



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

DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF PRISONS
U.S. PENITENTIARY
ATLANTA, GEORGIA

RESPONDENT

Case No. AT-CA-13-0020

AND

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 1145

CHARGING PARTY

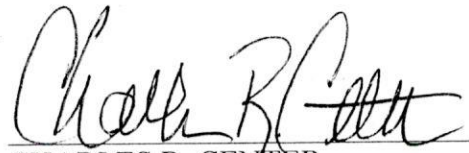
NOTICE OF TRANSMITTAL OF DECISION

The above-entitled case having been heard by the undersigned Chief 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. § 2423.34(b).

PLEASE BE ADVISED that the filing of exceptions to the attached Decision is governed by 5 C.F.R. §§ 2423.40-41, 2429.12, 2429.21-2429.22, 2429.24-2429.25, and 2429.27.

Any such exceptions must be filed on or before **APRIL 6, 2015**. Exceptions may be filed electronically at www.flra.gov, by selecting **eFile** under the **Filing a Case** tab and follow the instructions, or the can be filed by U.S. Mail addressed to:

Office of Case Intake & Publication
Federal Labor Relations Authority
1400 K Street, NW, 2nd Floor
Washington, DC 20424-0001


CHARLES R. CENTER
Chief Administrative Law Judge

Dated: March 4, 2015
Washington, D.C.



FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C.

OALJ 15-19

DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF PRISONS
U.S. PENITENTIARY
ATLANTA, GEORGIA

RESPONDENT

AND

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 1145

CHARGING PARTY

Case No. AT-CA-13-0020

Patricia J. Kush
For the General Counsel

Elisa Mason
For the Respondent

Kelvin Williams
For the Charging Party

Before: CHARLES R. CENTER
Chief Administrative Law Judge

DECISION

STATEMENT OF THE CASE

This is an unfair labor practice proceeding under the Federal Service Labor-Management Relations Statute, 5 U.S.C. §§ 7101-7135 (Statute), and the Rules and Regulations of the Federal Labor Relations Authority (FLRA/Authority), 5 C.F.R. part 2423.

On October 9, 2012, the American Federation of Government Employees, Local 1145 (Charging Party/Union) filed an unfair labor practice (ULP) charge against the Department of Justice, Federal Bureau of Prisons, U.S. Penitentiary (USP), Atlanta, Georgia (Respondent/Agency). (G.C. Ex. 1(a)). After conducting an investigation, the Regional

Director of the Atlanta Region issued a Complaint and Notice of Hearing against the Respondent on February 26, 2013, alleging that the Respondent violated § 7116(a)(1) and (5) of the Statute by implementing the practice of requiring bargaining unit employees to conduct random alcohol testing in the housing units of Respondent's facility without notifying the Union and providing it an opportunity to negotiate to the extent required by the Statute. (G.C. Ex. 1(b)). In its answer to the complaint, the Respondent admitted some of the factual allegations but denied that it committed the alleged unfair labor practice. (G.C. Ex. 1(c)). The Respondent also filed a Motion for Protective Order regarding certain evidence to be presented at the hearing on April 22, 2013. (G.C. Ex. 1(f)).

A hearing in the matter was conducted on April 30, 2013, in Atlanta, Georgia. At the hearing, all parties were represented and afforded an opportunity to be heard, to introduce evidence, and to examine witnesses. The Respondent's Motion for Protective Order was granted at the hearing without objection. The General Counsel and Respondent filed post-hearing briefs, which I have fully considered.

Based on the entire record, including my observation of the witnesses and their demeanor, the undersigned has determined that the Respondent changed conditions of employment for bargaining unit employees by requiring them to conduct random breathalyzer tests in the housing units at USP Atlanta. Therefore the Respondent violated § 7116(a)(1) and (5) of the Statute. In support of these determinations, I make the following findings of fact, conclusions of law, and recommendations.

