

OFFICE OF COMPLIANCE
LA 200, John Adams Building, 110 Second Street, S.E.
Washington, DC 20540-1999

<u>AFSCME Council 26, AFL-CIO ,</u>)	
)	
Petitioner,)	
Labor Organization)	
v.)	Case No. 03-LMR-02
)	Date: December 2, 2003
OFFICE OF THE ARCHITECT)	
OF THE CAPITOL)	
)	
Respondent,)	
Employing Office)	

Before the Board of Directors: Susan S. Robfogel, Chair; Barbara L. Camens, Alan V. Friedman; Roberta L. Holzwarth; Barbara Childs Wallace, Members.

DECISION AND ORDER OF THE BOARD OF DIRECTORS
ON NEGOTIABILITY ISSUE

I. Introduction

_____The petition for review comes before the Board of Directors of the Office of Compliance (“the Board”) pursuant to § 7105(a)(2)(E) of the Federal Service Labor Management Relations Statute (“FSLMRS”), as applied by § 220©(1) of the Congressional Accountability Act (“CAA”), 2 U.S.C. § 1351(c)(1). Upon careful consideration of the entire record, including the parties’ filings, the Board has determined, for the reasons set forth below, that the Union’s proposal is negotiable.

This case concerns the negotiability of the Petitioner labor organization’s (AFSCME Council 26) proposal essentially that the employing office (the Architect) immediately cease requiring bargaining unit employees to sign out and in when taking meal breaks. AFSCME Council 26 is the certified bargaining representative of a Architect unit composed of laborers and custodians.

II. Proposal in Dispute

1. The parties agree to implement Article 36 of the proposed collective bargaining agreement.
2. Article 36 does not require employees to sign in or out for meal breaks.
3. The [Architect] will provide supporting documents showing workload was inefficient and productivity was not effective.¹
4. The requirement for Night Senate Labor staff to sign in upon return from meal breaks shall cease immediately.

III. Positions of the Parties

The Architect initially responded to the proposal that the meal sign out/in requirement “is merely a reinstatement of a long standing past practice and there is, consequently, no adverse impact on affected employees.” In this proceeding, the Architect has taken the following position before the Board:

1. The disputed sign-in procedure had been in effect for thirty years, when in September 2001 the Architect decided to “suspend” the requirement “to address employee concerns in the spirit of labor management cooperation.” However, in December 2002 the Architect decided to reinstate the sign in process “for operational requirements and workload reasons.”
2. The proposal would force the Architect to implement a portion of the tentative master agreement that had not been ratified by AFSCME membership, pursuant to the negotiation ground rules, or approved by the Architect, pursuant to 5 U.S.C. §7114©(1)&(2).
3. The proposals are totally unrelated to Article 36 (Time Clocks) because employees do not use time clocks to sign in after meals. Further, the sign in requirement did not create any reasonable foreseeable impact on unit employees.
4. The proposal that employees not be required to sign in after breaks, and that the Architect forthwith cease that requirement, violates management’s right to assign work and direct the workforce in violation of 5 U.S.C. §7106(a)(2)(B).

¹ During this proceeding the Architect withdrew its position that #3 was non-negotiable, while contending that the non-negotiability of the remaining items rendered #3 moot.

AFSCME Council 26 contends that its proposal seeks to clarify the language of Article 36 “based upon negotiations”. AFSCME submits that the Architect has failed to provide a legal basis supporting its claims of non-negotiability regarding each of the dispute proposals.

IV. Analysis and Conclusions

_____ A fair reading of AFSCME’s proposal discloses that it seeks negotiation on whether or not the meal break sign-out/in procedure should be discontinued. AFSCME’s tack of channeling that goal through reference to a Time Clock provision of a tentative unratified and unapproved master agreement between the parties does not detract from the proposal’s essence. Whether the parties negotiate the question through the inchoate Time Clock provision, or do so from scratch, the underlying substance of the negotiation will be the same: whether the sign-out/in requirement will stay or go. The Board does not approach petitions for review of negotiability issues in a formalistic manner but instead distills proposals to identify their actual import. With that said, we must now consider whether a proposal to discontinue a meal break sign-out/in requirement is subject to the obligation to bargain.

Section 7103(a)(14) of Title 5, U.S.C., as applied by Sections 220 & 225(f)(1) of the Congressional Accountability Act [2 U.S.C. §§1351, 1361(f)(1)] defines “conditions of employment” as personnel policies, practices, and matters whether established by rule or regulation, or otherwise, affecting working conditions. Policies or practices requiring bargaining unit employees to record their work time, and from which their bargaining representative wishes to exempt them, constitutes a personnel policy and practice established by an employing office and is a matter which affects the working condition of bargaining unit employees and the employment relationship. *See, Planners, Estimators and Progressmen Association, Local No. 8 Union and Department of the Navy, Charleston Naval Shipyard*, 13 FLRA 455 (1983) [Charleston Naval Shipyard]. Moreover, a proposal to cease a particular employing office timekeeping procedure does not conflict with management’s right to determine the “methods and means” of performing its work under 5 U.S.C. §7106(b)(1) because the Architect has not shown, and it is not apparent, that the objective of determining the whereabouts of unit employees may only be achieved through the extant sign-out/in procedure. *Charleston Naval Shipyard, supra*.

Management policies regarding the recording of employee time and attendance constitutes a condition of employment the substance of which is a negotiable matter. *United States Department of Health and Human Services, Region II, New York, New York and National Treasury Employees Union and National Treasury Employees Union, Chapter 218*, 26 FLRA 814 (1987); *AFGE, AFL-CIO, Local 1603 and Department of the Navy, Navy Commissary Store, Patuxent River, MD*, 16 FLRA 96 (1984).

In summary, we conclude that AFSCME’s proposal involves a negotiable condition of employment.

V. **ORDER**

The Architect shall, upon request, or as otherwise agreed to by the parties, bargain on the proposal concerning the discontinuation of the meal break sign-out/in requirement.²

Issued, at Washington, D.C., December 2, 2003

² In finding the proposal to be negotiable, we make no judgment as to its merits.

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of December 2003, I delivered a copy of this Decision of the Board of Directors to the following parties by the below identified means:

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& Facsimile Mail
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