

MEMORANDUM

March 2, 1988

To: Susan Stuntz  
From: Debbie Schoonmaker *ds*  
Subject: Labor Hearing; AFGE Grievance on HHS Smoking Ban

A hearing was held today before an Administrative Law Judge at the Federal Labor Relations Authority (FLRA) concerning the Department of Health and Human Services (HHS) policy requiring smoke-free environments in all HHS occupied space. The American Federation of Government Employees (AFGE) has charged HHS with an unfair labor practice for imposing a ban without bargaining with the union.

HHS witnesses included Ron Davis (OSH), James Repace (EPA), and Surgeon General Koop. AFGE presented no witnesses. I arrived at the hearing as Davis' testimony was drawing to a close, so I am unable to report on his comments.

Repace said it is neither practical nor economic to increase ventilation in order to reduce cancer risk to an acceptable level. Ventilation rates, he said, must be increased by ~~226~~ <sup>256</sup> times to reach an acceptable cancer risk level. Ventilation is not the answer, Repace remarked; the source -- cigarette smoke -- must be eliminated. "Everyone agrees," he said, that in a sick building, the first step toward remedial action is a smoking ban.

Although AFGE's attorney got him to admit that labor groups should be involved in the formulation of workplace smoking policies, Surgeon General Koop stressed that permitting any smoking within the Public Health Service (PHS) damages the credibility of the agency. Koop said he feels hypocritical asking employers to ban smoking if the federal government permits its health department employees to smoke, even in restricted areas.

Two others, a labor relations officer and a personnel director, appeared as witnesses for HHS. Both outlined last year's events and discussions leading to adoption of the smoking policy based on "compelling need." They said the union was notified in August 1987 of the smoking ban, the substance of which was non-negotiable. HHS said it was willing to discuss impact and implementation proposals, however, none were forthcoming from the union.

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The judge heard closing remarks from the HHS lawyer who, along with the AFGE counsel, plans to submit more in post-hearing briefs by April 4. The agency's mission, vis a vis the compelling need argument, will be under the judge's scrutiny. The issue of compelling need and whether it is subject to the collective bargaining process is currently being reviewed in a case before the Supreme Court. The judge in today's hearing inferred that his decision would be based upon the outcome of the Supreme Court case.

cc: W. Kloepfer  
R. Lewis  
B. Moran  
P. Sparber

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