GENERAL SERVICES ADMINISTRATION, NATIONAL CAPITAL REGION, FEDERAL PROTECTIVE SERVICE DIVISION, WASHINGTON, DC Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1733, AFL-CIO Charging Party	Case No. WA-CA-30469

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 **DECEMBER 5, 1994**, and addressed to:

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

SALVATORE J. ARRIGO
Administrative Law Judge

Dated: November 3, 1994

Washington, DC

MEMORANDUM DATE: November 3, 1994

TO: The Federal Labor Relations Authority

FROM: SALVATORE J. ARRIGO
Administrative Law Judge

SUBJECT: GENERAL SERVICES ADMINISTRATION,
NATIONAL CAPITAL REGION, FEDERAL
PROTECTIVE SERVICE DIVISION,
WASHINGTON, DC

Respondent

and Case No. WA-
CA-30469

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 1733, AFL-CIO

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

GENERAL SERVICES ADMINISTRATION, NATIONAL CAPITAL REGION, FEDERAL PROTECTIVE SERVICE DIVISION, WASHINGTON, DC Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1733, AFL-CIO Charging Party	Case No. WA-CA-30469

Gary F. Davis, Esq. and
Edward P. Denney
For the Respondent

Christopher M. Feldenzer, Esq.
For the General Counsel

Before: SALVATORE J. ARRIGO
Administrative Law Judge

DECISION

Statement of the Case

This case arose under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the U.S. Code, 5 U.S.C. § 7101, et seq. (herein the Statute).

Upon an unfair labor practice charge having been filed by the captioned Charging Party (herein the Union) against the captioned Respondent, the General Counsel of the Federal Labor Relations Authority (herein the Authority), by the Regional Director for the Washington Regional Office, issued a Complaint and Notice of Hearing. The General Counsel alleges Respondent violated the Statute by discontinuing the authorization for bargaining unit police officers to carry their firearms between their duty station and residence without providing the Union with notice and an opportunity to negotiate on the impact and implementation of the change.

A hearing on the Complaint was conducted in Washington, D.C. at which all parties were afforded full opportunity to adduce evidence, call, examine and cross-examine witnesses and argue orally. Briefs were filed by Respondent and the General Counsel and have been carefully considered.

Upon the entire record in this case, my observation of the witnesses and their demeanor and from my evaluation of the evidence I make the following:

Findings of Fact

At all times material the American Federation of Government Employees, AFL-CIO (herein AFGE) has been the exclusive collective bargaining representative of various of Respondent's employees and AFGE Local 1733 has been the agent of AFGE for the purpose of representing those employees. The Union represents approximately 225 of Respondent's employees, including uniformed police officers and various support employees.

Prior to 1971 Respondent's uniformed officers held "Guard" positions and were assigned to fixed posts. Guards were primarily responsible for controlling access to federal buildings, which included checking badges and building passes. All Guards carried a Colt 38 firearm, which was kept in a locked safe at the worksite when the Guard was not on duty and was obtained from supervisors prior to the start of each shift.

In 1971 the Federal Protective Service was created through an Executive Order. Subsequently, the Guard position was converted to "Federal Protective Officer" (GS-083 series). As a result of this change, the training for Federal Protective Officers was increased from a two week course to a four week course and although this enhanced training included more training for these officers in the use of a firearm, officers were not authorized to carry their firearms between their home and duty station.

In December 1988 the position description for Federal Protective Officers was changed to "Police Officer" (GS-083 series). The job itself had been transformed from a stationary one at fixed posts of duty to one where police officers were assigned to mobile patrol units to protect designated sectors in the Washington metropolitan area. This change required all of Respondent's police officers to report for roll call before each duty shift at the Washington Navy Yard rather than reporting to various duty posts. After receiving their assignments as well as a briefing, officers then reported to their assigned sectors. At the end of each shift police officers again reported to

the Navy Yard. Firearms were picked up by officers at the Navy Yard at the beginning of each tour of duty and returned at the conclusion of the tour. Consistent with this change, the training afforded Respondent's police officers was further enhanced to include an 8 week initial training course with an additional 40 hours of training required semiannually.