FINDINGS OF FACT

The Respondent is an agency within the meaning of § 7103(a)(3) of the Statute. (G.C. Exs. 1(b) & 1(c)). The American Federation of Government Employees, Local 1145, (AFGE) is a labor organization within the meaning of § 7103(a)(4) of the Statute, and is the exclusive representative of a nationwide unit of employees that is appropriate for collective bargaining at the Respondent. (G.C. Exs. 1(b) & 1(c)).

The United States Penitentiary in Atlanta, Georgia is a medium security prison facility. There are three housing units at the Respondent's facility, which are designated as Housing Units A and B and the special housing unit referred to as the Dog House. (Tr. 24-25). These three units are further subdivided by three floors resulting in nine active housing units. (Tr. 24). Each floor contains rows of cells, a TV room, a common area, offices for the Unit Case Manager and Unit Counselor, and an officer's station. (Tr. 25). Housing Units A and B contain approximately 200 inmates per floor while the Dog House contains approximately 100 inmates per floor. (Tr. 26). There is one housing unit officer in each unit during the day shift as well as members of the unit team. (Tr. 46). From 2 p.m. through the evening shift, there are two housing unit officers per housing unit. (*Id.*). Unit Team staff members, including unit managers, counselors, case managers and unit secretaries, all have offices within the housing unit. (Tr. 47). They have weekend hours and late night shifts. (*Id.*). The Unit Team staff members attend the Federal Law Enforcement Training Academy and are trained and required to respond as corrections officers in emergency situations. (*Id.*).

The Respondent's correctional officers are responsible for conducting alcohol tests on inmates. (Tr. 15-16). There are two types of alcohol tests performed by the officers. Suspect testing is performed by officers on inmates who are suspected of possessing or consuming alcohol. (Tr. 17). When a suspect test is needed, the correctional officer takes inmates to the Lieutenant's office to perform testing. (Tr. 18). The administration of suspect testing is not at issue in this case. Random alcohol testing involves correctional officers testing a certain number of inmates, chosen at random, per shift. (Tr. 21). Correctional officers conduct the test using a breathalyzer called the Alco-Sensor. (Tr. 16). If the test is positive, the correctional officer waits a certain period of time then performs a second test. (*Id.*). If the second test is positive, the correctional officer prepares an incident report and the inmate is taken to the special housing unit. (*Id.*).

Before September 2012, correctional officers conducted random alcohol testing in the main corridor of the prison. (Tr. 18, 69). Housing Units A and B are located off of the main corridor on opposite sides. (Tr. 19). The Lieutenant's office and Captain's office are located beyond a grill off of the main corridor. (Tr. 10). Inmates and staff use the main corridor to move from one location to another within the prison. (Tr. 19-20). Inmates move through the corridor during morning work call and during ten minute moves that occur each hour. (Tr. 20).

One corrections officer is assigned to the main corridor duty station during shifts. (Tr. 18). Prior to September 2012, the officer assigned to the main corridor was instructed to randomly test ten inmates per shift in the main corridor. (Tr. 21). The officer selected inmates to test during a scheduled move or would summon an inmate from the housing unit to the main corridor for such random testing. (Tr. 21-22, 97-98).

Vance Bryant is a Senior Correctional Officer at USP Atlanta. (Tr. 15). Bryant testified that when performing random alcohol tests on inmates during moves in the corridor, he would pull the inmate aside and wait until the movement of other inmates was completed to test the inmate selected by him. (Tr. 21-22). Bryant testified that he used this procedure when testing in the main corridor so that there would be no other inmates around to get involved if an incident developed while the inmate was being tested. (Tr. 22). Bryant would call ahead to other officers after completing the alcohol test to let them know to expect the delayed movement of the tested inmate. (Tr. 95-96).

