UNITED STATES OF AMERICA

FEDERAL LABOR RELATIONS AUTHORITY

Office of Administrative Law Judges

WASHINGTON, D.C. 20424-0001

AIR FORCE MATERIEL COMMAND WARNER ROBINS AIR LOGISTICS CENTER, ROBINS AIR FORCE BASE, GEORGIA Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 987 Charging Party	Case No. AT-CA-50193

NOTICE OF TRANSMITTAL OF DECISION

The above-entitled case having been heard before the undersigned Administrative Law Judge pursuant to the Statute and the Rules and Regulations of the Authority, the undersigned herein serves his Decision, a copy of which is attached hereto, on all parties to the proceeding on this date and this case is hereby transferred to the Federal Labor Relations Authority pursuant to 5 C.F.R. § 2423.26(b).

PLEASE BE ADVISED that the filing of exceptions to the attached Decision is governed by 5 C.F.R. §§ 2423.26(c) through 2423.29, 2429.21 through 2429.25 and 2429.27.

Any such exceptions must be filed on or before **JULY 1, 1996**, and addressed to:

Federal Labor Relations Authority
Office of Case Control
607 14th Street, NW, 4th Floor
Washington, DC 20424-0001

WILLIAM B. DEVANEY
Administrative Law Judge

Dated: May 30, 1996
Washington, DC

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C. 20424-0001

MEMORANDUM DATE: May 30, 1996

TO: The Federal Labor Relations Authority

FROM: WILLIAM B. DEVANEY
Administrative Law Judge

SUBJECT: AIR FORCE MATERIEL COMMAND
WARNER ROBINS AIR LOGISTICS
CENTER, ROBINS AIR FORCE BASE,
GEORGIA

Respondent

and Case No. AT-CA-50193

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 987

Charging Party

Pursuant to section 2423.26(b) of the Rules and Regulations, 5 C.F.R. § 2423.26(b), I am hereby transferring the above case to the Authority. Enclosed are copies of my Decision, the service sheet, and the transmittal form sent to the parties. Also enclosed are the transcript, exhibits and any briefs filed by the parties.

Enclosures

UNITED STATES OF AMERICA

FEDERAL LABOR RELATIONS AUTHORITY

Office of Administrative Law Judges

WASHINGTON, D.C. 20424-0001

AIR FORCE MATERIEL COMMAND WARNER ROBINS AIR LOGISTICS CENTER, ROBINS AIR FORCE BASE, GEORGIA Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 987 Charging Party	Case No. AT-CA-50193

C.R. Swint, Jr., Esquire
For the Respondent

Richard S. Jones, Esquire
For the General Counsel

Before: WILLIAM B. DEVANEY
Administrative Law Judge

DECISION

Statement of the Case

This proceeding, under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the United States Code, 5 U.S.C. § 7101 et seq. [1], and the Rules and Regulations issued thereunder, 5 C.F.R. § 2423.1, et seq., concerns whether the Respondent violated § 16(a)(1) and (5) of the Statute by requiring its WG-4102-09 painters to perform the duties of "wash, etch and alodine" without fulfilling its obligation to bargain with the Charging Party. For reasons more fully set forth below, I find that the Respondent violated the Statute as alleged in the complaint.

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[1] For convenience of reference, sections of the Statute hereinafter are, also, referred to without inclusion of the initial "71" of the statutory reference, i.e., section 7116(a)(5) will be referred to simply as "§ 16(a)(5)."

This case was initiated by a charge filed on December 5, 1994 (G.C. Exh. 1(a)); the Complaint and Notice of Hearing issued July 31, 1995 (G.C. Exh. 1(c)), and the hearing was set for October 24, 1995, and a hearing was duly held on October 24, 1995, in Warner Robins, Georgia, before the undersigned. All parties were represented at the hearing, were afforded full opportunity to be heard, to introduce evidence bearing on the issues involved, and were afforded the opportunity to present oral argument which each waived. At the conclusion of the hearing, by agreement of the parties, November 27, 1995, was fixed as the date for mailing post-hearing briefs, which time was subsequently extended, on Respondent's motion, unopposed by the General Counsel, for good cause shown, to December 11, 1995. General Counsel and Respondent each timely mailed a brief, received on December 14, 1995, which have been carefully considered. Upon the basis of the entire record, including my observation of the witnesses and their demeanor, I make the following findings and conclusions:

Findings

The American Federation of Government Employees (AFGE) is the exclusive representative for a nationwide consolidated unit of Respondent's employees appropriate for collective bargaining (G.C. Exh. 1(c) and (d)). The Charging Party, AFGE Local 987 (Union), is an agent of AFGE for purposes of representing unit employees at Robins Air Force Base, Georgia (G.C. Exh. 1(c) and (d)).

