U.S. DEPARTMENT OF TRANSPORTATION FEDERAL AVIATION ADMINISTRATION, STANDIFORD AIR TRAFFIC CONTROL TOWER, LOUISVILLE, KENTUCKY Respondent	
and NATIONAL AIR TRAFFIC CONTROLLERS ASSOCIATION, MEBA/NMU, (AFL-CIO) LOCAL SDF Charging Party	Case Nos. CH-CA-50496 CH-CA-50497

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 **MARCH 13, 1996**, and addressed to:

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

SAMUEL A. CHAITOVITZ

Chief Administrative Law Judge

Dated: February 12, 1996
Washington, DC

MEMORANDUM DATE: February 12, 1996

TO: The Federal Labor Relations Authority

FROM: SAMUEL A. CHAITOVITZ
Chief Administrative Law Judge

SUBJECT: U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION,
STANDIFORD AIR TRAFFIC CONTROL TOWER,
LOUISVILLE, KENTUCKY

Respondent

and Case Nos. CH-CA-50496
CH-CA-50497

NATIONAL AIR TRAFFIC CONTROLLERS
ASSOCIATION, MEBA/NMU, (AFL-CIO)
LOCAL SDF

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

U.S. DEPARTMENT OF TRANSPORTATION FEDERAL AVIATION ADMINISTRATION, STANDIFORD AIR TRAFFIC CONTROL TOWER, LOUISVILLE, KENTUCKY Respondent	
and NATIONAL AIR TRAFFIC CONTROLLERS ASSOCIATION, MEBA/NMU, (AFL-CIO) LOCAL SDF Charging Party	Case Nos. CH-CA-50496 CH-CA-50497

Charles Oxford, Esq.
For the Respondent

Gary J. Liebermann, Esq.
For the General Counsel of the FLRA

Before: SAMUEL A. CHAITOVITZ
Chief 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.* (Statute), and the Rules and Regulations of the Federal Labor Relations Authority (FLRA or Authority), 5 C.F.R. § 2411, *et seq.*

Based upon unfair labor practice charges filed by National Air Traffic Controllers Association, MEBA/NMU, AFL-CIO (NATCA), Local SDF (NATCA Local SDF or Union), against U.S. Department of Transportation, Federal Aviation Administration, Standiford Air Traffic Control Tower, Louisville, Kentucky (FAA or Respondent), a Complaint and Notice of Hearing was issued on behalf of the General Counsel (GC) of the FLRA by the Regional Director for the Chicago

Region of the FLRA alleging that Respondent violated § 7116(a)(1),(5) and (8) of the Statute. Respondent filed an answer denying the substantive allegations of the Complaint.

A hearing was held in Louisville, Kentucky. All parties were afforded a full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence. The GC of the FLRA and the FAA filed briefs, which have been fully considered.

Based upon the entire record[1], including my observation of the witnesses and their demeanor, I make the following findings of fact, conclusions and recommendations.

Findings of Fact

A. Background.

NATCA is the certified exclusive representative of a unit of employees appropriate for collective bargaining at Respondent. NATCA represents approximately 45 air traffic control specialists at Respondent's Standiford Air Traffic Control Tower (Standiford Tower or Standiford facility) as part of a nationwide bargaining unit. NATCA and FAA are parties to a nationwide collective bargaining agreement (CBA).

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[1] The GC of the FLRA filed a motion to correct the transcript in this matter (Attached hereto as "Attachment A"). No opposition to this motion has been filed. Accordingly, the motion is **GRANTED** and the corrections set forth in "Attachment A" are hereby made.

The Standiford facility is located in the FAA's Southern Region and is a terminal radar approach control whose mission is the expeditious flow of air traffic, and to provide air traffic service to the users of the air space. The current Standiford Tower was constructed in the late 1960's, and is approximately 7500 square feet. The current facility consists of an operations area, and a tower, that includes approxi-mately five or six staff offices, management offices, a union office, a break room, and a training room that is approximately 110 square feet. The current Standiford facility does not have a conference room, and staff meetings are generally held in the training room or off site at the Regional Airport Authority, approximately a half mile away.