On January 17, 1991, Respondent issued a Temporary Special Order which authorized police officers to carry their service firearm between their home and duty station. Essentially, the Desert Storm events of January 1991 and concerns over the possibility of terrorists attacks had caused Respondent to reduce the number of daily work shifts from 3 to 2 and implement 13 hour shifts each day for all police officers. The order helped to facilitate the ability of officers to get to their assigned sectors in a more efficient manner and respond more readily to any disorders. Originally, the weapons authorization provided that it would self-cancel on April 1, 1991.[1] The Temporary Special Order of January 17, 1991 provided, _inter alia_:

> 1. PURPOSE: The purpose of this order is to establish temporary procedures for the carrying of assigned revolver by police officers and supervisors to and from home and duty station.
>
> 2. CANCELLATION: This order supersedes all Divisional orders and policy statements previously issued concerning this matter . . .
>
> 3. AUTHORIZATION:
>
> A. Effective upon the date of this order, all Police Officers and Police Supervisors (further referred to as "officer") in the 083 occupational series assigned to the National Capital Region, Federal Protection Division, General Services Administration are hereby authorized to wear and carry their Government assigned .38 caliber revolver, while off duty when travelling to and from their place of residence and official duty station.
>
> B. All officers must agree upon either procedure 1 or 2, if neither then procedure 3 is the default.

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[1] Apparently during this period police officers were still reporting to the Navy Yard headquarters at the beginning and end of each shift.

4. PROCEDURES:

PROCEDURE 1: a) Officers who are off-duty leaving their duty station must remain in uniform and carry their assigned revolver in their issued holster in plain view. Officers must go directly to their place of residence without deviation to the most direct route. The officer should not stop at convenience stores, gas stations, or other public areas while off-duty and in full uniform. These needs should be accomplished after the weapon is properly secured. b) Once the officer arrives at home, the officer will immediately secure the weapon with an issued trigger lock, safely unload the weapon and place the revolver where it can be tightly controlled (access restricted) in the home out of reach and sight of children or others. c) An officer leaving home must again use the most direct route to the duty station and other measures prescribed in (a & b) above. An officer who fails to bring the weapon when reporting for duty will not be allowed to work and will be placed in a leave (for up to two hours) or if longer, absent without leave category (nonpay status) until such time the officer reports for duty with all assigned equipment.

PROCEDURE 2: a) Officers who are off-duty leaving their duty station who do not wish to wear their uniform home are not authorized to carry the revolver concealed or on their person. Officers in this instance will unload their weapon, place the trigger lock on and place the weapon in the trunk of their personal vehicle. The weapon will not be carried in the passenger compartment of the vehicle and the officer must go directly to their place of residence without deviation by the most direct route. The officer should not stop at convenience stores, gas stations, or other public areas while off-duty with the weapon left in the vehicle. b) Once the officer arrives at home, the officer will ensure that the issued trigger lock is in place, that the weapon is unloaded and then place the revolver where it can be tightly controlled (access restricted) in the home out of reach and sight of children or others. Procedure 1(c) also applies.

PROCEDURE 3: Officers who do not follow either procedure 1 or 2 are not authorized to carry their assigned weapon home and must upon arrival for

duty, checkout their weapon as normally prescribed by Patrol Operations, FPD and other GSA guidelines.

The authorization for police officers to carry their service firearms between their home and duty station was continued even after the end of the Persian Gulf War. Indeed, on January 30, 1992, Garrett De Yulia, GSA's Assistant Commissioner, Office of Physical Security and Law Enforcement, sent a memorandum to Federal Protective Service Division Director Wulf R. Lindenau, which stated that his previous authorization which allowed police officers to transport assigned firearms from their duty station to their residence of record, was "extended indefinitely." The memorandum stated, in relevant part:

> We have reviewed your memorandum dated January 21, 1992, regarding an authorization permitting Federal Protective Officers of the National Capital Region to transport their assigned firearms from their duty stations to their residence of record.
>
> After careful consideration, we feel that your request is consistent with effective operational practices, by eliminating the need for the time consuming administrative process of firearm issuance and retrieval, and improving our capability to respond to emergency situations under employee recall conditions. Furthermore, we agree that a firearm procedure such as the one you have proposed requires establishment of regulatory procedures similar to those which you have described. Therefore, my previous authorization which allowed FPOs to transport their assigned firearm from their duty stations to their residences of record is extended indefinitely, . . .