A. Respondent's Program Depot Maintenance Process

Part of Respondent's mission is to perform a "full paint strip and repaint" of aircraft every 10 years, a lengthy process that generally takes from 155 to 175 days (Tr. 107). In addition to its own aircraft, Respondent does similar warranty work on aircraft located at other Air Force bases (Tr. 130-132). In the latter situation, if the customer is dissatisfied with the quality of the paint job, Respondent is required to re-do the work (id.).

The process starts with "de-painting" or stripping the old paint from the aircraft. Then the aircraft is overhauled mechanically (Tr. 107). Next, the aircraft receives a "wash, etch, and alodine" (WEA) which prepares the surface for re-painting (Tr. 59-60, 133). More specifically, the "wash" with soap and water removes any surface dirt, grease or oil; the "etch" with acid removes any corrosion and roughens the aircraft surface slightly so that the new paint will adhere better; and the "alodine", with a chrome substance, prevents the aluminum surface of

the aircraft from corroding in the future (Tr. 118-122). All three processes are done in the same way: the substance is sprayed on and scrubbed, then washed off with hot water (Tr. 122). Prior to December 1994, the WEA work was performed by WG-5 and 7 equipment cleaners (Tr. 110) and WG-9 painters did not perform WEA duties (Tr. 14-15, 82). They did, however, inspect the aircraft for corrosion or other surface imperfections before painting began, and either removed the imperfections themselves, if minor, or sent the aircraft back to the equipment cleaners if the problem was substantial (Tr. 33-34, 41, 136, 159).[2] Finally, when the aircraft surface is deemed ready, the painters paint it and stencil on the appropriate markings (G.C. Exh. 3; Tr. 27, 42, 154).

B. WEA Duties Are Reassigned to Painters in December 1994

In December 1994, Respondent reassigned the WEA duties to the WG-9 painters (Tr. 26-28, 86, 155). As explained by Mr. Roger Hobbs, manager and supervisor of Respondent's paint and de-paint shops, the decision to reassign such duties arose in the context of a substantial change in the method by which aircraft were stripped of old paint and prepared to receive new paint (Tr. 106, 107-109, 126-127). Under the old system, methylene chloride, a very toxic chemical was used to remove the old paint, and the job could be performed quickly and well (Tr. 107-108). When the decision was made to adopt a more ecologically-friendly method of paint removal, involving a baking soda solution, the process became far more expensive in terms of both the cost of materials and the number of man-hours required. Mr. Hobbs estimated that it took much more than twice as long to accomplish the job under the new system (Tr. 110). In addition, the new method deprived Respondent of flexibility, because it could only be done indoors in one of the hangars with sufficient water drainage capacity and, once begun, had to be completed without interruption, whereas the old process could be stopped at any point and the aircraft removed from the hangar to make way for another aircraft and then continued at some later date without damage (Tr. 111-113, 114-116).

As a result, Respondent concluded that its operation would be more efficient if the painters moved from Building 89 -- where the painting had been done under the

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2 They also did a "chemical wipe" as needed, which consisted of wiping down the entire aircraft with rags soaked in chemicals to remove dirt that had accumulated while the aircraft stood outdoors waiting to be painted (Tr. 14-15, 45-46, 57-58, 117).

old system -- to Building 54 where the stripping and WEA had been done by the equipment cleaners, so that the painters could do both the WEA and the painting as a continuous process (Tr. 111-113, 126-128, 177). As Mr. Hobbs testified, having the painters perform the WEA work in this manner also eliminated both the "chemical wipe" process, which had been necessary to remove the dirt accumulating on the aircraft between the WEA and the painting under the old system, and one of the two time-consuming aircraft taping steps in preparation for painting the aircraft (Tr. 126-127, 177). Conversely, Mr. Hobbs testified, that if Respondent were required to return the WEA work to the equipment cleaners, it would entail moving those employees from another building, where the paint stripping operation is now performed, to Building 54 where the WEA work is done, thereby interrupting the paint stripping work, and would require the painters to stand by in Building 54 with no work to do (Tr. 129-130, 153, 184). Accordingly, Respondent implemented the reassignment of duties at the end of 1994, but it did so without notifying or bargaining with the Union (Tr. 87, 155).