Airways Facility, a component of the FAA that maintains equipment for air traffic at the Standiford facility, is located in a temporary office near the facility. Airways Facility employs approximately ten to fifteen technicians, who are represented by another labor organization, the Professional Airways Systems Specialists (PASS).

B. FAA Authorized Construct of a New Standiford Air Traffic Control Tower in 1991; NATCA Local SDF Submits a Request to Negotiate.

In 1991, shortly before Theodore J. Clark, Jr. became Air Traffic Manager at Standiford Tower, FAA authorized construction of a new Standiford Tower. The Standiford airport was being expanded, which required the relocation of the current air traffic control tower to a new location. Originally, the facility was authorized a base building of 14,500 square feet. It was anticipated that the new facility, which would include the administrative offices of Airways Facilities, would be large enough to support an additional 10 to 15 employees hired for air traffic control.

1. NATCA Local SDF Requests to Negotiate About the New Facility.

Mark Hood became the President of NATCA Local SDF in June or July 1992. During his tenure as Union President, Hood has negotiated with Clark, the Air Traffic Manager, on a variety of subjects including sick leave, overtime, watch schedules, and facility orders. During these negotiations Clark had the authority to resolve grievances, and execute memorandums of understandings with Hood concerning working conditions. Clark is the top management official at Standiford facility.

Upon learning of FAA's plan to construct a new control tower, Hood, as NATCA Local SDF President, discussed the details of the plan with Clark. Clark informed Hood that he did not have the authority to enter into any type of agreement with the Union, and that the decisions for the new facility were going to be made at the Regional Office level. Nevertheless, on August 31, 1992, Hood requested to negotiate by submitting proposals to Clark, who then forwarded the proposals to Ike Grove on September 2, 1992. Grove worked as a section supervisor in the Southern Regional Office in the Facilities and Equipment (F & E) Division of the FAA, the section responsible for the planning and construction of the new facilities.

The Union proposed that the new facility should include a Union office, a smoking area in accordance with a Federal Service Impasse Panel decision, a workout/recreational area, a basement for the base building and covered parking. The proposal for the workout/recreational room was to provide an area for weight lifting equipment, stationary bikes, and space large enough for other recreational activities. NATCA Local SDF was to provide the equipment. Hood wrote:

> As a general rule, air traffic controllers have a high incidence of health problems, most of which can be directly related to the high amount of stress incurred in the performance of our jobs, and the lack of activity at the workplace. This area will not only provide a means to dissipate stress, but will allow for the formulation and implementation of the FAA Wellness program here at SDF. We feel that with the implementation of a facility wellness program, there would be a substantial drop in sick leave usage, and therefore a drop in overtime expenditures.

NATCA Local SDF envisioned the workout room (later termed the multipurpose room) as a benefit to both the bargaining unit employees and the agency, by reducing the amount of stress inherent in the job as an air traffic controller, and to meet the needs of the FAA Wellness Program. The Union did not propose to negotiate the size of the overall facility.

2. NATCA Local SDF Submitted Second Request to Negotiate, and Filed Unfair Labor Practice (ULP), Case No. AT-CA-30215.

After Clark forwarded the Union's proposals to Grove, Hood unsuccessfully attempted to call Grove on several

occasions to discuss the construction of the new facility and the Union's proposals. Hood then did contact Grove who informed him that it was inappropriate for Hood to contact him, and that he should be dealing with Clark on the subject. Thereafter, on November 7, 1992, the Union made a formal written bargaining request to Grove to discuss the construction of the new facility, and proposed that the parties meet at an agreeable time and place to start the negotiation process.

After FAA did not respond to the Union's demand to bargain, Hood filed an unfair labor practice (Case No. AT-CA-30215) with the Atlanta Region of the FLRA on November 23, 1992. The ULP alleged that FAA, by failing to reply to the Union's request to negotiate, bargained in bad faith in violation of the Statute.