Apparently Assistant Commissioner De Yulia thereafter inquired as to the feasibility of issuing a General Order authorizing police officers to carry their weapon to their residence. The record reveals that De Yulia was sent a memorandum dated February 16, 1993 from Melville Valkenburg, Respondent's Associate General Counsel, Real Property Division, addressing the matter as follows:

> This is in reply to your request for our views concerning the proposed General Order of the Federal Protective Service Division (FPSD), National Capital Region (NCR), authorizing Federal Protective Officers (FPOs) to carry assigned

firearms between their duty station and their residence.

The issue of FPOs carrying their assigned firearms while in a non-duty status to and from duty assignments has been previously considered by both the General Counsel and the Office of Legal Counsel, Department of Justice. See General Counsel memorandum of December 1, 1978 and the October 2, 1972, Opinion of the Assistant Attorney General, Office of Legal Counsel, Department of Justice which are attached. It remains our office's opinion that no authority exists to permit FPOs to carry their assigned firearms in a non-duty status between their duty station and their residence except in exceptional duty-related circumstances such as those outlined in the Justice Department opinion.

The 1972 Opinion of the Assistant Attorney General, referred to by Valkenburg in his memorandum to the GSA Administrator, states:

> The Attorney General has asked me to provide you with my views on whether the Administrator of the General Services Administration is authorized to permit Federal Protective Service officers to carry their weapons while in a non-duty status. These officers are assigned to protect particular federal buildings and we understand that, under present general practice, their weapons remain at their assigned buildings. The question concerns whether the officers may be permitted as a general practice to carry their weapons back and forth between home and work and to other places when they are off duty, either openly or concealed on their persons. Except in the narrow circumstances noted below, such carriage of weapons by off-duty officers would not be authorized by federal law, and officers attempting it would probably be subject to prosecution under some State weapons laws.
>
> The Administrator is expressly authorized "to furnish arms and ammunition" for Federal Protective Service officers. 40 U.S.C. 490(a)(2). This express statutory authority carries with it, by necessary implication, authority for the officers to carry weapons while on duty. There is, however, no express statutory provision governing carriage of weapons by these officers when they are in off-duty status, and no directly

controlling judicial decisions. Therefore, the question is whether such carriage of weapons is either necessary or reasonably related to the performance of their official duties.

Unlike most law enforcement officers, who have broad duties and authority to enforce the laws throughout their jurisdictions, Federal Protective Service officers have relatively narrow and specific duties --to guard, enforce regulations, and keep the peace in and around federal buildings. The relevant statute specifically states that their "jurisdiction and policing powers . . . shall be restricted to Federal property over which the United States has acquired exclusive or concurrent criminal jurisdiction." 40 U.S.C. 318. Accordingly, should a Federal Protective Service officer observe or have reason to believe that an offense is being committed in his presence while he is off duty and away from federal buildings, he would have no more authority to act than would any other private citizen.

State criminal laws prohibiting the carrying of deadly weapons, particularly concealed weapons, reflect widely accepted legislative judgments that carriage of weapons by substantial numbers of people, away from their homes or places of business, is inherently dangerous and should be kept to a minimum, consistent with law enforcement needs. Such statutes typically contain exemptions for policemen, and some include exemptions for other narrow categories of employment. For example, the Virginia statute exempts rural mail carriers. VA. Code § 18.1-269. However, the courts have tended to construe these exemptions narrowly.

In McKenzie v. United States, 158 A.2d 912 (1960), the Court of Appeals for the District of Columbia sustained a conviction of a "special policeman" for carrying a weapon without a license. The defendant was what is generally called a security guard hired to guard particular private businesses. He was specially licensed to carry a weapon while on duty at assigned posts. However, at the time of the arrest, he had not been on duty or at a building he had been assigned to guard. The court held that the defendant was neither a "policeman" nor a "law enforcement officer" within the meaning of the District's weapons statute. Other courts have adopted similar reasoning in