The transfer of WEA duties to the painters had certain consequences for them. Since they were given no training in proper WEA techniques, the painters on several occasions prepared aircraft surfaces improperly by leaving substances on too long or not long enough, which resulted in an unacceptable paint job and the need to go through the entire process again (G.C. Exh. 5, Tr. 33-34, 44, 75-76, 83-84, 87-88, 89, 130-132).[3] Additionally, several painters got sick after performing WEA duties (Tr. 52-53, 89).[4] The

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There appears to be a dispute as to the number of aircraft that had to be re-painted as a result of improper surface preparation--employees testifying that 5 aircraft had to be redone (Tr. 89), while Mr. Hobbs mentioned 2 or 3 (Tr. 130-132). There is no dispute, however, that paint failed to adhere properly to aircraft surfaces after the painters were assigned the WEA duties in late 1994.

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While Mr. Hobbs testified that he was not aware of any employees who got sick from the chemicals used in the WEA process, and that such chemicals were much milder than the ones previously used by the painters during chemical wipe-downs (Tr. 137-139), he also testified that the painters had used elaborate protective clothing and equipment for chemical wipe-downs (Tr. 117-118, 125) but "much, much, much less" protection was required under the new process while performing WEA functions (Tr. 121, 123). Accordingly, I credit the testimony that some employees got sick after performing WEA duties even though the chemicals were less toxic and even though Mr. Hobbs may not have been aware of any problem. I further credit the testimony of employee Lewis Williams, a WG-9 painter at Robins Air Force Base for 22 years, that the employees were concerned about the chemicals used during the WEA process; asked for information about them; were promised such information; but never received it (Tr. 89).

painters also were concerned that they might lose their WG-9 grade as a result of having to perform the WEA duties previously performed by the WG-5 equipment cleaners (Tr. 51-52, 90), and that rather than having their jobs enriched, they were "going

back to cleaning" (Tr. 51-52).5 Finally, the painters were concerned about the amount of weekend overtime they were being asked to work as a result of the reassignment of duties, particularly since the lower-graded equipment cleaners were losing the opportunity for that overtime (Tr. 53-54, 90, 174-175).

Conclusions

It has long been settled, and is undisputed in this case, that an agency has the right under § 6(a)(2)(B) of the Statute to reassign duties from one group of employees to another. Department of Transportation, Federal Aviation Administration, Washington, D.C., 20 FLRA 481, 483 (1985)(FAA); National Association of Government Employees, Local R14-89, 15 FLRA 14 (1984). It is equally well settled that when management does so, it is obligated to notify the exclusive representative in advance and provide an opportunity for negotiations over the impact and implementation of the change under § 6(b)(2) and (3) of the Statute unless the union has in some manner given up its right to bargain or the impact of the change is de minimis. FAA, supra, at 483; Department of the Navy, Marine Corps Logistics Base, Albany, Georgia, 39 FLRA 1060 (1991), rev'd on other grounds, 962 F.2d 48 (D.C. Cir. 1992); Social Security Administration, Area IX of Region IX, 51 FLRA 357, 369 (1995).

A. Respondent's Reassignment of WEA Duties to the Painters Constituted a Change in Conditions of Employment

Prior to the end of 1994, Respondent's WG-9 painters had not been assigned WEA duties. Those tasks had been performed by the WG-5 and 7 equipment cleaners. While the painters inspected aircraft surfaces prepared by the equipment cleaners and occasionally made minor improvements prior to painting the aircraft, any major work of this nature was not performed by the painters but instead the aircraft was returned to the equipment cleaners so that the WEA work could be redone.

The reassignment of the WEA duties to the painters occurred in conjunction with a major change in Respondent's aircraft maintenance program. Largely driven by ecological concerns, the previous method of stripping paint from the

5 Although Mr. Hobbs testified that performing WEA duties would not reduce the painters' WG-9 grade because surface preparation work is already included in OPM's standard for that position (Tr. 153-154), he also testified that the WEA work previously performed by lower-graded employees was "a menial task" and "very easy to do" (Tr. 141, 153).

aircraft resulted in the use of different materials which, in turn, resulted in the need to alter the timing of the WEA work and the painting of the aircraft. As a result, the painters were moved to a different building; required to perform new duties without training in the process or information about the unfamiliar chemicals; were relieved of other duties they had been performing, such as the chemical wipe; and were required to work substantially more weekend overtime. I conclude, therefore, that the Respondent's decision to reassign the WEA duties to the painters changed their conditions of employment.

