

**OFFICE OF ADMINISTRATIVE LAW JUDGES**

**WASHINGTON, D.C. 20424-0001**

554TH OPERATIONS SUPPLY WING NELLIS AIR FORCE BASE, NEVADA

Respondent

and

Case No.  
SF-CA-30064

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1199,  
AFL-CIO

Charging Party

Major Phillip G. Tidmore

Captain Tony R. Roberts

For the Respondent

Yolanda Shepherd Eckford, Esquire

For the General Counsel

Before: BURTON S. STERNBURG

Administrative Law Judge

**DECISION**

**Statement of the Case**

This is a proceeding under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the U.S. Code, 5 U.S.C. Section 7101, et seq., and the Rules and Regulations issued thereunder.

Pursuant to an amended charge first filed on October 13, 1992, by American Federation of Government Employees, Local 1199, AFL-CIO, (hereinafter called the Union), against the 554th Operations Supply Wing,

Nellis Air Force Base, Nevada, (hereinafter called the Respondent), a Complaint and Notice of Hearing was issued on January 15, 1993 by the Regional Director for the San Francisco, California Regional Office, Federal Labor Relations Authority. The Complaint alleges that Respondent violated Sections 7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute, (hereinafter called the Statute), by unilaterally effecting a change in the duties of various unit employees without first notifying the Union and affording it the opportunity to negotiate the impact and manner of implementation of the change.

A hearing was held in the captioned matter on July 14, 1993 in Las Vegas, Nevada. All parties were afforded the full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues involved herein. The Respondent and the General Counsel submitted post-hearing briefs on August 12 and 16, 1993, respectively, which have been duly considered.

Upon the basis of the entire record, including my observation of the witnesses and their demeanor, I make the following findings of fact<sup>(1)</sup>, conclusions and recommendations.

#### Findings of Fact

The Union is the certified exclusive representative of a unit of employees at Respondent which includes aircraft mechanics assigned to the Equipment Maintenance Squadron (Squadron). The aircraft mechanics in the Squadron work on aircraft in various buildings located throughout the Air Force Base. As part of their duties the aircraft mechanics are charged with the responsibility for policing the areas in which they work on aircraft to make sure that there is no object in the work area which could cause any damage to the aircraft which they are working on. To this end at the beginning of their respective shifts the aircraft mechanics walk around the buildings, hangars, etc., where they work and pick up any metal items, such as nuts, bolts and cans which could possibly damage the aircraft that they are working on. The area so policed, on occasion, includes the outside areas of the buildings where aircraft might be wheeled to the "flight line" for further tests<sup>(2)</sup>. All these walks are known as "FOD Walks". "FOD" stands for "foreign object damage". The usual "FOD Walks" take approximately five minutes.

In September 1992, Respondent held a briefing session with the aircraft mechanics wherein, among other things, it informed the mechanics that they were going to be required to participate in a massive clean-up effort across the entire flight line. The flight line consists of the runways and the area dividing the runways. The area dividing the runways consists of rocky uneven desert terrain. The length of the entire flight line is approximately one mile. Respondent referred to this upcoming clean up project as a "FOD Walk".

On the designated date in September, the aircraft mechanics were given garbage bags and directed to pick up everything on the ground for the entire flight line, including garbage. The mechanics then proceeded to walk the entire flight line, the runways and the rocky desert terrain separating the runways. The walk lasted approximately one hour.

Upon hearing of the September walk from some of the mechanics, Ms. Eleanor Mickelson, Union President, contacted Mr. Fred Hamlin, Respondent's Personnel Officer, concerning the matter and was informed by Mr. Hamlin that it was "okay as long as they gave the employees notice" of the clean-up project.

Mr. Hamlin further stated that Respondent's position was consistent with an earlier ruling by the San Francisco Regional Office of the FLRA.<sup>(3)</sup> Mr. Hamlin refused Ms. Mickelson's request to bargain over the September clean-up project, citing the previous decision of the Region with respect to the January 1992 clean-up project. By letter dated September 22, 1992 Ms. Mickelson renewed her request to bargain. Respondent replied by letter dated September 28, 1992, taking the position that the matter was covered by the earlier decision of the Regional Director and that in any event the clean-up was no different than the FOD Walks performed by the mechanics on a daily basis.

Ms. Mickelson filed the instant unfair labor practice on October 13, 1992. In November 1992, while the unfair labor practice was being processed, Respondent ordered the aircraft mechanics to participate in another flight line clean-up project. This clean-up was occasioned by an Open House ceremony which had been attended by some 200,000 people.