Alan Cohen was the captain at USP Atlanta in 2012. His office was located in the main corridor hallway, so he was able to observe alcohol testing conducted in the main corridor on a regular basis. (Tr. 70-71). Cohen testified that when testing was conducted in the main corridor, officers would only test inmates coming and going from Housing Unit A at the officer's desk in front of this unit. (Tr. 69, 89). Cohen testified that officers would stand in front of Housing Unit A when doing the testing and thus inmates from other housing units were not selected for testing. (*Id.*). Cohen testified that this practice resulted in no deterrence of alcohol use and that alcohol was being used throughout the prison. (*Id.*).

Cohen and Special Investigative Agent Gerson Rivera both testified that inmates were not being separated or segregated from the general population when random alcohol testing was done in the main corridor. (Tr. 71, 88). Cohen testified that he regularly observed

alcohol testing being completed during open moves while other inmates were in the main corridor. (Tr. 71). Rivera testified that since 2009 there have been no assaults on staff by inmates in the housing unit. (Tr. 90).

In September 2012, Cohen informed correctional officers that rather than conducting random alcohol testing in the main corridor, they were to start performing random alcohol tests within the housing units. (Tr. 23-24, 68-69). Since September 2012, random alcohol tests have been performed in a different housing unit each day. (Tr. 27). Correctional officers are still required to test ten inmates per shift. (*Id.*). Bryant testified that he would test inmates in the unit office located within the housing units. (*Id.*). He would test inmates with the office door shut, but it would not be locked and other inmates could see into the office. (Tr. 27-28, 65). Other officers perform the test in the same office or at the officer's station in the common area of the housing unit. (Tr. 28).

POSITIONS OF THE PARTIES

General Counsel

The General Counsel contends that the Respondent violated § 7116(a)(1) and (5) by precluding random alcohol testing in the main corridor and requiring correctional officers to conduct random alcohol testing of inmates in the housing units, without providing the Union notice and an opportunity to bargain. The General Counsel asserts that conducting random alcohol tests in the housing units was a change in conditions of employment and is distinguishable from the pat downs and cell searches routinely conducted in the housing areas. The General Counsel points out that the officer has to use a special piece of equipment for alcohol testing and that there may be a greater chance for confrontation as the test may be more likely to uncover an inmate's misconduct.

The General Counsel argues that requiring officers to conduct random alcohol testing in the housing units is a change because it increased the number of officers involved in the testing. The General Counsel notes that the housing units are set up differently from the main corridor, which means officers have to consider the new environment when conducting tests. The General Counsel argues the Authority has long recognized that changing the location where employees perform their job can be a change in conditions of employment, even where employees are still performing the same duties.

The General Counsel argues that the Respondent's decision to require officers to do random alcohol tests in the housing units had more than a de minimis effect on their conditions of employment. The General Counsel asserts that testing in the housing units is riskier because the officer can isolate the inmates when testing is conducted in the main corridor.

The General Counsel disputes the Respondent's contention that inmates were not isolated when tested in the main corridor. The General Counsel cites Bryant's testimony indicating he isolated inmates when performing tests in the main corridor. However, the General Counsel points out that the Respondent's witness, who observed inmates being

tested in the main corridor, was only at the institution for 23 months. The General Counsel asserts that the Respondent did not produce any testimony by correctional officers who followed a different procedure from Bryant, and the videotape of an officer using a different procedure was insufficient to counter Bryant's testimony.

The General Counsel argues that even if some correctional officers conducted random alcohol tests during prisoner moves in the main corridor, testing in the housing units represents a greater risk to bargaining unit employees. The General Counsel asserts that there are not as many inmates around to witness tests conducted in the main corridor relative to those present in a housing unit. The General Counsel argues that inmates in the housing units are more likely to see what is happening during testing because they are not focused on their own movement to a new location as they are during the ten minute moves through the main corridor.

The General Counsel contends that inmates behave differently when challenged by an officer in front of other inmates than when they are alone with the officer. Inmates may feel the need to resist when they are around their peers, especially if they are gang members. The General Counsel asserts that inmates may react violently if they fail the alcohol test and other nearby inmates may get involved. The General Counsel states the video of an incident at USP Atwater supports this assertion. (G.C. Ex. 2).

