UNITED STATES OF AMERICA

FEDERAL LABOR RELATIONS AUTHORITY

Office of Administrative Law Judges

WASHINGTON, D.C. 20424-0001

MEMORANDUM DATE: March 26, 1996

TO: The Federal Labor Relations Authority

FROM: WILLIAM B. DEVANEY
Administrative Law Judge

SUBJECT: AIR FORCE LOGISTICS COMMAND
WARNER ROBINS AIR LOGISTICS
CENTER, ROBINS AIR FORCE BASE,
GEORGIA

Respondent

and Case No. AT-CA-50246

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

AIR FORCE LOGISTICS COMMAND 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-50246

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 **APRIL 29, 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: March 26, 1996
Washington, DC

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
OFFICE OF ADMINISTRATIVE LAW JUDGES
WASHINGTON, D.C. 20424-0001

AIR FORCE LOGISTICS COMMAND 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-50246

C.R. Swint, Jr., Esquire
For the Respondent

Sherrod G. Patterson, 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's admitted unilateral relocation of a telephone had more than a de minimis impact. For reasons more fully set forth hereinafter, I conclude

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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)".

that the change was de minimis and gave rise to no obligation to bargain.

This case was initiated by a charge filed on December 27, 1994 (G.C. Exh. 1(a)); the Complaint and Notice of Hearing issued June 30, 1995 (G.C. Exh. 1(c)), and the hearing was set for October 4, 1995. By Order dated September 15, 1995 (G.C. Exh. 1(e)), this, and a number of other cases, was rescheduled for hearing on October 24, 1995, pursuant to which a hearing was duly held on October 24, 1995, 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, by agreement of the parties, December 4, 1995, was fixed as the date for mailing post-hearing briefs and Respondent and General Counsel each timely mailed an excellent brief, received on December 7, 1995, which have been carefully considered. Upon the basis of the entire record, I make the following findings and conclusions:

Findings and Discussion

Respondent's Technology Industrial Support Branch is located in Building 142. This Branch removes corrosives from airplane parts by sandblasting, performs non-destructive testing and magnetic and chemical plating. These processes, by their nature, are noisy, require support equipment such as air compressors sandblasters, aquamizer, shotpeening machine and large exhaust fans. There are two shifts: day shift, which starts at 7:30 am and ends at 4:15 pm, and employs 20-25 employees (Tr. 63, 91, 92, 93); and the swing shift, which starts at 4:00 pm and ends at 12:30 am, and employs only 5 employees (Tr. 30-31, 50-51, 94). On the day shift, as many as five blasters may be operated at the same time; but on the swing, or night, shift a maximum of two blasters could be operated at the same time (Tr. 30, 94). Sergeant Richard W. Randolph, Jr., a bioenvironmental engineering journeyman testified that the noise level at 1400 hours showed readings of 70 to 75 decibels; and at 2100 hours showed 60 to 63 decibels (Tr. 109-110). Sergeant Randolph further stated that 60 to 63 decibels was typical of an administrative area that has a lot of traffic, i.e.,

people going and coming, talking, telephone conversations, etc. (Tr. 110).[2]

There are two supervisors: Mr. Jerry Kendall Wahl, Electroplater foreman (Tr. 14, 98), who works from 7:30 am to 4:00 pm (Tr. 61, 92); and Ms. Betty Jo Adams, Electroplater foreman (Tr. 14, 66), also known as "B.J." (Tr. 24), who works from 12:00 noon until 8:00 pm (Tr. 92).[3] General Counsel Exhibit 2, although not to scale (Tr. 18), accurately shows the relative locations of the offices, blasting areas, plating rooms, break area, etc. of Building 142. In the left center of the diagram is a block of rooms consisting of: Mr. Wahl's office, the right side of which faces toward the blasting area and Robins Drive; joining his office, immediately to the left, is Ms. Adams' office; and joining her office, immediately to the left, is the office of the scheduler. These three offices, facing toward 1st Street, open onto a wide area that serves as a corridor for traffic to and from Building 140 through a door on the left side of Building 142, facing Building 140, which door is immediately above the NDI plating area which extends along the 1st Street side of Building 142 to a point in line with the right side of Mr. Wahl's office. Here, there is a door from 1st Street through which traffic also flows into the corridor onto which the Wahl, Adams and scheduler's offices open. Behind these three offices is a hallway, extending to an outside door; and opening off this hallway are: first, the Selective Plating room, which is across the hallway directly opposite Mr. Wahl's office; and next to this room is the Break Area, which is across the hallway directly opposite the offices of Ms. Adams and the scheduler. There is a telephone in Mr. Wahl's office and an extension of the same line to a telephone in Ms. Adams' office.