> sustaining weapons convictions of off-duty postal employees carrying weapons away from their offices or routes. See, e.g., State v. Boone, 44 S.E. 595 (N.C. 1903); Lane v. State, 22 S.W. 140 (Tex. 1983).
>
> In our view, the McKenzie decision is sound and substantially analogous to the present situation. Further, it should be noted that the District of Columbia statute, unlike most concealed weapons laws, prohibits carriage of weapons "either openly or concealed on or about his person." 22 D.C. Code 3204.
>
> We can envision circumstances in which a Federal Protective Service officer may have a special duty-related reason to carry his weapon while off-duty. For example, if some officers are assigned to different and widely separated buildings on different days, the only feasible procedure might be for them to take their weapons home with them overnight. The same might be true during a riot situation when they might be subject to special call to places not ascertainable in advance. It would be impossible to catalogue in detail all such situations before the fact. The Administrator might establish general guidelines governing special duty-related situations justifying off-duty carriage of weapons. Off-duty carriage of weapons in conformity with such guidelines would be impliedly authorized by federal law and would not, by the same token, provide a basis for prosecution under State weapons statutes. However, in view of the limited powers and duties of Federal Protective Service officers, it is clear that the Administrator would not be authorized to permit off-duty carriage of weapons as a general practice, and that such carriage might well violate State weapons statutes.

The 1978 memorandum from the GSA General Counsel, referred to in Associate General Counsel Valkenburg's memorandum dated February 16, 1993, was also addressed to the GSA Administrator and essentially reached the same conclusion as the 1972 Department of Justice memorandum. The General Counsel's opinion relied in part on a 1973 case, decided by the District of Columbia Court of Appeals, wherein a Federal Protective Service police officer (FPO) was arrested for possession of a weapon in the District of Columbia. His defense was that as an FPO, he was within certain exceptions to the District of Columbia statute which

restricted carrying a weapon. The exemption applied to "duly appointed law-enforcement officials." The General Counsel's memorandum, inter alia, related that the court had ruled the FPO did not fall within the exception since his only authority to carry a weapon derived from the GSA Administrator and that a "thorough search of the District of Columbia and United States statutes fails to disclose any authorization for FPOs to carry firearms other than while on duty or while in a travel status to and from duty assignments, wherever those assignments may be located." The memorandum also included the following observation:

> "It should be emphasized that since FPO's jurisdiction is restricted to property under the Administrator's control, the fact that an FPO may possess a weapon while on non-duty status would give the FPO no more authority to use the weapon outside of Federal property than would any other private citizen."

By memorandum dated February 24, 1993 Assistant Commissioner De Yulia informed his Division Directors of the Agency's legal opinion that no authority exists to permit FPOs, in normal situations, to carry their assigned firearms in a non-duty status between their duty station and residence. Federal Protective Service Division Directors were instructed to take immediate steps to ensure complete compliance with the legal opinion.

The record reveals that sometime between February 16 and February 24, 1993 Director Lindenau became aware of Respondent's decision to discontinue the practice of allowing police officers to carry their weapons between their residence and the Navy Yard. Thereupon Lindenau issued an order for the immediate discontinuance of the practice by all Respondent's police officers. The announcement was made without prior notice having been given to the Union President, Albert Moody, or any agent of the collective bargaining representative.[2] Moody heard from his Union Vice President who worked the 6:00 a.m. to 2:00 p.m. shift that at the end of the shift, all police officers were required to turn in their weapons at the Navy Yard. Moody immediately met with Lindenau and was informed of the new policy. Moody expressed his displeasure with the change and Lindenau indicated that he had no choice but to implement the new policy immediately.

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Lindenau testified that the Union had some notice of the change in that a few days earlier he told Moody that he had heard a "negative interpretation may be forthcoming" regarding the authorization for carrying weapons to residences.

Within a few days after the new policy was put into effect, Moody, by memorandum dated February 26, 1993, requested to bargain on the change and requested the policy be rescinded while the parties negotiate on the impact and implementation of the change. Respondent never replied to the Union's request to bargain on the matter.

Additional Findings, Discussion and Conclusions

The General Counsel alleges Respondent's terminating the practice of allowing police officers to carry their weapons between their home and the Navy Yard (their duty station) violated the Statute, contending: police officers transporting their weapons is a condition of employment; Respondent was obligated to negotiate with the Union over the impact and implementation of the change since the impact of the change was more than *de minimis*; and Respondent failed to bargain on the change. In addition to challenging Respondent's defenses, the General Counsel also argues that a *status quo ante* remedy be imposed.

Respondent takes the position that the practice of permitting police officers to carry their weapons from their duty station to their residence was illegal and accordingly the Agency was privileged to immediately terminate the practice and that, in any event, the Union was afforded prior notice and an opportunity to negotiate on the matter but declined to do so.[3] Respondent also opposes any imposition of a *status quo ante* remedy.

