was represented by Mr. Billy Kirtdoll, Chief Steward, Department of Medical Services (Tr. 13, 17), and by President Brumsey (Tr. 35-36, 63, 66); and Respondent was represented by Ms. Young (Tr. 17, 36-37, 63). Mr. Kirtdoll was the spokesman for the Union and he suggested no check-in at all, but an honor system (Tr. 18) and said that Mr. Clifton Henry, a supervisor, had told him he went through the wards and could see who was on duty[3] (Tr. 18). Ms. Young responded that Respondent needed to know its staffing at the beginning of each shift in order to ensure administrative coverage (Tr. 63); that having a supervisor go through the wards to see who was on duty would be a problem; that there were only two supervisors on the day tour, one of whom would have to remain in the office (Tr. 64), which would leave only one supervisor to cover all of the approximately 20 wards (Tr. 63-64). Nevertheless, she told them that it might be feasible if there were a single morning shift, i.e., eliminate the 7:30 - 4:00 shift (Tr. 66).

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[3] Mr. Kirtdoll said that Mr. Henry told him he did so to collect the daily "bed count sheets" and that was what he told Ms. Young (Tr. 18). Ms. Young stated that she did not remember any suggestion concerning "bed check reports" (Tr. 79); that Respondent has no such report (Tr. 79). However, there is a census report which is completed at midnight (Tr. 79-80) and usually is turned in by the evening Ward Clerk upon leaving or, if there is an evening supervisor, the evening supervisor may collect them and turn them into the administrative officer of the day (Tr. 81). I do not credit Mr. Kirtdoll's testimony that he mentioned "bed count sheets" or "bed count reports"; nevertheless, it is clear that, as a part of his "honor system" proposal, the parties did, indeed, discuss supervisors going through the wards to see who was on duty.

8. President Brumsey said, ". . . Mr. Kirtdoll tried to discuss different things with Ms. Young. Instead of her making one specific change, he tried to offer suggestions to her that she didn't want to hear. . . ." (Tr. 36-37); but he never said what Mr. Kirtdoll tried to discuss or what suggestions he made. Mr. Kirtdoll did make his "honor system" suggestion, i.e., that there be no check-in at all (Tr. 18, 63). While, as I have found, the parties discussed having supervisors walk through the wards to see who was present for duty, this was not a separate proposal but was, "part and parcel" of Mr. Kirtdoll's "honor system" proposal, i.e., if there were no check-in, Mr. Kirtdoll was saying that super-visors could walk through the wards to check staffing. The record shows no other proposal by the Union and no response to Ms. Young's counterproposal that doing away with the check-in might be feasible if there were a single morning shift, namely 8:00 a.m. to 4:30 p.m.

I specifically do not credit Mr. Kirtdoll's testimony that, Ms. Young said or intimated that ". . . She [Ms. Young] had her mind made up the employees were going to sign in on computer and that was the bottom line." (Tr. 23) or President Brumsey's testimony that, "She [Young] said, My mind was made up and I am going forward." (Tr. 37). Ms. Young denied that she stated that she was going to do the computer sign-in system, no matter what (Tr. 67). I found her testimony convincing in this regard and I further credit her testimony that, while the Union didn't like her ideas and she didn't like theirs, ". . . we would -- all parties would continue to consider this issue. And if someone had another idea that could be explored, they would address it. They would bring it up and we would address it." (Tr. 67).

9. There was "no rush to judgement" by Ms. Young. Following the meeting on September 25, 1995, she took no action until October 6, 1995, when she gave notice to the Union and to the Ward Clerks that, "Effective October 23, 1995, all Ward Clerks on every tour will sign in on an electronic mailman message. . . ." (Joint Exh. 6).

10. The Union stated that it did not request the assistance of the Federal Mediation and Conciliation Service because, as Mr. Kirtdoll stated, ". . . Linda Young had her mind made up . . ." (Tr. 23) or as President Brumsey stated, "Because we saw the borderlines. She had told us that, no matter what we have to say, that she was through with it." (Tr. 37).

11. The Union did not request further bargaining on the procedures and/or appropriate arrangements for employees

adversely affected by the change announced on October 6, 1995, to be effective October 23, 1995.

Conclusions

1. Parties Bargained on the Proposed Change

General Counsel asserts that Respondent's, ". . . notice only offered the Union the opportunity to bargain the impact and/or implementation of the new procedure." (General Counsel's Brief, p. 5). The record is to the contrary. It has become routine in our decisions to substitute the term "impact and implementation", or, simply, "I&I", bargaining for § 6(b)(2) and (3) bargaining concerning, "procedures which management . . . will observe in exercising any authority under this section" (§ 6(b)(2)) or, "appropriate arrangements for employees adversely affected by the exercise of any authority under this section by . . . management . . ." (§ 6(b)(3)). Nevertheless, the words do not mean the same thing to all people. Thus, while Ms. Young, in her September 18, 1995, notice to the Union, stated, . . . I am requesting your comments or concerns regarding the impact and/or implementation of a different sign in procedure for Ward Clerks" (Joint Exh. 4), the record shows that both she (Tr. 70, 72) and the addressee of the notice, President Brumsey, understood the notice at least included the subject matter. Thus he testified,

"Q But what did she say in writing, subject matter or impact?

"A It was basically on the subject matter.

"Q On her notice to you?

"A That is right." (Tr. 34).

Only after prodding by General Counsel did President Brumsey reverse himself and say,

"A It was the impact.

"Q The impact only.

"A Yes." (Tr. 35).

Mr. Kirtdoll's testimony was,

"A We were given notice and we wrote the letter [Joint Exh. 5][4] to negotiate on the impact. (Emphasis supplied.)

"Q And you did.