B. The Change in the Painters' Conditions of Employment Was More than De Minimis

In Department of Health and Human Services, Social Security Administration, 24 FLRA 403 (1986), the Authority stated that in determining whether a change in conditions of employment requires bargaining, it would evaluate the particular facts and circumstances of the case with principal emphasis being placed on such general areas as the nature and extent of the effect or reasonably foreseeable effect of the change on conditions of employment of bargaining unit employees.6 I find and conclude that the effect of the changes herein on employees' conditions of employment was greater than de minimis. Thus, the reassignment of WEA duties was intended to be permanent, and involved a significant change in work duties. Department of Health and Human Services, Family Support Administration, 30 FLRA 346 (1987); Marine Corps Logistics Base, Barstow, California, 42 FLRA 287, 310 (1991), remanded on other grounds without decision (D.C. Cir. No. 91-1565, Dec. 4, 1992). Moreover, the reassignment of WEA duties led directly to the loss of weekend overtime for the lower-graded equipment cleaners who had performed the WEA functions in the past.

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Respondent contends that there was no change in the painters' conditions of employment because their position description (G.C. Exh. 10) at all times included as a duty "Prepares surfaces using a variety of methods and materials," and the OPM Classification Standard for a WG-9 painter (G.C. Exh. 3) similarly contains surface preparation responsi-bilities. While I agree with the Respondent that such duties are part of the painters' position description, and that "surface preparation" is broad enough to encompass the WEA duties involved in this case, I cannot agree that the assignment of those duties to the painters for the first time engendered no change in their conditions of employment. There is a significant difference between having a duty described in a position description and having the duty actually assigned to be performed by the incumbent of that position.

C. The Reassignment of WEA Duties to the Painters Is Not "Covered By" the Parties' Agreement so as to Relieve the Respondent of the Obligation to Bargain over the Impact and Implementation of the Change

Respondent contends that its admitted failure to notify the Union of the reassignment of WEA duties from the WG-5 and 7 equipment cleaners to the WG-9 painters and to bargain over the impact and implementation of such change was proper because the matter of work reassignment is "covered by" the parties' negotiated agreement.[7] Specifically, that Article 17 governs the assignment of duties recited in position descriptions where, as here, the position description of WG-9 painters includes surface preparation, ". . . using a variety of methods and materials" (G.C. Exh. 10) and OPM's Classification Standard for a WG-9 painter, ". . . prepares surfaces by methods such as smoothing . . . mixing and applying precoating agents, for example, pickling and alkali compounds." (G.C. Exh. 3). Further, the record shows that painters had regularly performed chemical wipe-downs (Tr. 117-118, 125) which is a form of surface preparation. Article 17 provides, in pertinent part, as follows:

"**ARTICLE 17**

"**POSITION CLASSIFICATION**

"SECTION 17.01: CONTENT OF POSITION DESCRIPTION

The purpose of a position description is to describe officially, for pay and classification purposes, the predominant skills and duties particular to a position. A position description does not list every duty an employee may be assigned, but reflects those duties which are series- and grade-controlling. The phrase "other duties as assigned" shall not be used as the basis for the assignment to employees of duties unrelated to the principal duties of their positions, except on an infrequent basis and only

7 I reject General Counsel's contention that Respondent is precluded from raising the "covered by" defense at this time because it did not previously advise the Union that the terms of the parties' agreement authorized it to reassign the WEA duties without bargaining. If Respondent read the agreement as permitting the change in work assignments without notice to and bargaining with the Union, then the first opportunity Respondent would have had to make such a claim is in answer to the complaint alleging an unlawful refusal to bargain.

under circumstances in which such assignments can be justified as reasonable.

"SECTION 17.02: CHANGES TO POSITION DESCRIPTIONS

Position descriptions will be based upon the principal duties and responsibilities assigned to each position. . . . Addenda, deletions, and amendments to position descriptions will be reviewed by a classifier, and impact thereof recorded. . . . Such changes in position descriptions will be discussed with employees and employees will be furnished a copy of the changed position description.

"SECTION 17.03: COMPLAINTS OVER POSITION DESCRIPTIONS

Employees who feel that their position descriptions are inaccurate may meet and discuss this matter with their supervisors for clarification. When differences concerning the accuracy of a position description cannot be resolved between the supervisor and the employee, the employee may file a grievance under the Negotiated Grievance Procedure. . . ." (Res. Exh. 1, Article 17, Secs. 17.01-17.03)

Accordingly, Respondent asserts that because the contract covers the assignment of duties it was not obligated to bargain further. U.S. Department of Health and Human Services, Social Security Administration, Baltimore, Maryland, 47 FLRA 1004 (1993); Social Security Administration, Douglas Branch Office, Douglas, Arizona, 48 FLRA 383 (1993); U.S. Department of the Navy, Marine Corps Logistics Base, Barstow, California, 48 FLRA 102 (1993); Sacramento Air Logistics Center, McClellan Air Force Base, California, 47 FLRA 1249 (1993) (Respondent's Brief, pp. 15-21).