The General Counsel believes that Cohen's rationale for implementing testing in the housing units demonstrates the change is more than de minimis. Cohen's testimony that hundreds of inmates were being missed when testing was done in the corridor indicates that the Respondent expected more inmates to be tested when done in the housing units and that more positive tests would result. The General Counsel argues that this further increases the risk to officers by requiring them to test inmates in front of other inmates who have been consuming alcohol and are presumably more prone to violence as a result.

The General Counsel rejects any contention by the Respondent that the change here was "covered by" Articles 3 and 16 of the Respondent's and AFGE bargaining agreement. The General Counsel asserts that neither of those sections of the agreement expressly addressed the issue of alcohol testing nor are they "inseparably bound up with" them.

The General Counsel asserts that the Respondent failed to notify the Union of the change in this case and refused to bargain with the Union afterwards. The General Counsel asserts the Respondent's actions violated the Statute.

As a remedy, the General Counsel seeks a status quo ante relief. Specifically, it asks that the Respondent rescind its decision to require correctional officers to perform alcohol testing in the housing units and return to the procedures for testing that existed before September 2012. The General Counsel asserts that a status quo ante remedy is appropriate because: (1) the Respondent failed to notify the Union of its decision to implement random alcohol testing in the housing units; (2) the Union requested bargaining immediately after learning about the change; (3) the change significantly increased the risk faced by employees;

and (4) the Respondent failed to establish that a status quo ante remedy would impair the efficiency and effectiveness of its operations. The General Counsel contends that since random alcohol testing is still conducted in the main corridor, it would be simple to revert to performing all random testing in that area.

The General Counsel also requests that notice of the violation be posted on bulletin boards and circulated via email to Respondent's bargaining unit employees. The General Counsel contends that distributing the notice through email in addition to physical posting would best effectuate the purposes and policies of the Statute. The General Counsel argues that the record shows that bargaining unit employees have access to computers and regularly receive email from the Respondent.

Respondent

The Respondent asserts that it did not violate § 7116(a)(1) and (5) because the General Counsel failed to establish that alcohol testing in the housing units was more dangerous. The Respondent argues that there was no change in conditions of employment. The Respondent asserts that determining the location of random alcohol testing falls under management's right to determine its internal security practices and assign work under § 7106(a)(1) of the Statute. The Respondent contends there was no duty to bargain over appropriate arrangements and procedures for change because there was no change to working conditions. Respondent argues the alleged change in this case, that the housing unit becomes more dangerous by alcohol testing, is speculative and hypothetical.

The Respondent argues that testing in the housing units will not be more dangerous because it will reduce instances of alcohol usage and the number of intoxicated inmates. The Respondent argues Bryant's testimony that inmates were isolated when being tested in the main corridor was rebutted by Cohen and Rivera who testified that inmates were tested during open moves in the main corridor while other inmates were present. The Respondent also asserts that the video of an officer conducting alcohol testing during an open move supports its position. The Respondent claims Cohen's testimony, that an officer could not isolate an inmate for testing in the corridor because the inmate would miss their move, rebuts Bryant's testimony about the procedure he used. The Respondent argues that Bryant's own testimony contradicted his position that inmates could not be isolated in the housing unit during testing. The Respondent cites Bryant's testimony where he stated that he would take inmates to the unit office and close the door in order to perform the test away from other inmates.

The Respondent disputes Bryant's testimony that random alcohol testing was more dangerous in the housing units because the officer was alone. The Respondent points out that there are two housing unit officers on duty during evening shifts. The Respondent also states that Unit Team staff members have offices on the housing unit and work weekends and night shifts. The Respondent contends there was no evidence that officers could not conduct alcohol tests when other correctional workers, who were all trained law enforcement officers, were present.

Respondent argues that even if other staff were present during testing, there is no evidence that this prevents assaults. The Respondent contends that assaults on correctional staff occur even when numerous staff are present. The Respondent cites videos of assaults in General Counsel's Exhibit 2 and Agency Exhibit 9 as support for its assertion that assaults could happen even when multiple staff members are present.

