



**INTERNATIONAL
ASSOCIATION
OF MACHINISTS
AND AEROSPACE
WORKERS**

Machinists Building
1300 Connecticut Avenue
Washington, D.C. 20036

Area Code 202
857-5200

OFFICE OF THE INTERNATIONAL PRESIDENT

February 12, 1987

ATTACHMENT E

Mr. John Leyden
Executive Director
Federal/Postal Division
AFL-CIO Building
Room 308
815 16th Street, N.W.
Washington, D.C. 20006

Dear John,

On February 8, 1987, the General Services Administration's new rule on smoking in GSA controlled buildings and facilities went into effect.

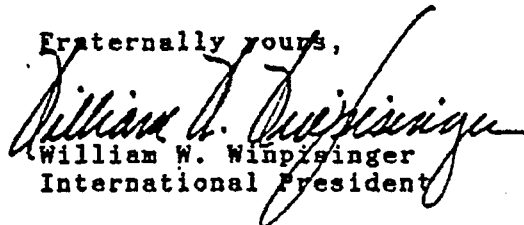
We believe this new rule has potentially far reaching consequences for collective bargaining in the federal sector. Accordingly, our legal department prepared the attached analysis of the rule in order to assist our bargaining representatives and local union officials in responding to agency efforts to implement the GSA policy. The memorandum concludes that in the vast majority of cases, agency heads and local management is required to bargain fully before seeking to impose any new restrictions on smoking prior to the expiration of any existing collective bargaining agreement.

We would be very interested to know whether other P.E.D. unions agree with our analysis, as well as, how they are reacting to the new policy.

Please feel free to forward this information to other P.E.D. unions if you feel it appropriate.

I look forward to hearing from you on this matter.

Fraternally yours,


William W. Wimpfinger
International President

WWW/pal

Attachment



TCAL0058082

MEMORANDUM

Collective Bargaining Rights
Under the GSA Smoking Rule

On December 8, 1986, the General Services Administration ("GSA") issued a final rule regarding smoking in GSA-controlled buildings and facilities. 51 F.R. 44258, 41 CFR Part 101-20. This rule would place new limits on smoking in office space and other employee work areas in federal buildings.

Since the method of implementing this regulation -- by GSA, agency heads and local management -- could have far reaching consequences for federal sector labor relations, we must ensure that federal agencies do not use the smoking issue to set a precedent that will enhance management's ability to make unilateral changes in working conditions covering a wide range of issues in the future.

Policies affecting smoking in the workplace are conditions of employment subject to the agency's duty to bargain with a union under the Civil Service Reform Act ("CSRA"). The Federal Labor Relations Authority ("FLRA") has recognized workplace smoking as a condition of employment under 5 U.S.C. Chap. 71, See Social Security Administration, 19 F.L.R.A. No. 47 (1985), and this ruling is fully consistent with court and administrative decisions in the public and private sectors. See e.g., Gallenkamp Stores Co. v. NLRB, 402 F.2d 525, 529 n.4 (9th Cir. 1968) ("company rules concerning coffee breaks, lunch periods, smoking, employee discipline, and dress are mandatory bargaining subjects") (citations

TCAL0058083

omitted); Chemtronics, Inc., 236 N.L.R.B. 178 (1978) (unlawful to deny employees smoking privileges because of union activities); Commonwealth of Pennsylvania v. Pennsylvania Labor Relations Board, 459 A.2d 452, 455 (Pa. Commw. 1983).

GSA apparently has never questioned the correctness of this general rule or its applicability to its recent smoking regulations case. However, the agency's failure to spell out its understanding of the scope of the duty to bargain under the CSRA and its traditional hostility toward meaningful collective bargaining in the federal sector have caused us substantial concern throughout the rulemaking process.

In particular, earlier versions of GSA's smoking regulations suggested that GSA originally viewed its smoking policy as "government-wide" in scope. As you know, the CSRA exempts "government-wide" rules from an agency's duty to bargain. Instead, an agency such as GSA need only provide consultation rights to unions under 5 U.S.C. 7117 before issuing such a rule. Since a successful GSA claim of government-wide applicability regarding the smoking rule would potentially have had far reaching consequences for bargaining on all subjects in the federal sector, the IAM's comments on the rule stressed the legal hazards GSA faced if it pursued such a course and the importance of promoting full collective bargaining.

We now believe that GSA's final regulations belatedly recognize that the new smoking rule is not government-wide in scope. Section 2(g) of the final rule no longer refers to the provisions of the CSRA governing consultation on government-wide rules, but instead refers to the broader, more inclusive

requirements of 5 U.S.C. Chap. 71. */ It is our conclusion, therefore, that agency management is now obligated to bargain fully with federal unions prior to making any change in workplace smoking policies.

GSA's rules became effective on February 8, 1987 and will require agencies to begin considering their bargaining obligation at that time. Since local unions will undoubtedly receive communications from agency heads or local management soon thereafter, and since we anticipate that some agencies will insist that GSA's rules are "government wide" and will, therefore, refuse to bargain over workplace smoking policies, we should inform business representatives and local unions of the following so they will be prepared to respond appropriately to agency management demands.

° If a collective bargaining agreement includes language on workplace smoking, contract provisions regarding smoking remain effective for the life of that agreement, unless the union agrees to a modification.

° If a collective bargaining agreement is silent but local practice has permitted smoking, that practice may have become a condition of employment. In such cases, no change is required, absent union agreement, until the expiration of

*/ Section 2(g) of the final GSA rule states:

Prior to implementation of this regulation, where there is an exclusive representative for the employees, the Agency shall meet its obligation under 5 U.S.C. Chap. 71. In all other cases, agencies should consult directly with employees.

the current contract. Disputes over whether a past practice has become an element of the collective bargaining agreement are arbitrable.

° If neither the collective bargaining agreement nor past practice has established a smoking policy, or the collective bargaining agreement has expired, agency management is under a continuing obligation to bargain over both the content and implementation of the smoking policy as it affects working areas.

Under GSA's final rule, agency heads retain discretion to designate the number and locations of smoking areas in each facility. Their ability to exercise that authority is subject to the duty to bargain. Thus, even if the agency claims that it has no obligation to bargain over the establishment of the GSA smoking policy, the agency remains obliged to negotiate with the union over the implementation of the smoking policy in working areas. */

*/ As stated earlier, it is the IAM's position that GSA's smoking regulations are not "government-wide" rules. Local officials should be aware, however, that in National Treasury Employees Union, 3 F.L.R.A. 748 (1980), the FLRA held that government-wide rules include rules "generally applicable throughout the federal government . . . though not, of course, to every federal employee." That FLRA decision was never appealed. Since acceptance of this principal would narrow the scope of bargaining in the federal sector, we have a vital interest in opposing any agency attempt to broadly apply that FLRA decision. It is possible that some aspects of the GSA rule ultimately will be found to have "government-wide" applicability. However, since GSA's final rule leaves the ultimate decision on some matters -- most prominently the regulation of smoking in general office space and corridors, lobbies and restrooms -- to each agency, we believe agency management must accord local unions full bargaining rights on the impact and implementation of the smoking policies in any of those areas.

TCAL0058086

° Agencies are required to negotiate over enforcement procedures for the smoking policy. Under the GSA rule, agencies must develop enforcement guidelines and procedures for implementing those guidelines.

The duty to bargain over enforcement of smoking rules is no different than the duty to bargain over the enforcement of any other work rule established by management. And in this case, we believe locals should resist management efforts to impose serious penalties except for the most egregious, repeat offender.

TCAL0058087