The test the Authority has applied in deciding whether a matter concerns a condition of employment within the meaning of the Statute was set forth in *Antilles Consolidated Education Association and Antilles Consolidated School System*, 22 FLRA 235 (1986). In that case the Authority stated that in making such a determination it would consider: whether the matter pertains to bargaining unit employees; and the nature and extent of the effect of the matter on working conditions of those employees. *Id.* at 236-237. Clearly the matter at issue herein pertains bargaining unit employees and whether police officers carry their weapons home is a matter which flows solely from the employment relationship. *See* *American Federation of Government Employees, National Border Patrol Council and National Immigration and Naturalization Council and U.S. Department of Justice, Immigration and Naturalization Service*, 40 FLRA 521, 542-543, (1991). Accordingly, I

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3 Respondent raised this at opening argument during the hearing but did not address it in its brief.

conclude the matter at issue herein concerns a condition of employment within the meaning of the Statute.

When an agency changes a condition of employment of bargaining unit employees it is normally obligated under the Statute to notify and negotiate with the collective bargaining representative prior to effectuating the change. Department of the Air Force, Scott Air Force Base, 5 FLRA 9 (1981). Even though an agency in some cases may be privileged under the Statute to effectuate a change without bargaining on the decision itself, for example the methods and means of performing the agency's work or a matter involving the agency's internal security, it has been long held that the agency may nevertheless be required to negotiate on the impact and implementation of the change before effectuating the change. See Social Security Administration, 8 FLRA 517 (1982).

In the case herein the allegation is that Respondent failed to bargain with this Union regarding the impact and implementation of the change.[4] However, Respondent contends that the practice of permitting police officers to take their weapons to their residences at the completion of their tour of duty was illegal. If illegal, Respondent had no obligation to negotiate with the Union before terminating the practice. Department of the Interior, U.S. Geological Survey, Conservation Division, Gulf of Mexico Region, Metaire, Louisiana, 9 FLRA 543 (1982).

While it has not been conclusively established that it would be illegal for Respondent's police officers to continue the practice of transporting their official weapons between their duty station and residence, the record upon which Respondent relied in making its decision to terminate the practice strongly suggests the illegality of the practice. Two litigated D.C. court cases give a reasonable indication of the possible illegality of such conduct and

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4 Section 7106(b) of the Statue provides, in relevant part:

> (b) Nothing in this section shall preclude any agency and any labor organization from negotiating--
>
> > (2) procedures which management officials of the agency will observe in exercising any authority under this section; or
> >
> > (3) appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such management officials.

the legal advice given by the Justice Department and the Agency's office of its General Counsel, directly urging the discontinuance of the practice based upon conclusions of illegality, appears to be sound. While some of the legal guidance relied upon is not particularly current, the record does not suggest that police officer's duties are substantially different than they were immediately prior to the change in practice in 1991 which allowed the transportation of weapons. Nor does the record disclose any authorization, or particular functions police officers currently perform, which would somehow undermine the basis upon which the legal opinions were formed. On the record herein I find and conclude Respondent, in a good faith, reasonably concluded, based upon the available resources, that the practice of permitting police officers to carry their weapons home when off duty was illegal. In these circumstances I conclude Respondent was privileged to immediately discontinue the practice prior to providing the Union with notice and an opportunity to negotiate on the decision without violating the Statute. Id.

Notwithstanding the above, Respondent was nevertheless obliged under the Statute to promptly notify the Union of the change and provide it with an opportunity to negotiate on the impact and implementation of the change unless the impact of the change was de minimis. In Department of Health and Human Services, Social Security Administration, 24 FLRA 403, 408 (1986), the Authority held that in determining whether a change is more than de minimis it would look to "the nature and extent of the effect or reasonably foreseeable effect of the change on conditions of employment of bargaining unit employees." Counsel for the General Counsel avers that the following portion of a February 23, 1993 letter from Director Lindenau to Assistant Commissioner De Yulia arguing that police officers should retain authority to carry their weapons between their residences and the duty station supports its contention that the change was not de minimis:

> . . . FPS officers remain subject to immediate recall due to extreme shortages of FPS law enforcement officers and as changes occur to the regional threat level posture. Officers today are expected to report to their base headquarters office in the Southeast Federal Center for assignment and shift briefings. This must be accomplished quickly and efficiently. Officers must be available for dispatch in the region within minutes of reporting for work. The Government benefits by officers taking their firearm home by avoiding the time-consuming chore of issuing firearms at the beginning and end of

> each shift. Assuming that the issuance of a firearm takes from 30 to 60 seconds each (checking and verifying the serial number, inspecting the condition of weapon, and signing the checkout register), it would take the Government about one hour at the beginning of each eight hour shift and another hour at the end of the shift to checkout/in each officer's firearm, daily (from the first officer issuance to the last based on a 60-75 officer shift). . . .