C. NATCA Local SDF Pursued Bargaining and Settlement while ULP (AT-CA-30215) was Pending.

After the ULP was filed in November 1992, the Union still pursued negotiations with Respondent over the new facility through the submission of proposals, including ground rules. Clark responded again that he did not have the authority to negotiate. Despite Clark's stated position, Hood received a letter from Vance White, the FAA's Senior Labor Relations Specialist for the Southern Region, which provided that

Respondent was prepared to meet with NATCA to negotiate. The letter provided in its entirety:

> In accordance with 5 USC Chapter 71, Section 7117, management recognizes its obligation to I & I bargain as appropriate concerning the new tower at Standiford Field. The Manager at Standiford Tower is ready to meet at your request.

Upon receipt of the letter, Hood approached Clark in another attempt to begin negotiations on the new tower. In spite of White's assurances that Clark was the individual the Union should begin negotiations with, Clark responded to Hood that he did not have the authority to negotiate.2

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2 Prior to the settlement and withdrawal of Case No. AT-CA-30215 Clark informed Hood on numerous occasions that he did not have the authority to negotiate. However, NATCA withdrew the ULP on assurances from FAA that Clark was the individual NATCA should be dealing with to resolve the issue.

Following White's letter, on March 19, 1993, Clark made a formal proposal to form a planning committee to take over all planning for the new facility. Clark proposed:

> I envision the committee being made up of two bargaining unit members and two staff members. The committee would have the authority to make decisions on all matters concerning the new facility and the responsibility to complete all future planning. The committee would also plan and oversee the new procedures needed to move from the existing ATC to the new facility.

The Union responded that due to the pending ULP, it was inappropriate for any other individuals to handle the issues other than Clark and Hood.

While the Union was attempting to initiate negotiations, even after the ULP was filed, FAA continued to plan for the new tower without Union input. Meetings were held in the Regional Airport Authority conference room to discuss the design and construction of the facility, with representatives from the Regional Airport Authority (the body that governs the airport), architects, Clark, Joel Cole (a staff specialist at Respondent), representatives from F & E (at least at some of the sessions), a representative of Airways Facilities and Hood[3]. At these meetings, the parties discussed the design of the base building, which included the administrative areas, the radar equipment, and the tower itself. Through the input of the architect firm, the planners discussed a base building with a square footage of 17,500, to accommodate the amount of equipment required in the facility.

At one of the meetings, on July 21, 1993, Dirk Bronson, from F & E, informed the parties that if it would not delay the project if there was authorization to include a multi-purpose room in the new facility, originally proposed by the Union. The consensus from the participants was that the inclusion of the multipurpose room would not delay the project.

After this meeting, in August 1993, a new nation-wide collective bargaining agreement (CBA) was executed. Article 76, section 4 and 5 of the new CBA. New Facilities/Current Facility Expansion, provides that NATCA, at the appropriate level, will be notified when the FAA approved project implementation plans for new, expanded, remodeled, or combined facilities, and:

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[3] Hood started attending these planning sessions in approximately February 1993.

> Any negotiations under this Article shall be conducted in accordance with Article 7 of this Agreement. Nothing in this Article shall be construed as a waiver of any Union or Employer right.

Article 7 of the CBA, addresses the procedures for bargaining for changes in working conditions at the national and local level.

Article 13 of the CBA, entitled Union Publications and Information and Use of Employer's Facilities, provides for the use of bulletin boards and distribution of materials by the Union and for the provision of a Union office and work space by the FAA.

D. After the Issuance of Complaint in AT-CA-30215, the ULP is Withdrawn by the Union.

While planning of the new tower continued a Complaint and Notice of Hearing was issued in Case No. AT-CA-30215 on January 18, 1994. A hearing date was scheduled for early April 1994. Concurrently, NATCA and the FAA were implementing a partnership in an effort to improve the relationship between the parties that had become adversarial. Discussions ensued between NATCA Regional Representatives' Rodney Turner and Randy Schwitz and the Respondent at the Regional level in an effort to resolve the ULP in a partnership atmosphere. Prior to the withdrawal of the ULP, Hood submitted his third written request to negotiate to Clark on March 2, 1994. Hood requested that Clark either begin negotiations as FAA's authorized representative, or provide the name of the individual who had the authority to negotiate.