The Respondent asserts that housing unit officers' duties require them to challenge inmates at all times and they conduct searches of inmates and their living quarters in the housing units to deter introduction of contraband. The Respondent asserts there is a logbook that requires each officer to conduct five shakedown of common areas or cells each shift. If contraband is found, inmates are likely to receive an incident report and be placed in the Special Housing Unit. The Respondent points out it also attempts to deter cellphone possession using a cellphone detector. The housing unit officers are required to do window taps in the cells in order to deter escapes. They are also required to make irregular checks of inmates so the inmates do not know when those checks will occur. The Respondent argues that random alcohol testing is but one of many tools the officers must use as part of their duty to deter dangerous behavior by inmates.

The Respondent contends there is no evidence that random alcohol testing puts an officer in a more dangerous environment than all the other ways officers challenge inmates. The Respondent argues that whether detecting alcohol, weapons, drugs, escape mechanisms, cellphones or other prohibited items, the duty is required of all officers and therefore the potential for confrontation with an inmate already exists. The Respondent contends that alcohol testing is reasonably related to the correctional officer's position description, which requires, "being in such hostile or life-threatening situations as riots, assaults and escape attempts." (Agency Ex. 7).

The Respondent contends that if conducting random alcohol testing in the housing units is a change in conditions of employment, the change is de minimis. According to the Respondent, the General Counsel did not produce any evidence that housing unit officers were affected in any way by the change. There was no evidence that violence increased after the change. The Respondent cites Cohen's testimony that alcohol consumption can lead to violence by inmates and that most alcohol consumption takes place in the housing unit. The Respondent contends it needs to control alcohol consumption in the housing units if it wants to reduce instances of consumption. The Respondent argues that the creation of a more dangerous environment is not a reasonably foreseeable effect of the change.

The Respondent asserts that requiring random alcohol testing in the housing units does not have an impact on the workload of housing unit officers because the testing itself involves a small amount of work that is substantially the same as the officers' other duties. The Respondent argues that since the testing rotates between ten locations within the prison, a housing unit officer would conduct testing, at most, three times a month.

Respondent insists that status quo ante relief would be inappropriate because it would disrupt and impair the efficiency and effectiveness of detecting and deterring the illegal introduction and use of alcohol at its facility. Cohen testified that USP Atlanta was failing in

that duty so he took appropriate steps to correct the deficiency. Respondent asserts that any adverse impact experienced by housing unit officers is minimal. Respondent contends there is no evidence in the record of any current impact on housing unit officers.

CONCLUSIONS OF LAW

Before implementing a change in conditions of employment for bargaining unit employees, an agency is required to provide the exclusive representative with notice of the change and an opportunity to bargain over those aspects of the change that are within the duty to bargain. *Fed. Bureau of Prisons, FCI, Bastrop, Tex.*, 55 FLRA 848, 852 (1999). The determination of whether a change in conditions of employment occurred involves an inquiry into the facts and circumstances regarding the Respondent's conduct and employees' conditions of employment. *SSA, Office of Hearings & Appeals, Charleston, S.C.*, 59 FLRA 646, 649 (2004). When, as here, an agency exercises a reserved management right and the substance of the decision is not itself subject to negotiation, the agency nonetheless has an obligation to give notice and bargain over procedures to implement that decision and appropriate arrangements for unit employees adversely affected by that decision, if the resulting change has more than a de minimis effect on conditions of employment. *Pension Benefit Guar. Corp.*, 59 FLRA 48, 50 (2003) (*Pension*).