General Counsel does not dispute that the Position Description for the painters, by referring to surface preparation, incorporates WEA duties. Nor does General Counsel assert that Respondent improperly assigned those duties to the painters. To the contrary, General Counsel concedes that Respondent has the discretion, under § 6(a)(2)(B) of the Statute, to assign WEA duties to painters even if their position description did not encompass those duties.

Rather, the issue is, as General Counsel states, that, when Respondent changed the painters' duties to include WEA duties, which they had never performed, Respondent was required to give the Union notice of the change and to bargain on the impact and implementation of the change. The

fact that the position description includes WEA duties is immaterial. The controlling facts are: (a) painters did not perform WEA duties; and (b) Respondent changed the painters' duties by having them perform WEA duties. It is the change of their conditions of employment that gives rise to the obligation to bargain on the impact and implementation of that change. True, the Agreement refers to the content of position description (Sec. 17.01); changes to position descriptions (Sec. 17.02) and to complaints over position descriptions (Sec. 17.03); but Article 17 of the Agreement neither covers, nor purports to cover, the change of assigned duties. Here, painters had never performed WEA duties; a new process was involved with new and different chemicals; and the painters had no training in the performance of these new duties. Plainly, Respondent changed the conditions of employment of the painters by assigning them WEA duties even though such duties were included in their position descriptions. It is equally plain that nothing contained in Article 17 shows any intent that further bargaining was foreclosed if Respondent changed conditions of employment by reassigning duties to employees who had never performed them. Moreover, because the process was different and new and different chemicals were involved, introduction of the new process changed working conditions and Respondent was obligated to give the Union notice of the change and to bargain on the impact and implementation thereof. U.S. Department of Defense, Department of the Air Force, Air Force Logistics Center, Tinker Air Force Base, Oklahoma, 25 FLRA 914 (1987).

D. Article 3 of the Parties' Agreement Did Not Relieve Respondent of the Duty to Bargain When WEA Duties Were Assigned to the Painters

Article 3 of the Parties' Agreement provides, in pertinent part, as follows:

"**ARTICLE 3**

"**MANAGEMENT RIGHTS**

* * * * * *

"SECTION 3.03: ADDITIONAL OBLIGATIONS AND RIGHTS OF MANAGEMENT

"In prescribing regulations relating to personnel policies, practices and conditions of employment, the Employer shall have due regard for the obligations imposed by Title VII. However, the Employer and the Union may negotiate:

> "a. at the election of the Employer, on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;
>
> "b. procedures which management officials of the agency will observe in exercising any authority under this article; or
>
> "c. appropriate arrangements for employees adversely affected by the exercise of any authority under this article by such management officials." (Res. Exh. 1, Article 3, Sec. 3.03).

From this, Respondent argues,

> ". . . Section 3.03 . . . says that the parties 'may' negotiate on the impact and implementation of the exercise of these independent rights. The use of the word 'may' can only be interpreted to mean that such negotiations are optional on the part of both parties to the agreement. Given this, the Respondent was not obligated to negotiate the impact an (sic) implementation of its decision to assign WEA duties to the painter employees." (Respondent's Brief, p. 22).

I do not agree with Respondent's interpretation of Article 38. Article 3, Section 3.01 provides at the outset that, "In the administration of all maters covered by this agreement, . . . the Employer and the Union and employees . . . are governed by Title VII of the Civil Service Reform Act of 1978" (the Statute). The remainder of Article 3 is a restatement of § 6 of the Statute, modified only to incorporate the statutory language to the contract and verbatim with respect to substance. Thus, Section 3.02 a and b of the Agreement restate verbatim the provision of § 6(a)(1) and (2) of the Statute; and Section 3.03 of the Agreement restates the provisions of § 6(b) of the Statute. § 6(b) of the Statute, begins, "Nothing in this section shall preclude any agency and any labor organization from negotiating -", while Section 3.03 of the Agreement begins, "In prescribing regulations relating to personnel policies,

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8 Where, as here, a respondent raises as a defense that a specific provision of the parties' collective bargaining agreement permitted the action alleged to constitute an unfair labor practice, the meaning of the agreement must be resolved. Internal Revenue Service, Washington, D.C., 47 FLRA 1091, 1103 (1993).