The Union was given assurances that Clark was ready to meet with Hood and resolve the issues in a partnership environment. On April 10, 1994, the Union withdrew the ULP based on these assurances. The Union withdrew the ULP on the condition that FAA was willing to negotiate over the new facility and send an authorized representative to the bargaining table. At no time after the Union withdrew the ULP in April 1994 did Clark, or another management representative, inform the Union that they did not have the authority to negotiate.

Hood requested that FAA provide written assurances. On May 9, 1994, one month after the ULP was withdrawn, Wayne Goswick, Air Traffic Manager, Cincinnati HUB, assured the

Union that, in the spirit of cooperation and understanding, NATCA Local SDF would continue to be included in the discussions over the new tower. The Union representative was to be afforded an opportunity to attend all on site meetings concerning the facility and would be able to provide recommendations concerning the internal structure of the facility. Goswick's letter referenced Clark's March 19, 1993 letter, which was Clark's proposal to delegate complete authority on the planning of the new facility to a committee. Goswick's letter also provided that budgetary requirements would limit the inclusion of certain items, but was silent with respect to higher level approval of any agreements reached.4

Following the withdrawal of the ULP, and the assurances from FAA, over an eight month span Hood met four or five times with Clark, other FAA representatives from F & E, and the other participants at the planning sessions outside of the facility, and had numerous informal discussions, to discuss the design and layout of the new facility. The meetings were attended by the same participants who were designing the layout of the facility as before. Hood was introduced as the NATCA President and submitted proposals on behalf of the Union. As the participants began these sessions, and began discussing the blueprints for the interior design, Tom Malone, F & E Specialist, was very specific that he could not approve a building larger than the current size being discussed, 17,500 square feet. During the sessions, if specific items arose, such as increasing the size of the building beyond 17,500 square feet by building a second story or a basement in the building, Malone specifically stated that he needed FAA approval.

When the subject of the multipurpose room arose, Clark and Malone never indicated that a higher level of the FAA needed to approve any agreements, and expressed their desires to include a multipurpose room in the plans.

During the session, the parties drafted blueprints for both the base building and the tower. The plans that were drafted were partially based on NATCA Local SDF proposals and included a multipurpose room.

By September 1994, the participants finalized plans for the new facility and employees in the bargaining unit were notified in the facility newsletter, at crew briefings, and

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Once the ULP was withdrawn FAA never informed Hood that his negotiations with Clark were subject to approval by the FAA, or that Clark did not have the authority to negotiate.

by the Union that the new facility would contain, among other items, a multipurpose room.

On January 18, 1995, the day before the final session, Hood met with Malone, the Airways Facility manager, and Clark to discuss the plans and work out some minor changes to the plans. At Malone's request, Hood drafted a blueprint of the base building reflecting these minor changes that had been agreed to. The blueprint was for a 17,500 square foot building as authorized by Malone, and included items that were agreed to at previous meetings, a multipurpose room that was approximately 300 square feet (adjacent to the mechanical room), a Union office, a smoking room and showers. The plans also included a 600 square foot conference room, and a training room approximately 70 square feet larger than the training room in the current facility.

At the final session, on January 19, 1995, Malone began the meeting by stating that the meeting was not going to end until an agreement was reached. The participants agreed to make some minor changes to Hood's blueprint, including the reduction of space in the multipurpose room by the movement of a wall by two feet. The participants agreed upon the overall blueprint of the base building drafted by Hood, which included a multipurpose room. The participants also agreed upon the design and layout of the tower shaft, including a quiet room, and a break room. At the conclusion of the session, the architects discussed when they would finish the construction drawings in order to begin construction on the building. There was no discussion from either Clark or Malone that the plans needed higher level from the FAA. No date was set for another session.

E. FAA Refuses to Execute Written Agreement on the Design and Layout of the New Tower, and the Plans are Changed.

Following the agreement on the layout and design of the facility, Clark informed Hood that the FAA planned to reduce the size of the facility. On February 8, 1995, Hood requested that Clark, in accordance with section 7114(b)(5) of the Statute, execute a Memorandum of Understanding (MOU) recording alleged agreements reached by the parties. Clark responded by letter dated February 15, 1995, refusing to sign the MOU because the size of the facility was being questioned by FAA Headquarters, that the facility was attempting to justify a facility of that size and that he did not have authority to commit FAA to a specific building size through any local agreement.