Upon learning of the November 1992 clean-up project the Union amended the pending unfair labor practice charge to include the November 1992 clean-up project which again was scheduled without any prior notice or bargaining with the Union.

The November 1992 flight line clean-up project was conducted in the same manner as the September 1992 clean-up project. The only difference appears to have been the amount and type of trash picked up by the mechanics. According to the record testimony, there were many hamburger and hot dog wrappers discarded along the flight line area.

According to the credited testimony of Mr. William Cormier and Mr. Frank Zupanic, both of whom are aircraft mechanics who have been working at the air base for over fourteen years, prior to September 1992 they had never been required to participate in cleanup projects covering the entire flight line.

The position description for aircraft mechanics and aircraft engine mechanics under "Duty 8: Cleans work area and equipment" states as follows:

A. Accomplishes and complies with established FOD regulations and procedures on assigned aircraft and related work areas.

B. Cleans work areas as necessary and at the end of the shift. Equipment and tools are put away in a timely manner when returned to the shop.

AFR 66-33 entitled "FOREIGN OBJECT DAMAGE (FOD) PREVENTION PROGRAM" which covers Nellis Air Force Base in addition to generally setting forth a program to eliminate damage to aircraft caused by foreign objects provides in Supplement 1 dated 18 September 1990 as follows:

4e(2). Nellis AFB aircraft maintenance units (AMUs) will accomplish a minimum of two FOD walks per day. The first FOD walk will be prior to the sortie of the day. . . . The areas of responsibility will include taxiway Fox and the areas surrounding the AMU buildings. . . . FOD walks will include emptying all FOD, trash, and butt cans stationed within the

respective area.

### Conclusions

The General Counsel takes the position that Respondent violated Sections 7116(a)(1) and (5) of the Statute when it required the aircraft mechanics to conduct FOD walks across the entire flight line. According to the General Counsel such extensive FOD walks constituted a change in the aircraft mechanics' existing conditions of employment. In such circumstances, the Union was entitled to advanced notice of the change and the opportunity to request bargaining on the impact and manner of implementation of the change.

Respondent, on the other hand, takes the position that the FOD walks across the entire flight line were covered by the existing Air Force regulations and employee job descriptions and therefore did not constitute a change in a condition of employment. To the extent that there might be disagreement with the aforesaid position of the Respondent, Respondent argues in the alternative that it was under no obligation to bargain with the Union over such change since the impact on the employees' conditions of employment was de minimis.

A reading of the respective positions of the parties makes it plain that resolution of the instant controversy turns on whether FOD walks across the entire flight line constituted a change in the aircraft mechanics' conditions of employment and, if so, whether such change had more than a de minimis impact on the aircraft mechanics.

Based upon the credited testimony of Mr. Cormier and Mr. Zupanic and a literal reading of their job descriptions, I find in agreement with the contention of the General Counsel that the 1992 so-called FOD walks across the entire flight line constituted a change in the aircraft mechanics' conditions of employment. Thus, according to their testimony and their job descriptions, FOD walks were to be conducted around the buildings where the aircraft mechanics worked as well as those portions of the air base outside the buildings where the aircraft were being serviced by the mechanics. In this latter connection, according to the credited record testimony, when aircraft were scheduled to be worked on outside the buildings an aircraft mechanic always preceded the aircraft to the outside work area in order to inspect the ground to insure that there were no foreign objects lying on the ground that could possibly damage the aircraft.

The FOD walks referred to in the aircraft mechanics' job description were designed to insure that there was no damage to the aircraft upon which the aircraft mechanics were working. The FOD walks along the entire flight line had no such connection to the work being performed by the aircraft mechanics. Rather they appeared to be solely of a cosmetic nature, i.e. cleaning up after an open house at the base.

Having concluded that the newly assigned walks along the entire flight line constituted a change in the employees' conditions of employment, it must now be decided whether or not the change had more than a de minimis impact.

Again, contrary to the position of Respondent, I find that FOD walks along the entire flight line had more

that a de minimis impact on the aircraft mechanics. Aside from the demeaning aspect of the assignment, the fact that the distance to be walked was many times greater than that involved in the daily walks around the buildings where aircraft were being serviced might well have serious health implications. It is conceivable that one's physical condition might well allow the shorter daily FOD walks but not the longer one mile walks along the entire flight line. Similarly, one suffering a mild illness might well be able to easily handle the daily FOD walks but not the longer walks. Finally, one might have the proper shoes and clothing for the shorter walks but not the longer ones along the entire flight line.

