67 FLRA No. 152

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
COUNCIL OF PRISON LOCALS 33
LOCAL 506
(Union)

and

UNITED STATES
DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF PRISONS
FEDERAL CORRECTIONAL COMPLEX
COLEMAN, FLORIDA
(Agency)

0-NG-3117
(66 FLRA 819 (2012))

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DECISION AND ORDER
ON A NEGOTIABILITY ISSUE

September 23, 2014

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Before the Authority: Carol Waller Pope, Chairman, and Ernest DuBester and Patrick Pizzella, Members

I. Statement of the Case

In *AFGE, Council of Prison Locals 33, Local 506* (*Local 506*),[1] the Authority held, as relevant here, that a proposal concerning the watches worn by prison inmates (the proposal) is an appropriate arrangement under § 7106(b)(3) of the Federal Service Labor-Management Relations Statute (the Statute).[2] In *U.S. DOJ, Federal BOP, Federal Correctional Complex, Coleman, Florida v. FLRA* (*BOP*),[3] the U.S. Court of Appeals for the District of Columbia Circuit (the court) affirmed the Authority's holding that the proposal is an appropriate arrangement.[4] However, the court also remanded the case to the Authority "to allow it to determine whether, in light of the changed circumstances occasioned by the changed use of . . . metal detectors [at the Agency], the order to bargain over [the proposal] should be revised."[5]

Thus, the issue before us is whether the alleged "changed circumstances" warrant revision of our order to bargain over the proposal.[6] Despite the "changed circumstances" alleged by the Agency,[7] we find that the proposal continues to be an appropriate arrangement. Accordingly, we find that revision of our bargaining order in *Local 506* is unwarranted, and we order the Agency to negotiate with the Union over the proposal.

II. Background

The background is set forth fully in *Local 506* and is only briefly summarized here. The facility at issue here is a maximum-security penitentiary.[8] The prisoners' recreation yard is bordered by a buffer zone, called the "compound."[9] After the Agency decided to install two metal detectors (the compound detectors) in the compound, the Union submitted to the Agency a number of proposals, including the proposal at issue here.[10] Subsequently, the Union filed a negotiability appeal with the Authority; the Agency filed a statement of position; and the Union filed a response (the Union's response).

The wording of the proposal is as follows:

> Inmates will be required to turn in all watches that do not clear the metal detectors. This will be accomplished through a deadline of sixty (60) days from the date of completion of negotiations. If any inmate is caught not complying with this mandate their watch will be confiscated and considered contraband. Management will ensure all watches sold through commissary will be able to pass through the metal detector without activating the alarm.[11]

The proposal requires the Agency to: (1) require inmates to turn in any watch that does not clear the compound detectors (prohibited watches) within sixty days; (2) confiscate and treat as contraband any prohibited watch that is not turned in; and (3) ensure that no prohibited watches are sold through the commissary.[12]

According to the Union, the Agency's installation of the compound detectors has adversely affected officer safety by creating bottlenecks at the

[1] 66 FLRA 819 (2012).
[2] 5 U.S.C. § 7106(b)(3).
[3] 737 F.3d 779 (D.C. Cir. 2013).
[4] *Id.* at 788.
[5] *Id.*
[6] *Id.*
[7] *Id* at 783.
[8] *Local 506*, 66 FLRA at 819.
[9] *Id.* (internal quotation marks omitted).
[10] *Id.*
[11] *Id.* at 820.
[12] *Id.*

entrances of the compound-detector areas.[13] Before the Authority, the Union asserted – and the Agency conceded – that these bottlenecks reduce the effectiveness of the clearing process, and increase risks to the safety of the officers.[14]

As relevant here, the Authority held in *Local 506* that the proposal is not contrary to the Agency's right to determine internal-security practices under § 7106(a)(1) of the Statute.[15] Although the Authority found that the proposal affects management's exercise of this right,[16] the Authority nonetheless determined that the proposal is within the duty to bargain as an appropriate arrangement under § 7106(b)(3) of the Statute.[17] In this regard, first, the Authority found that the proposal is a sufficiently tailored arrangement that would ameliorate the adverse effects of the Agency's exercise of its right to determine internal-security practices because the proposal "is intended to reduce nuisance alarms triggered by prohibited watches, thereby moving inmates through the compound-detector bottlenecks more quickly."[18]

Second, the Authority found that the arrangement was appropriate because it did not excessively interfere with the affected management right.[19] In this connection, the Authority weighed the benefits that the proposal provides to employees against the burdens that it imposes on the exercise of management's rights.[20] The Authority found that the proposal's ban of prohibited watches would benefit employees by reducing the "delays, inefficiencies, and security risks caused by nuisance alarms at the compound-detector bottlenecks."[21] And the Authority noted that this benefit is consistent with the Agency's internal-security objectives, including screening standards that encourage a "zero[-]tolerance rule" for nuisance alarms.[22] Conversely, the Authority found that the Agency did not explain "what security objectives it intends to further by allowing inmates to wear, or buy in the commissary, watches that do not clear metal detectors."[23] In light of the Agency's failure to "offer any evidence or make any specific arguments explaining how the proposal burdens management's ability to determine internal[-]security practices," the Authority found that the proposal's benefits to employees outweighed the "unexplained burden" on management's right.[24]

The Agency filed a petition for review of the Authority's decision with the court, and the Authority cross-petitioned for enforcement of its decision and order. Regarding the proposal, the Agency argued to the court that the Authority's decision is "moot,"[25] or, alternatively, that the proposal is outside the duty to bargain because it excessively interferes with the Agency's right to determine internal-security practices.[26]