Requiring correctional officers to perform random alcohol tests in the housing units, rather than the main corridor, changed conditions of employment for bargaining unit employees. Before September 2012, correctional officers were not required to perform random tests in the housing units. Bryant testified that when performing random alcohol tests in the main corridor, he would pull aside the inmate to be tested and wait for the other inmates to complete their move before he began the test. (Tr. 21-22). This allowed him to do the test while the inmate was isolated from other inmates. (Tr. 22). Bryant testified he used this procedure so that if there was an altercation, other inmates could not get involved. (Tr. 22). When Bryant was finished testing the inmate, he would call ahead to other officers to allow the inmate to complete the transition to a new location. (Tr. 95). Bryant also had the option of calling an inmate out of a housing unit to the main corridor to perform the test while the inmate was isolated. (Tr. 97).

After the Respondent directed correctional officers to perform random alcohol testing in the housing units, Bryant was not able to isolate the inmate in the main corridor as before. Bryant testified that within the housing units, he would test inmates in the unit office. (Tr. 27-28). However, the unit office was unlocked and other inmates were able to see what was going on inside the office while he conducted the random test. (*Id.*). Bryant testified that he had to keep an eye on the door to the office when performing testing to make sure no one entered. (Tr. 28, 64). The environment in the housing unit was different from the main corridor because it was not feasible to effectively isolate an inmate for testing in the housing unit to the same extent possible in the main corridor. The Authority has noted that "the location in which employees perform their duties, as well as other aspects of employees' office environments, are 'matters at the very heart of the traditional meaning of 'conditions of employment.' " *U.S. Dep't of HHS, SSA, Baltimore, Md.*, 36 FLRA 655 (1990) (quoting

Library of Cong. v. FLRA, 699 F.2d 1280, 1286 (D.C. Cir. 1983)). In this case, correctional officers were required to perform alcohol tests in the new environment of the housing units, which prevented them from utilizing the same procedures that were available to them when conducting random testing in the main corridor.

Under these circumstances, I find that the Respondent changed conditions of employment for bargaining unit employees by precluding random alcohol testing in the main corridor and requiring testing to be conducted in the housing units.

The duty to bargain applies where there is a change in conditions of employment and the impact of the change is more than de minimis. *U.S. Dep't of HHS, Soc. Sec. Admin.*, 24 FLRA 403 (1986) (*SSA*). In determining whether the impact of a change is more than de minimis, the Authority looks to the nature and extent of either the effects, or the reasonably foreseeable effects, of the change on bargaining unit employees' conditions of employment, at the time of the change. *U.S. Dep't of the Air Force, AFMC, Space & Missile Sys. Ctr., Detachment 12, Kirtland AFB, N.M.*, 64 FLRA 166, 173 (2009) (*Kirtland AFB*).

Respondent's decision to require random alcohol testing in the housing units at USP Atlanta had more than a de minimis effect on bargaining unit employees' conditions of employment. As noted above, correctional officers could not use the same procedure to isolate the inmates for testing in the housing units as was available in the main corridor. Testimony from Bryant indicated that he had to conduct testing in an unlocked office in the housing unit while in the main corridor he conducted testing behind secured doors. (Tr. 21-22). The Respondent contends the testimony by Cohen and Rivera that they observed officers testing inmates in the corridor, without isolating them, refutes Bryant's claims regarding the procedures he used. However, the Respondent's witnesses never claimed they saw Bryant himself perform testing without isolating the inmates. Even if Bryant was the only correctional officer to isolate inmates when testing them, changes that impact a single employee can exceed the de minimis standard. See *U.S. Dep't of the Air Force, 913th Air Wing, Willow Grove Air Reserve Station, Willow Grove, Pa.*, 57 FLRA 852, 857 (2002) (*Willow Grove*); *Veterans Admin. Med. Ctr., Phoenix, Ariz.*, 47 FLRA 419, 424 (1993); *SSA*, 24 FLRA at 403. It was reasonably foreseeable that requiring officers to conduct testing in the housing units would have an effect on the procedures they used in randomly testing inmates for alcohol. Although officers could test inmates in the unit office in the housing unit, the door to the office was not locked and other inmates could see in through the office windows so inmates could not be segregated to the same degree as they could be in the main corridor. (Tr. 27-28, 65).