Director Lindenau cleary describes a foreseeable effect of the change which appears to have significant adverse impact on the Agency in terms of nonproductive time spent by police officers checking firearms in and out at the Navy Yard. However, each police officer would be affected only possibly one minute at the beginning and end of each workday by following an additional, but apparently innocuous, procedure and I am unable to discern on this record any other impact, adverse or otherwise, on police officers' conditions of employment by the effectuation of the change. A police officer is not required to use a weapon or enforce any law when not in duty status. Indeed officer's movements are severely restricted when transporting a weapon. Therefore it appears that transporting the weapon to the police officer's residence was for the benefit and convenience of the Agency, not the employee. Thus it is not apparent that the nature of the work is such that employees' ability to perform their work is related in any meaningful way to transporting their weapon to their residence. See U.S. Department of Health and Human Services, Social Security Administration, Baltimore, Maryland, 36 FLRA 655, 666-667 (1990). Accordingly I conclude that the impact of the change was de minimis and that Respondent was not obligated to negotiate with the Union concerning the impact and implementation of the change. Id.

Were I to find Respondent obligated to bargain on the impact and implementation of the change I would nevertheless not recommend ordering a status quo ante remedy on the facts

herein.[5] In Federal Correctional Institution, 8 FLRA 604 (1982), the Authority announced:

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[5] I reject Respondent's defense that the Union declined an opportunity to negotiate on the change. My findings, based upon the testimony of Union President Moody, reveal that the change was implemented prior to the Union receiving notification and indeed Lindenau testified that when he announced the change to Moody, he told him it had to be implemented immediately. No opportunity to negotiate was provided before the change took effect, and subsequent thereto Respondent did not respond to the Union's request to bargain on the matter. Nor do I find Lindenau's statement to Moody a few days before implementation of the change that a "negative interpretation may be forthcoming" regarding the practice to constitute notice within the meaning of the Statute.

> . . . in determining whether a status quo ante remedy would be appropriate in any specific case involving a violation of the duty to bargain over impact and implementation, the Authority considers, among other things, (1) whether, and when, notice was given to the union by the agency concerning the action or change decided upon; (2) whether, and when, the union requested bargaining on the procedures to be observed by the agency in implementing such action or change and/or concerning appropriate arrangements for employees adversely affected by such action or change; (3) the willfulness of the agency's conduct in failing to discharge its bargaining obligations under the Statute; (4) the nature and extent of the impact experienced by adversely affected employees; and (5) whether, and to what degree, a status quo ante remedy would disrupt or impair the efficiency and effectiveness of the agency's operations.

I have considered the above factors when evaluating the matter presented herein and having noted particularly the impact on bargaining unit employees occasioned by the change, see id. at 606, and that a return to the status quo ante would require Respondent to return to a practice which may be unlawful. See United States Department of Justice, United States Immigration and Naturalization Service, El Paso District Office, 34 FLRA 1035, 1048 (1990). In the circumstances herein I conclude that even if Respondent was found to be obligated to bargain with the Union on the impact and implementation of the change, a status quo ante remedy would not be appropriate in this case.

Accordingly, in view of the foregoing and my evaluation of the entire record herein I conclude it has not been established that Respondent violated the Statute as alleged and, in any event, it would not effectuate the purposes and policies of the Statute to impose a status quo ante remedy even if a violation of the Statute was found to have occurred and I recommend the Authority issue the following:

ORDER

It is hereby ordered that the Complaint in Case No. WA-CA-30469 be, and hereby, is, dismissed.

Issued, Washington, DC, November 3, 1994

SALVATORE J. ARRIGO
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of this DECISION issued by SALVATORE J. ARRIGO, Administrative Law Judge, in Case No. WA-CA-30469, were sent to the following parties in the manner indicated:

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Dated: November 3, 1994
Washington, DC