The reason that the multipurpose room had been eliminated from the design, was not because the inclusion of

a multi-purpose room in a facility would violate a law, or government wide rule or regulation, but rather, because of purported budgetary constraints with respect to the size of the overall building.

Construction on the new facility has not begun, and the latest plans for the new facility have not been finalized. However, the latest plans drafted by the architects, exhibits a facility 14,500 square feet, without the multipurpose room. The latest blueprints also indicate that Respondent is planning on constructing a 600 square foot conference room in the new facility to be jointly used by the Air Traffic employees, and the Airways Facilities employees, all employees of the FAA, and a training room larger than the training room in the current facility. There was no evidence adduced at hearing that FAA had an agreement with PASS over the design and layout of the building.

After Clark's refusal to sign the MOU, and upon learning that FAA planned to eliminate the multipurpose room to accommodate a smaller facility, the NATCA Local SDF filed the charges in the two subject Unfair Labor Practice cases.

Discussion and Conclusions of Law

The GC of the FLRA alleges that FAA violated § 7116(a)(1), (5), and (8) of the Statute by failing to sign a written document embodying the agreed to terms concerning the new Standiford Tower; by Clark stating in a February 15, 1995 letter, that he did not have authority to enter into an agreement with NATCA; and by refusing to "abide and implement" the agreement FAA had reached with NATCA. It is also alleged that FAA violated §7116(a)(1), (5) and (8) of the Statute by failing to be represented at negotiations with NATCA concerning the new Standiford Tower by authorized representatives as required by § 7114(b)(2) of the Statute.

A. The Design and Layout of the Standiford Tower and the Multipurpose Room.

Once FAA made the decision to construct a new air traffic control tower, it was obligated to negotiate the design and layout of the facility. The Authority has held that the location in which the employees perform their work, and other aspects of employees' office environments are matters at the very heart of the traditional meaning of conditions of employment. *See Federal Aviation Administration, Northwest Mountain Region, Renton, Washington,* 51 FLRA 35 (1995); *Department of Health and*

Human Services, Region IV, Office of Civil Rights, Atlanta, Georgia, 46 FLRA 396 (1992) (*HHS*). The FLRA has consistently held in negotiability decisions that proposals concerning space allocation, and the arrangement of space are negotiable unless an agency demonstrates that the proposals are inconsistent with applicable law and regulation. *See, e.g., National Treasury Employees Union, Chapter 83 and Department of the Treasury, Internal Revenue Service*, 35 FLRA 398, 413 (1990) (*IRS*); *American Federation of Government Employees, Local 12, AFL-CIO and Department of Labor*, 25 FLRA 979, 981 (1987). Cases concerning space allocation present an example of the tension between the competing legitimate interests of employees and management, interests that are not irreconcilable and ones that can be resolved through collective bargaining. *IRS*, 35 FLRA at 414.

An agency is obligated to bargain to the extent it has discretion to bargain on otherwise negotiable matters. *Library of Congress, Washington, D.C.*, 7 FLRA 578 (1982), *enf'd sub nom. Library of Congress v. FLRA*, 699 F.2d 1280 (D.C. Cir. 1983)(*LOC*). In *LOC*, the court affirmed the FLRA's findings that the agency was obligated to bargain over changes in office design and office environment.[5] The fact that control over the construction of the new facility may ultimately rest with a different organizational component of the FAA does not bar negotiations. *See, e.g., National Guard Bureau and Adjutant General, State of Pennsylvania*, 35 FLRA 48, 53 (1990). The record fails to establish the existence of any government wide regulations (i.e., GSA regulations) controlling the design of facilities, and FAA had full discretion in the design and layout of the facility.