In *Pension*, 59 FLRA at 51-52, where two employees were reassigned to smaller offices and lost access to a window, and in *Kirtland AFB*, 64 FLRA at 173-74, where a single employee was moved to a single, smaller office, the Authority held that those changes were more than de minimis. It is apparent from those cases that even relatively small changes in an employee's work environment are sufficient for the Authority to find a greater than de minimis change in conditions of employment. The change in environment here is more significant than those in both cases mentioned above. The Respondent argues the change is de minimis because random alcohol testing represents a small portion of the standard duty

day and is substantially the same as other duties that officers perform. However, the change at issue here is the location where the test is performed which impacts the procedures that could be used by officers to perform their duties. Thus, I find that the Respondent violated the Statute when it required correctional officers to perform random alcohol tests in the housing units at USP Atlanta.

REMEDY

In determining whether a status quo ante remedy would be appropriate in a 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. *Fed. Corr. Inst.*, 8 FLRA 604, 606 (1982).

The first three factors weigh in favor of awarding a status quo ante remedy. As discussed above, the Respondent failed to give advance notice of the change before it was implemented. As to the second factor, the Union did request to negotiate after it found out about the change. Further, the Respondent's conduct here was willful; it purposely directed correctional officers to perform random alcohol testing in the housing units. The fact that an agency believes it does not have the obligation to bargain does not mean its actions were not willful. *U.S. Dep't of Energy, W. Area Power Admin., Golden, Colo.*, 56 FLRA 9 (2000). In this case, the Respondent had the obligation to bargain over the impact and implementation of the change, even though it did not have to substantively negotiate over the decision to make the change.

The nature and extent of the impact the change had upon bargaining unit employees' working conditions also favors a status quo ante remedy. The effects of precluding correctional officers from conducting random alcohol tests in the main corridor and requiring them to test inmates in the housing units were more than de minimis as discussed above.

However, regarding the fifth FCI factor, I find that the Respondent has demonstrated that a status quo ante remedy would result in significant disruption to the efficiency and effectiveness of its operations at USP Atlanta. The Authority has held that a status quo ante remedy is not appropriate where record evidence demonstrates that the remedy could harm the safety or security of an agency's operations. *U.S. Dep't of Transp. & FAA*, 48 FLRA 1211 (1993); *Willow Grove*, 57 FLRA at 852. The Respondent has been directed to deter the introduction and use of alcohol among inmates at its facility. (Agency Ex. 2). The evidence presented showed that alcohol consumption by inmates could lead to violent altercations with staff. (G.C. Ex. 2; Tr. 31, 72, 74). Many of the instances of violence by intoxicated inmates at other facilities occurred because alcohol testing was not being conducted properly. (Tr. 71-72). Cohen testified that alcohol was being found constantly throughout the prison at

USP Atlanta when testing was conducted in the main corridor. (Tr. 69). He observed that the location where the testing was conducted in the main corridor prevented a large portion of inmates from being subject to testing. (Tr. 69-70). Thus there was a lack of a deterrent factor to prevent inmates from consuming alcohol. (*Id.*). Cohen decided to require testing in the housing units, where alcohol consumption was most likely to occur, so that more inmates would be subject to testing and thus deterred from consuming alcohol. (Tr. 69, 81). Requiring the Respondent to restrict random alcohol testing to the main corridor would prevent it from achieving its goal of deterring alcohol use among inmates. I find that forcing the Respondent to abandon alcohol testing in the housing units would disrupt the efficiency of the Respondent's operations. Therefore, a status quo ante order is not an appropriate remedy under the specific facts of this case.

The Respondent must instead fulfill its bargaining obligations under the Statute by prospectively bargaining in good faith over the impact and implementation of its decision to require random alcohol testing in the housing units. *U.S. Dep't of HUD*, 58 FLRA 33 (2002).