Regarding mootness, the Agency argued to the court that a new prison warden had changed the metal-detector policy so that the compound detectors would only be used "as needed."[27] Consequently, the Agency argued that the case was moot "because the bottleneck problem that prompted the Union's proposals [is] no longer an issue."[28]

But the court held that the Agency was "simply mistaken in its contention that the case is moot."[29] In this regard, the court emphasized that the Agency "has not irrevocably reversed its decision to place metal detectors in the . . . compound," and that the Agency "retains the discretion to decide how to utilize the [compound] detectors."[30] And the court noted that evidence in the record made it clear that the Agency "can increase the number of inmates required to pass through the [compound] detectors at any time, as it sees fit, and reintroduce the bottleneck problem that the Union seeks to address through its . . . proposal[]."[31] Accordingly, the court declined to vacate the Authority's decision in *Local 506*.[32]

Regarding the merits of the Authority's holding that the proposal is an appropriate arrangement, the court found that "the Authority's decision is eminently reasonable and supported by the record."[33] Accordingly, the court granted the Authority's cross-petition to enforce its decision and order regarding the proposal. However, the court also remanded the case to the Authority "to allow it to determine whether, in light of the changed circumstances occasioned by the changed use of the

[13] *Id.* at 822.
[14] *Id.* at 823.
[15] *Id.*
[16] *Id.* at 822.
[17] *Id.* at 823.
[18] *Id.*
[19] *Id.*
[20] *Id.* (citing *NAGE, Local R14-87*, 21 FLRA 24, 31-33 (1986)).
[21] *Id.*
[22] *Id.* (quoting Union's Response at 7) (internal quotation marks omitted).
[23] *Id.*
[24] *Id.*
[25] *BOP*, 737 F.3d at 782-83.
[26] *Id.* at 785.
[27] *Id.* at 782 (internal quotation marks omitted).
[28] *Id.*
[29] *Id.* at 783.
[30] *Id.*
[31] *Id.*
[32] *Id.*
[33] *Id.* at 785.

[compound] detectors, the order to bargain over [the proposal] should be revised."[34]

III. Analysis and Conclusions

In *BOP*, as discussed above, the court affirmed the Authority's holding that the proposal is an appropriate arrangement under § 7106(b)(3).[35] However, the court has asked us to determine whether "in light of the changed circumstances occasioned by the changed use of the [compound] detectors, the order to bargain over [the proposal] should be revised."[36]

The only alleged "changed circumstances" revolve around a new prison warden's decision to change the Agency's policy concerning use of the compound detectors.[37] Under the new policy (the new policy), the compound detectors will be used to screen inmates only "as needed for security purposes (randomly, suspicious behavior, etc.)."[38] According to the Agency, because the compound detectors are no longer used to screen *every* inmate leaving the compound,[39] the "issue of bottlenecks . . . has disappeared."[40]

Contrary to the Agency's assertion, however, the adverse effects of the installation of the compound detectors still exist. This is because, as the court discussed in *BOP*, the new policy preserves the Agency's discretion to determine how to use the compound detectors.[41] This means that, even under the new policy, "the [A]gency can increase the number of inmates required to pass through the [compound] detectors at any time, as it sees fit, and reintroduce the bottleneck problem that the Union seeks to address through its . . . proposal[]."[42] In fact, if the Agency exercised its discretion to determine that screening *every* inmate was "needed for security purposes," then it could do so under the new policy.[43]

Relatedly, the "changed circumstances"[44] do not eradicate the proposal's benefit to employees. As discussed in *Local 506*, banning prohibited watches would reduce the delays, inefficiencies, and security risks caused by nuisance alarms at the compound detectors.[45] That the Agency may implement the new policy in a manner that causes *fewer* bottlenecks at the compound detectors does not *eliminate* the benefit that the proposal provides in avoiding nuisance alarms.

Moreover, the "changed circumstances"[46] resulting from the new policy do not demonstrate any new burden on management's rights resulting from the proposal. That is, the Agency's failure to offer any evidence or make any specific arguments explaining how the proposal burdens management's ability to determine internal-security practices has *not* changed.[47] We note, in this regard, that neither party has sought to supplement the record.

For the foregoing reasons, the alleged "changed circumstances"[48] provide no basis for finding that the proposal is no longer an appropriate arrangement under § 7106(b)(3) of the Statute. Accordingly, we find that revision of our bargaining order in *Local 506* is unwarranted.

IV. Order

The Agency shall, upon request or as otherwise agreed to by the parties, negotiate with the Union over the proposal.

[34] *Id.* at 788.
[35] *Id.* at 785-86.
[36] *Id.* at 788.
[37] *Id.* at 782-83.
[38] Pet'r's Br., Addendum B, Movement Procedures Memorandum (Compound-Detector Policy) at 1.
[39] Pet'r's Br. at 24-25.
[40] *Id.* at 25.
[41] 737 F.3d at 783.
[42] *Id.*
[43] Compound-Detector Policy at 1.
[44] *BOP*, 737 F.3d at 783.
[45] 66 FLRA at 823.
[46] *BOP*, 737 F.3d at 783.
[47] *See BOP*, 737 F.3d at 785 (affirming the Authority's finding that the Agency failed to explain how the proposal's effect on the Agency's discretion to determine which watches are contraband would excessively interfere with the Agency's management rights); *Local 506*, 66 FLRA at 823.
[48] *BOP*, 737 F.3d at 783.