Since at least 1988, Ms. Adams' office had been left unlocked in her absence so that employees on both shifts could use the telephone in her office to place and receive

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Some years earlier, Respondent had implemented recommended engineering controls including construction of a wall about two-thirds the way up the facility around the blasting area, with acoustical curtains to the ceiling and doors, to eliminate the noise hazard which previously had existed (Tr. 120-121), Sergeant Randolph stated that when he conducted his test at 2100 hours, on the swing shift, the doors to the beadblast area were open, which meant that the beadlaster was not operating (it would be a safety violation to operate the beadblaster with the doors open, Tr. 118); however, he stated that with the doors closed and the beadblaster operating, the noise level would have gone up only one or two decibels to no more than 65 decibels. (Tr. 124, 127, 128).

3
Although not fully developed, it appears that Mr. Wahl and Ms. Adams may alternate shifts (Tr. 91). Further, Ms. Adams in 1994, left in the "afternoon" (Tr. 8, 67, 92).

personal telephone calls. For this purpose, her telephone was placed on the right, rear corner of her desk immediately adjacent to the door (Res. Exh. 2). Mr. Wahl's office has always been locked in his absence, because employees' 971 files were stored there, and employees had never had access to his office for telephone calls; however, it had been the practice, when the day shift supervisor left at 4:00 pm, to leave the public address system, which was located in Mr. Wahl's office, turned on with the microphone near the telephone so that the ringing of the telephone could be heard throughout the building. (Tr. 17, 19, 61, 70, 71). Regrettably, leaving the public address - intercom system on overnight caused the system to "burn up" (Tr. 71, 100). Ms. Adams said it happened a couple of times (Tr. 71). In any event, they were instructed to terminate the practice (Tr. 100). This occurred before the telephone was moved (Tr. 72), 100), was unrelated to the moving of the telephone, and, obviously, was not caused by the moving of the telephone (Tr. 72, 73, 100).

Ms. Adams locked her desk every day when she left work because she kept time and attendance records in her desk (Tr. 67, 68). In about June, 1994, she noticed that her desk was unlocked when she entered her office one morning but nothing was missing (Tr. 67), nevertheless, although she could not be certain she had not forgotten to lock her desk (Tr. 67, 69), because she was deeply concerned, she carefully arranged the items in her desk and locked it and, again, about a week later her desk was open when she arrived and the items in her desk had been moved around (Tr. 67-68, 69), although nothing was missing. In view of the fact that her desk had been broken into,[4] Ms. Adams decided she must, for security reasons, lock her office. Accordingly, on, or about, July 15, 1994, Ms. Adams began locking her office when she left for the day; however, to keep the telephone accessible for employees on the swing shift, she set the telephone, from her desk, on a little table just outside her office with the wire pulled out to pass under the door when she closed and locked it (Res. Exhs. 2, 3; Tr. 70, 100). As Respondent Exhibits 2 and 3 show, the telephone, literally, was moved only from one side of a cinder block wall to the other. To be sure, as Ms. Adams stated, it is easier to hear when the phone is in her office and the door is closed (Tr. 81), ". . . I wouldn't say great, but it's just better." (Tr. 82); but you can hear and be heard when the telephone is outside the office (Tr. 76, 81, 101, 103) and even during the day, when the noise level is much higher employees take the phone outside the office for privacy