Based on the facts of this case, it is clear the Respondent must notify its employees that it will not implement changes in conditions of employment without providing advance notice to, and negotiating with, the Union. In accordance with the Authority's recent decision that unfair labor practice notices should, as a matter of course, be posted both on bulletin boards and electronically, such posting is ordered. *See U.S. Dep't of Justice, Fed. BOP, Fed. Transfer Ctr., Okla. City, Okla.*, 67 FLRA 221 (2014).

CONCLUSION

I find that the Respondent violated § 7116 (a)(1) and (5) of the Statute when it directed bargaining unit employees to conduct random alcohol testing in the housing units at USP Atlanta without providing the Union with notice and an opportunity to bargain. Therefore, I recommend that the Authority adopt the following Order:

ORDER

Pursuant to § 2423.41(c) of the Rules and Regulations of the Authority and § 7118 of the Federal Service Labor-Management Relations Statute (Statute), the Department of Justice, Federal Bureau of Prisons, U.S. Penitentiary, Atlanta, Georgia, shall:

1. Cease and desist from:

(a) Failing to notify and bargain with the American Federation of Government Employees, Local 1145 (Union) before requiring correctional officers to conduct random alcohol testing in the housing units.

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

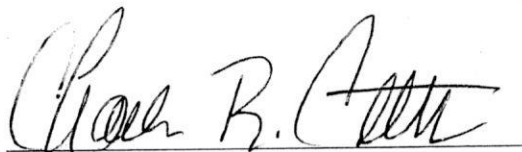
2. Take the following affirmative action in order to effectuate the purposes and policies of the Statute:

(a) Upon request, bargain in good faith with the Union to the extent required by the Statute, regarding the decision to require correctional officers to conduct random alcohol tests in the housing units at USP Atlanta.

(b) Post copies of the attached Notice on forms furnished by the Federal Labor Relations Authority. The forms must be signed by the Warden. The Respondent must post the signed Notice on its bulletin boards for 60 days, and distribute the Notice by email to all bargaining unit employees within 14 days from the issuance of this Order.

(c) Pursuant to § 2423.41(e) of the Authority's Rules and Regulations, notify the Regional Director, Atlanta Region, Federal Labor Relations Authority, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply.

Issued, Washington, D.C., March 4, 2015

A handwritten signature in black ink, appearing to read "Charles R. Center", written over a horizontal line.

CHARLES R. CENTER

Chief Administrative Law Judge

NOTICE TO ALL EMPLOYEES

POSTED BY ORDER OF

THE FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the Department of Justice, Federal Bureau of Prisons, U.S. Penitentiary, Atlanta, Georgia, violated the Federal Service Labor-Management Relations Statute (Statute), and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT change the conditions of employment of bargaining unit employees without providing the American Federation of Government Employees, Local 1145 (Union) with notice and an opportunity to bargain to the extent required by the Statute.

WE WILL NOT in any like or related manner, interfere with, restrain, or coerce bargaining unit employees in the exercise of their rights assured by the Statute.

WE WILL upon request, bargain in good faith with the Union to the extent required by the Statute, regarding the decision to require correctional officers to conduct random alcohol tests in the housing units at USP Atlanta.

(Agency/Respondent)

Dated: _____

By: _____
(Signature) (Title)

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

If employees have any questions concerning this Notice or compliance with its provisions, they may communicate directly with the Regional Director, Atlanta Regional Office, Federal Labor Relations Authority, whose address is: 225 Peachtree Street, Suite 1950, Atlanta, GA 30303, and whose telephone number is: 404-331-5300.

CERTIFICATE OF SERVICE

I hereby certify that copies of this **DECISION**, issued by CHARLES R. CENTER, Chief Administrative Law Judge, in Case No. AT-CA-13-0020, was sent to the following parties:

CERTIFIED MAIL & RETURN RECEIPT

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CERTIFIED NOS:

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7013-2250-0001-1588-9385

7013-2250-0001-1588-9392



Catherine Turner
Office of Administrative Law Judges
Federal Labor Relations Authority

Dated: March 4, 2015
Washington, DC