1. The Multipurpose Room

The test for whether a matter involves a condition of employment is set forth in *Antilles Consolidated Education Association and Antilles Consolidated School System*, 22 FLRA 235 (1986)(*Antilles*). The FLRA considers (1) whether the matter pertains to bargaining unit employees and (2) whether there is a direct connection between the matter and the work situation of bargaining unit employees. *Id.* at 237. The United States Court of Appeals for the District of Columbia reviewed the *Antilles* test in *American Federation of Government Employees, Local 2761*, AFL-CIO, 866 F.2d 1443,

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5 Although the Union in this case never proposed the expansion of the facility, the Authority has found negotiable a union's proposal that an agency expand existing office space to accommodate a break room. *U.S. Department of Justice, Immigration and Naturalization Service, Border Patrol, Tucson, Arizona*, 46 FLRA 930 (1992).

1447, 1449 (D.C. Cir. 1989), and held that the second part of the test requires the FLRA to determine whether there was a link or nexus between the matter and the workers' employment. The Court also found that where a matter has "a direct effect on the work relationship[,]" it concerns a condition of employment. *Id.* at 1449. *See also United States Department of Health and Human Services, Social Security Administration, Region X, Seattle, Washington*, 37 FLRA 880 (1990) (adopting the D.C. Circuit's application of *Antilles*).

In *U.S. Department of the Army Aviation Systems Command, St. Louis, Missouri*, 36 FLRA 418, 422-23 (1990) (*U.S. Department of the Army Aviation Systems Command*), the Authority found that the existence and availability of physical fitness facilities directly affected the work situation and employment relationship of bargaining unit employees, and therefore, was a condition of employment. In reaching that conclusion, the Authority found that a link or nexus was established because of Army regulations that emphasized physical fitness. *Compare, International Association of Fire Fighters, AFL-CIO, Local F-116 and Department of the Air Force, Vandenberg Air Force Base, California*, 7 FLRA 123 (1981).

FAA contends that it has no obligation to bargain about a multipurpose room in the new facility because it is not a condition of employment.

I conclude that inclusion of a multipurpose room in the new facility is a condition of employment under section 7103 (a)(14) of the Statute. In the Union's original proposal Hood explained that the multipurpose room, which was to be furnished by the Union with exercise equipment, was designed to reduce the amount of stress experienced by bargaining unit employees in the position of air traffic controller. Also, the multipurpose room would hopefully reduce the amount of sick leave and overtime expenditures, and be used in conjunction with the FAA's Wellness Program. The evidence established that there is a link, or nexus, between the multipurpose room and the workers' employment as it was proposed in conjunction with the Agency's Wellness Program and reduction of stress among air traffic controllers.

Thus the record establishes, and I conclude, that the multipurpose room has a direct effect on the employees' work relationship and is a condition of employment. Moreover, there are no government wide rules, laws or regulations that prohibit a multipurpose room in a facility.

2. FAA's "Covered By" Argument.

FAA's contends that it had no obligation to bargain with the Union concerning the construction of the new facility because the matter was "covered by" the parties negotiated agreement. I reject FAA's contention in light of the Authority's decisions addressing whether a contract provision covers a matter in dispute. In *U.S. Department of Health and Human Services, Social Security Administration, Baltimore, Maryland*, 47 FLRA 1004 (1993) (*SSA*) the Authority established a test to determine when a matter is contained in or is covered by a collective bargaining agreement. The Authority ruled that, upon execution of an agreement, an agency should be free from a requirement to continue negotiations over terms and conditions of employment already resolved by the previous bargaining. *SSA*, 47 FLRA at 1018. *SSA* is premised on an agency's refusal to bargain, or the implementation of a change that is covered by the parties' agreement.

In the subject case Article 13 of the CBA deals with FAA's obligation to provide the Union with space and facilities to communicate with the unit members and to conduct union business. It in no way deals with the lay out of employee space and the planning of towers for the benefit of the employees or the provision of a multipurpose room for employee use.