practices and conditions of employment, the Employer shall have due regard for the obligations imposed by Title VII." Then Section 3.03 states, "However, the Employer and the Union may negotiate:" and subsections a, b and c incorporate verbatim, except for substitution for "agency" of subsection (1) of § 6(b) of the Statute, the word "Employer" in subsection a of the Agreement, the language of subsection (1)-(3) of § 6(b) of the Statute. The language of § 6(b) of the Statute that, "Nothing in this section shall preclude any agency and any labor organization from negotiating [as provided in subsection (1), (2) and (3)], plainly means that they "may" negotiate as provided in subsection (1), (2) and (3). Therefore, the Agreement's language that the Employer and the Union may negotiate as provided in subparagraph a, b and c merely restates § 6(b) of the Statute without change of any substantive right. Not only was this true of the second and concluding introductory sentence of Section 3.03 of the Agreement, but the parties, in an abundance - truly, overabundance - of caution, provided in Section 3.01 of Article 3 that all matters covered by the Agreement were governed by the Statute and, again, in the first sentence of Section 3.03 of Article 3, stated that in prescribing regulations, the Employer ". . . shall have due regard for the obligation imposed by . . ." the Statute. Respondent's assertion that it was not, because of the "may" language of Section 3.03, required to negotiate "procedures" or "appropriate arrangements" ["I&I" bargaining] pursuant to 3.03 b and/or c, is without support. Clearly, the language of Article 3 of the Agreement went to great lengths to insure that rights already established by the Statute were not lost or altered by anything contained in Article 3. Stated otherwise while § 6(b) states only that, "Nothing in this section shall preclude . . ." the negotiation, inter alia, of "procedures" and/or "appropriate arrangements" pursuant to subsection (2) and (3), it consistently has been held that when an employer changes conditions of employment it is required to give notice and opportunity to bargain pursuant to § 6(b)(2) and (3). As a permissive right to bargain it could be waived by a union; but, to be effective, the waiver must be clear and unmistakable. U.S. Department of Commerce, Bureau of the Census, 17 FLRA 667, 670 (1985); Department of Health and Human Services, Health Care Financing Administration, 39 FLRA 120, 129 (1991), enf'd, 952 F.2d 398 (4th Cir. 1991). Not only was there not a clear and unmistakable waiver by the Union of its statutory right to negotiate the impact and implementation of changes of conditions of employment by anything contained in Article 3 of the parties' Agreement; but, to the contrary, as I have found, the language of Article 3 specifically incorporates and makes applicable all Statutory rights - the direct rejection that the Union intended to waive any

statutory right. And, as Respondent well knows, "it takes two to Tango", so that unless the Union waived its statutory right, Respondent could not "waive" the Union's right by unilaterally electing not to negotiate.

E. The Appropriate Remedy

Having found that the Respondent violated § 16(a)(1) and (5) of the Statute as alleged in the complaint, I next turn to the issue of an appropriate remedy. Inasmuch as the violation found is Respondent's failure to provide the Union with notice and an opportunity to bargain over the impact and implementa-tion of the decision to reassign WEA duties to the painters rather than the decision itself, the General Counsel's request for a status quo ante remedy must be considered in light of the factors set forth by the Authority in Federal Correctional Institution, 8 FLRA 604 (1982)(FCI). In FCI, the Authority stated that in determining whether a status quo ante remedy would be appropriate in any specific case involving a viola-tion of the duty to bargain over impact and implementation, it would consider, among other things:

> ". . . (1) whether, and when, notice was given to the union by the agency concerning the action or change decided upon; (2) whether, and when, the union requested bargaining on the procedures to be observed by the agency in implementing such action or change and/or concerning appropriate arrangements for employees adversely affected by such action or change; (3) the willfulness of the agency's conduct in failing to discharge its bargaining obligations under the Statute; (4) the nature and extent of the impact experienced by adversely affected employees; and (5) whether, and to what degree, a status quo ante would disrupt or impair the efficiency and effectiveness of the agency's operations." Id. at 606.

Here, while the Union (1) received no notice of Respondent's decision to reassign the WEA duties to the painters, and therefore (2) the Union had no opportunity to request bargaining over the impact and implementation of the change, I conclude that (3) Respondent's conduct was not willful in light of its reliance on several provisions in the parties' agreement to justify its failure to notify and bargain with the Union. Although I have rejected Respondent's interpretation and application of Articles 17 and 3 of the parties' agreement, I cannot conclude that Respondent's reliance on those provisions had no colorable basis.