Based upon the foregoing conclusions and observations, I find that Respondent's action in instituting the FOD walks along the entire flight line without first giving the Union appropriate notice and the opportunity to request bargaining over the impact and manner of implementation of the change violated Sections 7116(a)(1) and (5) of the Statute. Accordingly, it is recommended that the Federal Labor Relations Authority issue the following Order designed to effectuate the purposes and policies of the Statute.

### ORDER

Pursuant to section 2423.29 of the Federal Labor Relations Authority's Rules and Regulations and section 7118 of the Statute, it is hereby ordered that the 554th Operations Supply Wing, Nellis Air Force Base, Nevada, shall:

1. Cease and desist from:

(a) Unilaterally changing working conditions of unit employees by assigning FOD walks across the entire flight line, without first notifying American Federation of Government Employees, Local 1199, AFL-CIO, the exclusive representative of certain of its employees, and affording it the opportunity to bargain over the impact and implementation of the change.

(b) In any like or related manner, interfering with, restraining or coercing its employees in the exercise of their rights assured by the Federal Service Labor-Management Relations Statute.

2. Take the following affirmative action in order to effectuate the purposes and policies of the Federal Service Labor-Management Relations Statute:

(a) Upon request, bargain with American Federation of Government Employees, Local 1199, AFL-CIO, over the impact of the assignment of FOD walks across the entire flight line and over the impact and implementation of any future assignment of FOD walks across the entire flight line, or any like or related work assignments, to bargaining unit employees.

(b) Post at all facilities of the 554th Operations Supply Wing, Nellis Air Force Base, Nevada where bargaining unit employees represented by American Federation of Government Employees, Local 1199,

AFL-CIO are located, copies of the attached Notice on forms to be furnished by the Federal Labor Relations Authority. Upon receipt of such forms, they shall be signed by the Commanding Officer of the 554th Operations Supply Wing, and shall be posted and maintained for 60 consecutive days thereafter, in conspicuous places, including all bulletin boards and other places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that such Notices are not altered, defaced, or covered by any other material.

(c) Pursuant to section 2423.30 of the Authority's Rules and Regulations, notify the Regional Director of the San Francisco Region, 901 Market Street, Suite 220, San Francisco, CA 94103-1791, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

Issued, Washington, DC, June 1, 1994

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BURTON S. STERNBURG

Administrative Law Judge

**NOTICE TO ALL EMPLOYEES**

**AS ORDERED BY THE FEDERAL LABOR RELATIONS AUTHORITY**

**AND TO EFFECTUATE THE POLICIES OF THE**

**FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS STATUTE**

**WE HEREBY NOTIFY OUR EMPLOYEES THAT:**

WE WILL NOT unilaterally change working conditions of unit employees by assigning FOD walks across the entire flight line without first notifying the American Federation of Government Employees, Local 1199, AFL-CIO, the exclusive representative of certain of our employees, and affording it the opportunity to bargain over the impact and implementation of the change.

WE WILL NOT in any like or related manner, interfere with, restrain or coerce our employees in the exercise of their rights assured by the Federal Service Labor-Management Relations Statute.

WE WILL, upon request, bargain with the Union over the impact of the assignment of FOD walks across the entire flight line and over the impact and implementation of any future assignment of FOD walks across the entire flight line, or any like or related work assignments, to bargaining unit employees.

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(Activity)

Date: \_\_\_\_\_ By: \_\_\_\_\_

(Signature)

(Title)

This Notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material.

If employees have any questions concerning this Notice or compliance with any of its provisions, they may communicate directly with the Regional Director of the Federal Labor Relations Authority, San Francisco Region, 901 Market Street, Suite 220, San Francisco, CA 94103-1791, and whose telephone number is: (415) 744-4000.

Dated: June 1, 1994

Washington, DC

1. The facts for the most part are not in dispute. To the extent that the General Counsel's summary of facts set forth in her post-hearing brief comports with the record and my credibility findings, I have adopted same.
2. On those occasions when a plane is wheeled out to the flight line for further tests, the mechanic walks ahead of the aircraft and polices the area to insure that there are no pieces of metal on the ground which could harm the aircraft.
3. The ruling which Mr. Hamlin referred to concerned a flight line clean-up which occurred in January 1992. The Regional Director dismissed the ULP charge filed by the Union in Case No. SF-CA-20270 on the ground that the impact of the January 1992 clean-up was de minimis. In reaching this conclusion the Regional

Director noted that there was "no evidence that the (Respondent) intended to use civilians for the walk in the future".