Article 76 of the CBA provides for notice to the Union at the national level when certain decisions are made regarding a new facility, it provides for the Union at the local level to be part of and participate in a transition committee or work group to plan the new facility. FAA correctly points out that this provides for a participation in a procedure that is less than negotiations. However, Article 76 of the CBA also provides for notice at the local levels and for bargaining under Article 7 of the CBA and it further, specifically provides that nothing in the agreement shall be construed as a waiver by the Union of any right. I conclude the CBA not only does not preclude bargaining over the provision of a multipurpose room and does not cover the subject of plans and layout of the tower so as to prevent bargaining, but, rather, specifically provides for such bargaining by providing for notice at the local level and for bargaining and by stating that the Union was not waiving its rights. The CBA contemplates further negotiations, at the local level, on the construction of new facilities. *See Internal Revenue Service*, 47 FLRA 1091 (1993).

B. The Planning Sessions

Section 7103(a)(12) of the Statute defines collective bargaining as the:

> performance of the mutual obligation of the representative of an agency and the exclusive representative of employees in an appropriate unit in the agency to meet at reasonable times and to consult and bargain in a good-faith effort to reach agreement with respect to the conditions of employment affecting such employees and to execute, if requested by either party, a written document incorporating any collective bargaining agreement reached. . .

Section 7114(b)(5) of the Statute provides that the duty to negotiate in good faith includes, if an agreement is reached, the obligation to execute upon request a written document embodying the agreed upon terms and to take necessary steps to implement the agreement. *Internal Revenue Service, Philadelphia District Office*, 22 FLRA 245 (1986).

The GC of the FLRA contends that after settling the ULP case (Case No. AT-CA-30215) NATCA Local SDF and FAA engaged in negotiations over the new Standiford Control Tower and reached agreement and that FAA was obligated to execute and implement the agreement. The GC of the FLRA argues that the planning sessions, after the withdrawal of the ULP charge in Case No. AT-CA-30215 constituted negotiations and that the Union and FAA, in these sessions, reached agreement on the layout of the new tower.

I conclude that these meetings were not negotiations in the collective bargaining sense and that no agreement was reached, in the collective bargaining sense.

The record does establish that NATCA Local SDF on a number of occasions requested, indeed demanded, to negotiate concerning the layout of the new Standiford Facility. FAA reassured Hood that Clark would try to resolve the issue in the spirit of partnership.

Hood had been participating in the planning sessions long before the withdrawal of Case No. AT-CA-30215. When he first attended these sessions he apparently recognized that they were not negotiation sessions between the Union and management. The May 9, 1994 memorandum from the FAA reassured Hood that in the spirit of cooperation and understanding FAA would <u>continue</u> to include the Union in the discussions concerning the establishment of the new facility

and that the Union representative would be afforded an opportunity to attend all on site meetings and to provide recommendations concerning the internal structure of the facility.

After receipt of this reassurance Hood continued to attend and participate in these planning sessions. These meetings were fundamentally conducted in the same way as before the reassurance and nothing changed to convert them to collective bargaining meetings or to negotiations. At these planning sessions the Union, as well as all the other participants, made suggestions and tried to reach consensus, which they did. The participants at these sessions, in addition to the Union, Malone and Clark, were representatives of the Regional Airport Authority, of the architects, of F & E and of Airways Facilities.

These planning sessions, which the GC of the FLRA contends metamorphosed to negotiations after the withdrawal of Case No. AT-CA-30215, are the crux of this case. Thus FAA's representatives were communicating to the Union that FAA was prepared to accomplish the planning of the new facility in the spirit of partnership and to join with the Union and the other participants of the planning sessions in arriving at plans to be submitted for approval. In this regard it must be noted that among the other participants making suggestions were representatives of the Regional Airport Authority, a non FAA entity, and Airways Facilities, an FAA operation at the Standiford Facility that does not employ any members of the unit represented by NATCA.

The Union on the other hand was demanding to negotiate about the new facility as Hood continued to attend and participate in these planning sessions. Accordingly, I conclude that there was a fundamental confusion and disconnect between Clark and Hood. Clark thought he was engaging NATCA Local SDF in more meaningful and cooperative partnership discussions aimed at reaching a plan agreeable to all participants that could then be submitted to FAA headquarters for approval. Hood apparently thought these planning sessions were converted to negotiations and that any resulting agreement would be binding on both NATCA and FAA.