Further, while I find that (4) unit employees were adversely affected by the reassignment of WEA duties from the WG-5 and 7 equipment cleaners to the WG-9 painters, and that such adverse effects were more than de minimis, I further find that such adverse effects can be ameliorated without requiring Respondent to rescind the reassignment of duties. Specifi-cally, I find that the equipment cleaners can be made whole for any loss of weekend overtime they have suffered as a result of the reassignment of WEA duties to the painters prior to the completion of I&I bargaining. Such losses are remediable under the Back Pay Act, 5 U.S.C. § 5596, as unjustifiable and unwarranted personnel actions which would not have been suffered but for the Respondent's unfair labor practice. Department of Health and Human Services, Social Security Administration, Dallas Region, Dallas, Texas, 32 FLRA 521, 525-27 (1988), following remand in American Federation of Government Employees, SSA Council 220 v. FLRA, 840 F.2d 925, 929-30 (D.C. Cir. 1988); U.S. Department of Health and Human Services, Social Security Administration, 50 FLRA 296, 299-300 (1995). Similarly, the adverse effects of the work reassignment on the painters can be remedied without a status quo ante order. Thus, Respondent can be ordered to train the painters in proper WEA techniques; take no personnel actions against them for the improper performance of WEA duties prior to receiving such training; provide appropriate protective equipment to them in the performance of WEA duties; restore any sick leave taken by a painter as the result of having performed WEA duties; and make whole any painters who suffer a loss of pay or benefits as the result of downgradings attributable to their assignment and performance of WEA duties.

In my view, such remedial provisions would adequately protect the painters from any adverse effects caused by the reassignment of WEA duties to them, and at the same time would (5) avoid disrupting the effectiveness and efficiency of Respondent's operations. By contrast, a status quo ante remedy would unduly interfere with such operations. Thus, the record indicates that the new, ecologically friendly process of removing old paint from aircraft and preparing the aircraft for new paint is a continuous one which does not afford Respondent sufficient flexibility to have the equipment cleaners reassume the WEA duties. To require such a reassignment of duties would entail the disruption of equipment cleaners' paint removal functions in one building; their physical movement to another building where the WEA duties are performed; the performance of such duties while the painters at that location have no other duties to perform and therefore simply watch the equipment cleaners do the WEA work; and the backup of aircraft awaiting paint

removal in the building from which the equipment cleaners had been removed in order to do the WEA work. Moreover, Respondent's extensive refurbishing of several buildings to accommodate the new aircraft maintenance process would not permit the simple reassignment of the painters and equipment cleaners to their former locations and their former duties. Accordingly, weighing the various factors identified by the Authority in FCI, I conclude that a status quo ante remedy would be inappropriate in the circumstances of this case.

Accordingly, having found that Respondent violated the Statute, as alleged in the complaint, by its failure to notify the Union and provide it with an opportunity to negotiate on the impact and implementation of the decision to reassign WEA duties from the equipment cleaners to the painters before implementing the change in conditions of employment, I recommend that the Authority adopt the following:

ORDER

Pursuant to § 2423.29 of the Authority's Rules and Regulations, 5 C.F.R. § 2423.29, and § 18 of the Statute, 5 U.S.C. § 7118, it is hereby ordered that the Air Force

Materiel Command, Warner Robins Air Logistics Center, Robins

Air Force Base, Georgia, shall:

1. Cease and desist from:

(a) Changing working conditions of unit employees by reassigning wash, etch and alodine duties from the WG-5 and 7 equipment cleaners to the WG-9 painters without first notifying AFGE Local 987, the agent of the American Federation of Government Employees, AFL-CIO, the certified bargaining representative of unit employees, and affording it an opportunity to bargain regarding the procedures to be observed in implementing the change and appropriate arrangements for employees who have been, or may be, adversely affected by the implementation of any such change.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights assured them 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 AFGE Local 987 concerning the impact and implementation of the reassignment of wash, etch and alodine duties from the equipment cleaners to the painters in or around December 1994.

(b) Notify AFGE Local 987 of any proposed reassignment of duties which would affect bargaining unit employees' working conditions and, upon request, bargain with AFGE Local 987 as to the procedures to be observed in implementing such work reassignment and appropriate arrangements for employees adversely affected thereby.

(c) Except as otherwise agreed by AFGE Local 987, make whole any bargaining unit employee at the Warner Robins Air Logistics Center, Robins Air Force Base, Georgia, including any WG-5 and 7 equipment cleaner, who was adversely affected by the reassignment of wash, etch and alodine duties to the WG-9 painters in or around December 1994, such make-whole remedy to include backpay for any bargaining unit employee who suffered a loss or reduction in pay, allowances, or differentials because of the reassignment of WEA duties.