4 Subsequently, Ms. Adams was told by an employee that he, or she, had seen people going through her desk (Tr. 69).

". . . even with the noise going on." (Tr. 83, 93-94); some, while using the telephone in the office do not close the door (Tr. 93). Mr. Ronald Eugene Martin, Branch steward (Tr. 14), sandblaster and shotpeening machine operator (Tr. 13, 18) and the instigator of the charge (Tr. 24, 27, 34), asserted that, ". . . On several occasions, I've had to just hang the phone up, and I'd go outside and use the pay phone." (Tr. 28-29); however, he stated that the signal strength of voice communication to the telephone, apart from its location, from off base was weak and hard to hear (Tr. 25-26) where on base ". . . you can hear in certain areas." (Tr. 25). Further, Mr. Martin conceded that he had talked to Ms. Adams, who called from off base, and, while he said he could "barely" hear her and told her to speak up (Tr. 29), he did talk to her as well as to others (Tr. 28). Mr. Jerry Hardison, who stated he had been on the day shift three years (Tr. 58) stated that he worked on the swing shift, ". . . during the summer, when my little boy was small. . . ." (Tr. 58). Although it appears doubtful that the preceding year - 1994 - would have been "when my little boy was small", Mr. Hardison asserted that on one occasion he, ". . . even had to let them hang up and me go outside on the pay phone so I could hear." (Tr. 60). On the other hand, Ms. Adams stated that when she had spoken on the telephone outside her office she could hear and be heard (Tr. 76, 81); Mr. Wahl testified that when his door was open during the day he could hear and be heard on the telephone (Tr. 102); and that he had called from his home and talked to people when the telephone was outside Ms. Adams' office and had no trouble hearing or being heard (Tr. 102-103). Moreover, the testimony of Messrs. Martin, Crummey and Hardison largely concerned the inability to hear the telephone ringing after the use of the intercom - public address system stopped. See, for example, Tr. 14, 15, 17, 19, 20, 22, 26, 32, 33, 34, 36, 37, 38, 39, 40, 44, 48, 49, 50, 51, 61).

Conclusions

As noted above, following two instances of her desk being broken into and the contents rifled, for security reasons, Ms. Adams, beginning on, or about, July 15, 1994, when she left work moved the telephone from the back right end of her desk to a small table just outside her office so that her office door could be closed and locked. Quite literally, the telephone was moved the thickness of a cinder block, from one side of a wall to the other. As a result, five employees during all, or a portion, of their duty hours from 4:00 pm to 12:30 am, had to use the telephone outside Ms. Adams' office for telephone calls. In July, 1994, when Ms. Adams made the change, she worked the day shift; but

sometime later Ms. Adams' hours were changed to 12:00 noon to 8:00 pm.[5] Accordingly, for much of the time, the hours in question were only the four hours from 8:00 pm to midnight. Also as noted in detail above, the testimony of Messrs. Martin, Crummey and Hardison was overwhelmingly directed to the inability to hear the telephone ringing after the use of the intercom - public address system was stopped. Understandably, they asserted there was a very significant change in hearing and being heard when using the telephone outside Ms. Adams' office, while Ms. Adams and Mr. Wahl asserted there was not. By contrast, I found Sgt. Randolph's testimony wholly convincing and devoid of any subjective evaluation. Sgt. Randolph testified that at 9:00 pm he measured the noise level outside Ms. Adams' office as 60 to 63 decibels which is typical of a busy administrative area. Further, Sgt. Randolph stated that with the beadblaster operating and the doors closed, the noise level would have gone up only one or two decibels to no more than

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5 Although Ms. Adams stated that she and Mr. Wahl alternated shifts (Tr. 91), the impression was that after July 15, 1994, when she left work for the day she moved the telephone out of her office even if Mr. Wahl was present. Nevertheless, as noted in n.3, supra, this was not developed on the record and is no more than an impression.

65 decibels.[6] Moreover, Respondent Exhibit 6, American Industrial Hygiene Association's, "Industrial Noise Manual", third edition, shows, inter alia, 60 to 65 decibels, ". . . telephone use slightly difficult; normal voice 1 to 2 feet. . . ." (Table 2.5, p. 10). Finally, Sgt. Randolph credibly testified that,

> "A If the shop was operating in the condition that I found it, there would be no problem to speak on the telephone." (Tr. 124).