I conclude that there was no meeting of the minds with respect to the fundamental nature of the planning sessions and their result and, thus, there was no negotiated agreement as to the layout of the new Standiford Tower, in the collective bargaining sense. Therefore there is no agreement with respect to the layout of the new facility

that FAA was obligated to sign or implement and FAA did not violate
§ 7116(a)(1), (5) and (8) of the Statute when it refused to sign and implement the result of the planning sessions.[6]

In concluding that the planning sessions were not negotiation sessions, at least not in the view of FAA, I am not indicating that the Union waived its right to negotiate by participating in the spirit of partnership, in the planning sessions. Rather, the Union could have insisted on negotiating with FAA concerning the new facility and exercised this right by not participating in the planning sessions, by engaging in negotiation meetings at different times than the planning sessions, or by insisting that FAA recognize the planning sessions were being converted to negotiations.

C. FAA's Representative.

GC of the FLRA argues alternatively that, if it is found Clark did not authority to bind FAA, FAA violated § 7116(a)(1), (5), and (8) of the Statute because § 7114(b)(2) of the Statute obligates parties to send fully authorized representatives to the negotiation table. *U.S. Department of the Navy, Portsmouth Naval Shipyard, Portsmouth, New Hampshire,* 44 FLRA 205 (1992).

The record, herein, establishes that, although at first Clark stated he did not have authority, both FAA and Clark did acknowledge that Clark had full authority to bargain about the new layout and planning of the new facility.[7] Accordingly, I must reject the contention of the GC o the

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6 If it had been found that there had been a meeting of the minds and a negotiated agreement as to the layout of the new facility had been reached, then I would have concluded that FAA would have violated sections 7116(a)(1), (5) and (8) of the Statute when it refused to sign and abide by the agreement. *U.S. Department of the Navy, Portsmouth Naval Shipyard, Portsmouth, New Hampshire*, 44 FLRA 205 (1992).

7 Clark and other FAA representatives stated that Clark could not bargain over the size of the new Standiford Facility, presumably because of budgetary considerations. I need not reach the issue of whether Clark did have authority to bargain over the size of the new facility or if not having this authority would violate the Statute, because the Union was not attempting or asking to bargain over the size of the facility. There is no allegation or contention by the GC of the FLRA that any such lack of authority violated the Statute.

FLRA that FAA violated the Statute by failing to send an authorized representative to the bargaining table.[8]

Accordingly, having concluded that FAA did not violate § 7116(a)(1), (5), and (8) of the Statute, it is recommended that the Authority adopt the following:

Order

The Complaint in Case Nos. CH-CA-50496 and CH-CA-50497 are hereby DISMISSED.

Issued, Washington, DC, February 12, 1996

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SAMUEL A. CHAITOVITZ
Chief Administrative Law Judge

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[8] In so concluding I need not decide whether FAA violated the Statute by engaging in a course of conduct which constituted refusing to meet with the Union and bargain about the layout of the new facility, because neither the complaint herein nor the GC of the FLRA makes such an allegation. Therefore, such a possible violation was not before me. *See United States Immigration and Naturalization Service, United States Border patrol, Del Rio, Texas,* 51 FLRA No. 68 (1996), at 6.

CERTIFICATE OF SERVICE

I hereby certify that copies of this DECISION issued by SAMUEL A. CHAITOVITZ, Chief Administrative Law Judge, in Case Nos. CH-CA-50496 and CH-CA-50497, were sent to the following parties in the manner indicated:

CERTIFIED MAIL:

Charles Oxford, Esq.
Federal Aviation Administration,
South Region
P.O. Box 20636
Atlanta, GA 30320

Gary J. Liebermann, Esq.
Federal Labor Relations Authority
Boston Regional Office
99 Summer Street, Suite 1500
Boston, MA 02110-1200

Mark Hood, President
NATCA, Local SDF, MEBA, AFL-CIO
P.O. Box 39397
Louisville, KY 40233

REGULAR MAIL:

National President
National Air Traffic Controllers
  Association, MEBA/NMU, (AFL-CIO
444 N. Capitol Street, NW, Suite 845
Washington, DC 20001

Dated: February 12, 1996
        Washington, DC