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National Federation of Federal Employees



James M. Peirce • President
Abraham Orlofsky • Secretary Treasurer

In reply refer to: GSA-CB-63

July 8, 1986

EXACT COPY

Ms. Marie T. Musante
Labor Relations Officer
General Services Administration
Washington, D.C. 20405

Dear Ms. Musante:

This refers to your letter of May 20, 1986 and the attached proposed GSA regulations on smoking in Federal buildings. In a telephone conversation with Susan Whitney of your staff the comment period was extended until July 11, 1986.

The proposal would prohibit smoking in Federal buildings except in specifically-designated areas. It also restricts the area which may be designated by an agency as a "smoking" area. NFFE is, of course, aware of the ever-growing body of scientific evidence that tobacco smoke presents a health hazard not only to the smoker, but also to those exposed to sidestream smoke. We recognize this as an occupational health issue. We are also aware of research that suggests that smoking restrictions and cessation programs implemented in places of employment are important reinforcements in assisting people in stopping to smoke. For these reasons we support the intent of the proposed regulations. However, we also recognize the fact that Federal employees are affected by a variety of contaminants in the air they breathe which emanate from a number of sources besides those found in tobacco smoke. The proposed regulation presents such a piecemeal approach to regulating the air quality of Federal workplaces as to render it unacceptable. Furthermore, the proposal fails to take cognizance of the difficulty some people encounter in their efforts to stop smoking and does not sufficiently accommodate the physical and emotional needs of addicted smokers. Moreover, of major importance to labor organizations is the fact that the proposal completely fails to recognize and address the rights of exclusive representatives in determining these important employment conditions. For these reasons, we submit that major changes to the proposal are necessary.

Air pollution has been found to be a major source of illness as well

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as other health related and performance problems in the indoor working environment. Organic chemicals released from rugs, adhesives, furniture, pesticides, sewer gas, cleaning fluids, toners, inks, fluorescent lights and smoking are concentrated by restricted air exchange. Inorganic pollutants from smoking and radon emissions and asbestos from building materials combine with dust and molds to alter the work environment detrimentally. The purpose of any GSA regulation on air quality should be to ensure a basic policy not only to avoid these problems but to also maintain vigilance so as to address and rectify such problems at their early stages where they first begin to develop. As the Government's "landlord", GSA is in a unique position to ensure the occupational health of Federal workers (and the health of visitors) by addressing the matter of indoor air quality in a comprehensive manner.

The instant regulation addresses only one source of indoor air pollution - tobacco smoke. Such piecemeal regulation of air pollutants offers a piecemeal approach to the everyday problem that is not only inefficient and ineffective but may also possibly have contradictory results. This proposed regulation seeks to regulate only worker behavior and utterly fails to touch on any problems caused by work processes or the physical building and equipment themselves. This, we submit, is not only shortsighted but fails to fulfill what should be GSA's real purpose: assuring clean air for those who occupy or visit GSA-controlled buildings and facilities.

GSA should be a leader regarding the air quality of indoor workplaces by requiring the purchase, installation, operation and maintenance of equipment and processes designed to provide Federal workers with clean air on the job. Only by addressing indoor air quality in such a comprehensive manner will the health of employees and visitors be protected.

Whether one views tobacco smoking as a habit or a physical/psychological addiction, there is no doubt that habitual smokers will encounter considerable difficulty in adjusting to these regulations and/or in their efforts to stop smoking entirely. It is unreasonable and insensitive to mandate that agencies prohibit smoking in nearly every part of the workplace without also mandating that agencies offer reasonable assistance and services to those who wish to stop smoking, and also consider the effects on employees whose work performance may be, at least temporarily, adversely affected by these regulations. Such considerations will include among others, counseling and other services to smokers who need help in stopping; the gradual implementation of such regulations so that smokers can adjust to the new requirements; the effectuation of performance evaluations on employees whose performance may temporarily suffer due to this adjustment or due to their frequent use of designated smoking areas; etc. Indeed, failing to reasonably accommodate the

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needs of smokers may be a violation of the Rehabilitation Act, 29 U.S.C. §791.

Most important is the fact that since these various accommodations only vary on the basis of the needs of individual installations and may have to be reached on an ad hoc basis, it is essential that the regulations require that agencies formulate their accommodations after consultation and negotiation with employees and their representatives, as appropriate. It is clear that smoking in the workplace is a condition of employment as defined in 5 U.S.C. §7103(a) (14) and as such, is a mandatory subject of bargaining with exclusive representatives. However, even for those employees not represented by exclusive bargaining agents or covered by collective bargaining contracts, it would be advisable for agencies to consult with the employees who would be affected by these regulations, since such consultations would not only enhance morale, but would assure more constructive cooperation and more effective compliance with the regulations.

As you know, a union holding exclusive recognition has a statutory duty to fairly represent all employees in the bargaining unit. Consequently our Locals have had significant experience in addressing issues regarding which there are a variety of strong positions among unit employees. Smoking in the workplace is a prime example. Local parties have shown great ingenuity and creativity in finding arrangements, both formal and informal, which address everyone's needs. By directing agencies to work together with union and/or other employee representatives to implement the regulations, GSA will not only reaffirm the agencies with statutory requirements of collective bargaining, but will also promote its intent of protecting the health of employees and visitors.

We are also disturbed by the apparent bias in the proposed regulations in favor of higher level managers in section (b)(3) which states, "A private office may be declared a "smoking" area by the agency." It is axiomatic that other employees as well as visitors will, of necessity, have to spend time in these offices on official business and will thus be exposed to sidestream smoke. However, private offices are much more likely to be occupied by a higher level manager while "rank and file" employees are nearly always in shared workspace. The physical and emotional effects of a prohibition of smoking will be the same on all smokers, regardless of grade or rank. To mitigate these effects on the basis of one's status in the agency appears eminently unfair. It would be particularly aggravating to employees for a manager with a private office in which smoking is allowed to enforce a prohibition on smoking in general office space.

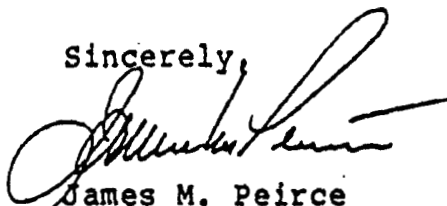
In conclusion, we are unable to support these proposed regulations because; (1) they fail to address the overall issue of air quality

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in GSA controlled buildings and facilities. The piecemeal approach of this proposal is unrealistic and therefore is unacceptable; (2) the proposed regulations fail to require agencies to make reasonable accommodations to the needs of smokers in implementing any restrictions on smoking in the workplace; (3) the regulations fail to require that agencies formulate their means of accommodation through consultation or negotiations with employees and their union representatives, as appropriate, thus giving local parties the flexibility to implement the regulations' intent on the basis of local needs and after full compliance with statutory bargaining obligations; and (4) the proposed regulations unfairly and unreasonably distinguish between higher level managers and private and rank and file employees.

If GSA would like to discuss these comments in greater detail, please contact Labor Relations Specialist Charlie Bernhardt at 862-4455. In any written reply to this letter, please refer to GSA-CB-63.

Sincerely,



James M. Peirce
President