When asked on cross-examination about a comparison of the noise level inside Ms. Adams' office and outside her office, Sgt. Randolph stated,

> "A Yes, sir, it would be the same. There probably wouldn't be any change.
>
> "Q With the door closed?
>
> "A The noise level might be, you know, a few decibels less, but I don't think it would be anything considerable."(Tr. 124)

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General Counsel's statement that I,

> ". . . denied . . . General Counsel's request to adjourn the hearing so that . . . [I] and the parties could make an on-site inspection of Building 142 and experience the noise levels first hand. . . ." (General Counsel's Brief, p. 15, n.11)

is not correct. I did not deny any such request; indeed, strictly speaking, General Counsel never made a request or motion for an on-site visit. To the contrary, General Counsel stated,

> ". . . And, your Honor, it's just a thought . . . and I was wondering if your Honor would like the opportunity to go to the building . . . and see and hear for yourself. . . ." (Tr. p.2)

I responded,

> ". . . well, I'll certainly bear that in mind. It might be very worthwhile." (Tr. 2).

Respondent asserted that, ". . . the evidence you'll receive will obviate the need for us to go out there . . . to listen for ourselves." (Tr. 3). At this point, I again responded,

> ". . . We will bear it in mind. I'm not ruling it out, and I'm not granting it either." (Tr. 3).

General Counsel's "thought", for an on-site visit, was not renewed.

The physical layout of Building 142(G.C. Exh. 2) shows that the offices of Mr. Wahl, Ms. Adams and the scheduler are on the far side of the building from the blasting area; that Mr. Wahl's office is toward the blasting area, with Ms. Adams' office being between his office and the scheduler; and that the IVD Plating Room is a buttress between the blasting area and Ms. Adams' office. Indeed, the record shows, contrary to the allegation of Paragraph 11 of the Complaint (G.C. Exh. 1(c)), that, when moved outside her office, the telephone was not in close proximity to loud machinery.

General Counsel did a masterful job of misdirection by stressing the inability to hear the telephone ring. As the record shows, the discontinuance of the use of the intercom - public address system to carry the ringing throughout the area was wholly unrelated to the moving of the telephone, took place before the telephone was moved and, of course, was neither caused by nor the result of the moving of the telephone. To the contrary, the practice of leaving the intercom - public address system turned on, to "broadcast" the ringing of the telephone, was discontinued because it burned out the system. Termination of the broadcasting of the telephone ringing was not an allegation of the charge (G.C. Exh. 1(a)) and is not an allegation of the Complaint (G.C. Exh. 1(c)).[7] Moreover, the record shows discussions with Respondent and the installation of bells (Tr. 26-27, 48, 49, 74, 87, 104, 106).

Ms. Adams' decision to lock her office door was, as the record shows, and as I have found, solely for security reasons. Her desk, which she had locked, twice was broken into. To protect business and personal items, including time and attendance records, which she kept in her desk, she was compelled to lock her office when she left work for the day. Her perceived need for such security was real and substantial. General Counsel's effort to denigrate her motive, by asserting that she does not lock her office during the day when she is out, is wholly without merit. First, during all, or much, of the day shift there are two supervisors in and out of adjoining offices; whereas, on the swing, or night, shift, no supervisor is present on all, or much, of the shift. Second, on the day shift there are 25 employees; whereas, on the swing, or night, shift there are only 5. Third, nothing in the record shows, or suggests, that Ms. Adams' practice of locking her desk has failed to

7 While Ms. Adams' telephone, as well as Mr. Wahl's, rings, the record shows that even when outside her office it could not be heard unless you were close by (Tr. 60); and when inside her office could not be heard outside (Tr. 33, 106).

provide adequate security during the day; whereas the record showed that twice her desk had been broken into during the swing, or night, shift. As the Authority has stated, "An agency's right to determine its internal security practices under section 7106(a)(1) of the Statute includes the right to determine the policies and practices . . . to secure or safeguard . . . physical property . . . against internal and external risks.", International Federation of Professional and Technical Engineers, Local 89, 45 FLRA 938, 960 (1992); "An agency's determination of when and how employees gain access to agency facilities is within the agency's right to determine its internal security practices under section 7106 (a)(1) of the Statute, where that determination is supported by a showing of a reasonable connection to internal security considerations." American Federation of Government Employees, Local 2452, 45 FLRA 1213, 1216 (1992). To like effect, see also: Patent Office Professional Association (Union), 41 FLRA 795, 836-837 (1991). As, plainly, the decision to lock the office door was connected to its internal security, Respondent was not obligated to negotiate the decision to lock the office door and this portion of the Complaint is dismissed. Air Force Accounting and Finance Center, Denver, Colorado, 42 FLRA 1196, 1206 (1991).