(d) Upon request by AFGE Local 987, provide adequate training and protective equipment to the WG-9 painters who are required to perform the wash, etch and alodine duties previously performed by the WG-5 and 7

equipment cleaners; rescind and/or refrain from taking any personnel action against a painter for poor performance of WEA duties prior to his receiving adequate training in the performance of such duties; restore any sick leave used by a painter as the result of having performed WEA duties; and make whole any painter who suffers a loss of pay or benefits as the result of a downgrading attributable to the assignment and performance of WEA duties.

(e) Post at its facilities in Robins Air Force Base, Georgia, 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 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.

(f) Pursuant to section 2423.30 of the Authority's Rules and Regulations, notify the Regional Director of the Atlanta Region, Federal Labor Relations Authority, Marquis Two Tower, Suite 701, 285 Peachtree Center Avenue, Atlanta, Georgia 30303-1270, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

WILLIAM B. DEVANEY
Administrative Law Judge

Dated: May 30, 1996
Washington, DC

NOTICE TO ALL EMPLOYEES

POSTED BY ORDER OF THE

FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the Air Force Materiel Command, Warner Robins Air Logistics Center, Robins Air Force Base, Georgia, violated the Federal Service Labor-Management Relations Statute and has ordered us to post and abide by this Notice.

We hereby notify our employees that:

WE WILL NOT change working conditions of unit employees by reassigning wash, etch and alodine duties from the WG-5 and 7 equipment cleaners to the WG-9 painters without first notifying AFGE Local 987, the agent of the American Federation of Government Employees, AFL-CIO, the certified bargaining representative of unit employees, and affording it an opportunity to bargain regarding the procedures to be observed in implementing the change and appropriate arrangements for employees who have been, or may be, adversely affected by the implementation of any such change.

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

WE WILL, upon request, bargain with AFGE Local 987 concerning the impact and implementation of the reassignment of wash, etch and alodine duties from the equipment cleaners to the painters which occurred in or around December 1994.

WE WILL notify AFGE Local 987 of any proposed reassignment of duties which would affect bargaining unit employees' working conditions and, upon request, bargain with AFGE Local 987 as to the procedures to be observed in implementing such work reassignment and appropriate arrangements for employees adversely affected thereby.

WE WILL, except as otherwise agreed by AFGE Local 987, make whole any bargaining unit employee at the Warner Robins Air Logistics Center, Robins Air Force Base, Georgia, including any WG-5 and 7 equipment cleaner, who was adversely affected by the reassignment of wash, etch and alodine duties to the WG-9 painters in or around December 1994, such make-whole remedy to include backpay for any bargaining unit employee

who suffered a loss or reduction in pay, allowances, or differentials because of the reassignment of WEA duties.

WE WILL, upon request by AFGE Local 987, provide adequate training and protective equipment to the WG-9 painters who are required to perform the wash, etch and alodine duties previously performed by the WG-5 and 7 equipment cleaners; rescind and/or refrain from taking any personnel action against any painter for poor performance of WEA duties prior to his receiving adequate training in the performance of such duties; restore any sick leave used by any painter as the result of having performed WEA duties; and make whole any painter who suffers a loss of pay or benefits as the result of a downgrading attributable to the assignment and performance of WEA duties.

_____
(Agency or 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, Atlanta Regional Office, Federal Labor Relations Authority, whose address is: Marquis Tower Two, Suite 701, 285 Peachtree Center Avenue, Atlanta, GA 30303-1270, and whose telephone number is: (404) 331-5212.

CERTIFICATE OF SERVICE

I hereby certify that copies of this DECISION issued by WILLIAM B. DEVANEY, Administrative Law Judge, in Case No. AT-CA-50193, were sent to the following parties in the manner indicated:

CERTIFIED MAIL:

C.R. Swint, Jr., Esquire
Warner Robins Air Logistics Center
JAG Office, Building 215
Warner Robins, GA 31098-1662

Richard S. Jones, Esquire
Federal Labor Relations Authority
Marquis Tower Two, Suite 701
285 Peachtree Center Avenue
Atlanta, GA 30303-1270

REGULAR MAIL:

Jim Davis, President
American Federation of Government
Employees, Local 987
P.O. Box 1079
Warner Robins, GA 31093-1079

National President
American Federation of Government
Employees, AFL-CIO
80 F Street, NW
Washington, DC 20001

Dated: May 30, 1996
Washington, DC