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April 4, 1988

Members of the Federal
Labor Relations Authority
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P.O. Box 33758
Washington, D.C. 20036-0758

In the Matter of: Department of Health and
Human Services and Office of the Assistant
Secretary of Health v. American Federation
of Government Employees, Local 41, AFL-CIO,
Case Nos. 3-CA-70664, 3-CA-80033, 3-CA-80085
and 3-CA-80086

Dear Board Members:

I have enclosed for your consideration a Petition
of The Tobacco Institute for leave to file a brief amicus
curiae in the above-captioned matter, as well as a copy of
the proposed brief that is being conditionally filed
herewith. Pursuant to the requirements of 5 C.F.R.
§ 2429.25, I have served the original and four copies with
the Administrative Law Judge, Judge William Devaney. In
addition, I have served copies of the enclosed Petition and
proposed brief upon the other parties to this matter.

Sincerely,



Matthew L. Jacobs

Enclosures

cc: Hon. William Devaney
Patricia E. Dratch, Esq.
Barry F. Smith, Esq.

TCAL0056478

UNITED STATES FEDERAL LABOR RELATIONS AUTHORITY

In the Matter of:

DEPARTMENT OF HEALTH AND HUMAN
SERVICES AND OFFICE OF THE
ASSISTANT SECRETARY FOR HEALTH,

Respondents,

v.

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 41, AFL-CIO,

Charging Party.

Case Nos. 3-CA-70664
3-CA-80033
3-CA-80085
3-CA-80086

PETITION OF THE TOBACCO INSTITUTE FOR LEAVE
TO FILE A BRIEF AMICUS CURIAE

The Tobacco Institute hereby moves, pursuant to 5 C.F.R. § 2429.9, for leave to file a brief amicus curiae in this proceeding. The brief of The Tobacco Institute ("The Institute") is addressed to a single issue: Respondents' assertion that scientific studies focusing on environmental tobacco smoke demonstrate a "compelling need" to dispense with bargaining and to impose unilaterally a ban on smoking in the workplace. As contemplated by 5 C.F.R. § 2429.9, The Institute's brief is being conditionally filed with this motion.

The Institute is a national trade association headquartered in Washington, D.C., that represents major United States cigarette manufacturers. The Institute has

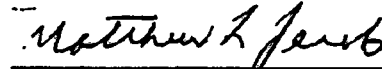
TCAL0056479

strong interests in this proceeding. The Institute's members produce the great bulk of cigarettes sold in the United States, and their customers include those members of Local 41 whose smoking would be restricted by the policy at issue here.

More particularly, The Institute has a substantial interest in the argument advanced by the Respondents to justify their refusal to submit the smoking ban at issue in this proceeding to collective bargaining. The purported justification is that environmental tobacco smoke ("ETS") produced by smokers in the workplace is harmful to nonsmokers. Yet, as set forth in the brief submitted herewith, the asserted evidence for the Respondent's position on ETS is meager, contradictory, and fundamentally flawed. In addition, reliable studies demonstrate that the major causes of indoor pollution are entirely unrelated to smoking. The same studies also show that improving ventilation is an effective and efficient way to deal with all indoor pollution, including ETS. The unbargained-for smoking ban imposed by Respondents thus addresses an illusory problem, yet fails to address the real cause of poor indoor air quality.

WHEREFORE, the Tobacco Institute requests that it be permitted to file its brief amicus curiae conditionally submitted herewith.

Respectfully submitted,



Clausen Ely, Jr.
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Dated: April 4, 1988