To insure the continued availability of her telephone for use by employees, Ms. Adams, before locking her office door pulled the telephone wire so that the door would close over the cord and placed the telephone on a small table immediately to the left of the door. As noted above, in actual effect, the telephone was literally moved the breadth of a single cinder block, from one side of the wall to the other.

As Respondent concedes, when it exercised its retained right under § 6(a)(1), while not obligated to negotiate the decision to lock Ms. Adams' office door, it was obligated to negotiate, ". . . the procedures used to exercise these rights and appropriate arrangements for adversely affected employees." (Respondent's Brief, p. 6). However, Respondent further notes that, ". . . where the exercise of a retained right results in an impact that is of a de minimis nature, there is no duty to negotiate. U.S. Government Printing Office and Joint Council of Unions, GPO, 13 FLRA No. 39 [203] (1983)." (Respondent's Brief, p. 6).

In Department of Health and Human Services, Social Security Administration, 24 FLRA 403 (1986), the Authority stated, in part, as follows:

"D. The standard to be applied in this and future cases.

"We have reassessed and modified the recent de minimis standard. In order to determine whether a change in conditions of employment requires bargaining in this and future cases, the pertinent facts and circumstances presented in each case will be carefully examined. In examining the record, we will place principal emphasis on such general areas of consideration as the nature and extent of the effect or reasonably foreseeable effect of the change on conditions of employment of bargaining unit employees. Equitable considerations will also be taken into account in balancing the various interests involved.

"As to the number of employees involved, this factor will not be a controlling consideration. . . ." (id. at 407-408).

The Authority has reiterated this standard in numerous cases, see, for example: U.S. Equal Employment Opportunity Commission, Washington, D.C., 48 FLRA 306, 310 (1993); Department of Veterans Affairs, Veterans Affairs Medical Center, Nashville, Tennessee, 50 FLRA 220, 230 (1995).

Here, the only reasonably foreseeable effect of moving the telephone was whether this had more than a de minimis effect on the ability to hear and be heard with the telephone located outside Ms. Adams' office. I conclude, as Sgt. Randolph credibly testified, that speaking on the telephone outside Ms. Adams' office, ". . . would be no problem. . . ." (Tr. 124); that, ". . . I don't think it would be anything considerable." (Tr. 124); and based on the entire record, that the impact of moving the telephone, from inside Ms. Adams' office to a table immediately adjacent to the door, for all or some portion of the swing, or night, shift was no more than de minimis. The slight increase in noise level had no more that a de minimis effect on the ability to hear and be heard. Sgt. Randolph's expert opinion was fully confirmed by the testimony of Ms. Adams (Tr. 76, 81) and Mr. Wahl (Tr. 102-103) concerning their experience in calling and talking to employees when the telephone was outside Ms. Adams' office; by Mr. Martin's admission that he talked to Ms. Adams' and to others (Tr. 28). Accordingly, because the impact of moving the telephone was no more than de minimis, Respondent did not violate § 16(a)(5) or (1) of the Statute by its unilateral action. Portsmouth Naval

Shipyard, Portsmouth, New Hampshire, 45 FLRA 574, 578 (1992); U.S. Patent and Trademark Office, 45 FLRA 40, 51 (1992).

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

<u>ORDER</u>

The Complaint in Case No. AT-CA-50246 be, and the same is hereby, dismissed.

WILLIAM B. DEVANEY
Administrative Law Judge

Dated: March 26, 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. AT-CA-50246, were sent to the following parties in the manner indicated:

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Dated: March 26, 1996
Washington, DC