"A And we did. . . ." (Tr. 27).

In short, the Union's request to bargain, which certainly appeared to include the decision itself, was asserted by Mr. Kirtdoll as a request, "to negotiate on the impact"; but, in fact, the bargaining was only on the decision, i.e., was substantive, whereby the Union sought to negate the decision to have computer sign-in, by eliminating all sign-in require-ments and having, instead, an "honor system".

It long has been settled that, notwithstanding what may have been said before negotiations begin, as the late Judge Milton Kramer stated, in United States Department of The Treasury, Internal Revenue Service, Chicago District, A/SLMR 711, 6 A/SLMR 492, 6 A/SLMR Supp. 191, 195 (1976),

> ". . . what actually took place did in fact satisfy the Respondent's obligation to negotiate."

To like effect, see also: NASA, Kennedy Space Center, Kennedy Space Center, Florida, A/SLMR No. 223, 2 A/SLMR 566 (1972); Office of Economic Opportunity, Region V, Chicago, Illinois, A/SLMR No. 251, 3 A/SLMR 128 (1973). Here, the parties did, in fact, negotiate about the decision to have electronic sign-in. Indeed, the Union not only did not broach procedures or appropriate arrangements (§ 6(b)(2) and (3)), but Mr. Kirtdoll strongly implied there was little or no concern about the effect of electronic sign-in saying that the Union opposed it because ". . . it was a change in working condition for the employees." (Tr. 20). Even though Mr. Kirtdoll said that sometimes two ward clerks work on the same floor and/or that the computer might be "tied up" (Tr. 20), the record does not show that he discussed this, or any other concern, with Ms. Young on September 25, 1995.

2. Parties Bargained to Impasse

General Counsel's assertion that Respondent did not bar-gain in good faith is without basis in fact. True,

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[4] "1. Pursuant to Chapter 71, Title 5, U.S.C., this will serve as an official Demand to Bargain on the Subject matter, Change in Signing Procedures, M.A.S. Ward Clerks.

"2. The Local would like to discuss this issue . . . before Implementation of different Sign-In Procedures . . . ." (Joint Exh. 5).

Respondent proposed computer sign-in for the Ward Clerks. The Union opposed computer sign-in because it was a change and proposed elimination of sign-in. Respondent opposed elimination of sign-in but said it might be feasible to eliminate sign-in and have supervisors walk through the wards to check staffing if there were a single day shift. The Union did not like Respondent's initial and counterproposal and Respondent did not like the Union's proposal; but it cannot fairly be said that Respondent bargained in bad faith. Respondent made a counterproposal to the Union's proposal. In addition, Ms. Young took no immediate action following the meeting on September 25, allowing the Union more than a week to seek a further meeting, which she had invited on September 25, and/or to seek assistance of the Federal Mediation and Conciliation Service and/or of the Federal Service Impasses Panel (FSIP). When, on October 6, 1995, she gave notice of implementation, she deferred implementation until October 23, 1995 (Joint Exh. 6), which, again, allowed the Union time to request

bargaining, etc.; but the Union did not seek further bargaining and/or assistance of mediation and/or the assistance of FSIP.5 Inasmuch as the parties bargained on the matter to a point at which they were at impasse and Respondent provided the Union with a reasonable opportunity to invoke the services of FSIP, which the Union did not, Respondent was permitted to implement the change when it did. Department of The Air Force, Scott Air Force Base, Illinois, 33 FLRA 532, 547 (1988); Department of The Navy, United States Naval Supply Center, San Diego, California, 31 FLRA 1088, 1093 (1988); United States Department of Defense, Department of The Air Force, Air Force Logistics Command, Oklahoma City Air Logistics Center, Tinker Air Force Base, Oklahoma, 21 FLRA 679, 693 (1986); Department of Defense, Department of The Navy, Naval Ordnance Station, Louisville, Kentucky, 17 FLRA 896, 897-898 (1985); U.S. Customs Service, 16 FLRA 198, 200, 214-215 (1984).

The object of mediation is to help recalcitrant parties, who can not, alone, resolve their differences, find an amicable solution; and the ultimate purpose of FSIP, when other efforts fail, is to resolve the impasse. To decline to do anything because you believe, as the Union asserted here, that Respondent has its mind made up, is to capitulate.

Because the change of the manner of sign-in was itself negotiable, the extent of the impact is not relevant to whether an agency is obligated to bargain. 92 Bomb Wing, Fairchild Air Force Base, Spokane, Washington, 50 FLRA 703, 704 (1995).6

Having found that Respondent did not violate §§ 16(a)(5) and (1) of the Statute, it is recommended that the Authority adopt the following:

5
The Union signed and served the charge herein on October 13, 1995, and the charge was filed on October 19, 1995 (G.C. Exh. 1(a)).

6
If, contrary to my conclusion, it were deemed relevant to determine the extent of impact, I would find that the change was de minimis. Ward Clerks routinely use the computer in the course of their duties and, as they are wholly "computer literate", signing in by computer would not change their conditions of employment. To be sure, they would be relieved of having to go to the fifth floor of Building 2 to sign in, a chore some found onerous; but their conditions of employment were not changed, or, if deemed changed, the change was de minimis.

ORDER

The Complaint in Case No. DA-CA-60029 be, and the same is hereby, dismissed.

WILLIAM B. DEVANEY
Administrative Law Judge

Dated: August 15, 1996
Washington, DC

CERTIFICATE OF SERVICE

I hereby certify that copies of this DECISION issued by WILLIAM B. DEVANEY, Administrative Law Judge, in Case No. DA-CA-60029, were sent to the following parties in the manner indicated:

CERTIFIED MAIL:

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Dated: August 15, 1996
Washington, DC