UNITED STATES OF AMERICA

FEDERAL LABOR RELATIONS AUTHORITY

Office of Administrative Law Judges

WASHINGTON, D.C. 20424-0001

MEMORANDUM DATE: February 14, 1997

TO: The Federal Labor Relations Authority

FROM: SAMUEL A. CHAITOVITZ
Chief Administrative Law Judge

SUBJECT: UNITED STATES ARMY SIGNAL CENTER
AND FORT GORDON,
FORT GORDON, GEORGIA

Respondent

and Case No. AT-CA-60621

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 2017

Charging Party

Pursuant to section 2423.26(b) of the Final 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 is a Motion for Summary Judgment and other supporting documents filed by the parties.

Enclosures

UNITED STATES OF AMERICA

FEDERAL LABOR RELATIONS AUTHORITY

Office of Administrative Law Judges

WASHINGTON, D.C. 20424-0001

UNITED STATES ARMY SIGNAL CENTER AND FORT GORDON, FORT GORDON, GEORGIA Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 2017 Charging Party	Case No. AT-CA-60621

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 **MARCH 17, 1997**, and addressed to:

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

SAMUEL A. CHAITOVITZ
Chief Administrative Law Judge

Dated: February 14, 1997
Washington, DC

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
OFFICE OF ADMINISTRATIVE LAW JUDGES
WASHINGTON, D.C. 20424-0001

UNITED STATES ARMY SIGNAL CENTER AND FORT GORDON, FORT GORDON, GEORGIA Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 2017 Charging Party	Case No. AT-CA-60621

James R. Baugh
For the Respondent

Sherrod G. Patterson, Esq.
For the General Counsel

Before: SAMUEL A. CHAITOVITZ
Chief Administrative Law Judge

DECISION ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

Statement of the Case

This case arose under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the U.S. Code, 5 U.S.C. § 7101, *et seq.* (the Statute).

Based upon an unfair labor practice charge filed by the Charging Party, American Federation of Government Employees, Local 2017 (the Union), a Complaint and Notice of Hearing was issued by the Acting Regional Director for the Atlanta Region of the Federal Labor Relations Authority. The complaint alleges that the United States Army Signal Center and Fort Gordon, Fort Gordon, Georgia (the Respondent) violated section 7116(a)(1) and (5) of the Statute by terminating

compressed work schedules (CWS) of employees in the Regimental Directorate of Training without providing the Union an opportunity to negotiate to the extent required by the Statute. Respondent's answer admits every factual allegation of the complaint, including the allegation that the Respondent terminated CWS for the specified employees without providing the Union an opportunity to negotiate, but denies that the Statute required the Respondent to do so.

Respondent filed with the Regional Director a Motion for Summary Judgment (with attachments) dated December 11, 1996. Thereafter, on December 18, 1996, the Regional Director issued an Order Referring Respondent's Motion for Summary Judgment to the Chief Administrative Law Judge. On December 19, 1996, the undersigned issued an Order indefinitely postponing the hearing in this case and providing the parties an opportunity to file any pleadings or briefs herein by January 21, 1997. The Order further provided that the record would then be closed, absent special permission to file further materials. The General Counsel filed a Cross Motion for Summary Judgment dated January 20, 1997, accompanied by the formal record and several exhibits. Thereafter, pursuant to section 2423.22(a)(2) of the Authority's Rules and Regulations, the Respondent filed a timely Response to General Counsel's Cross Motion for Summary Judgment. The undisputed facts and positions of the parties are set forth immediately below.

Statement of Undisputed Facts

There is no dispute concerning the material facts in this case. The Union is the exclusive representative of a unit of the Respondent's employees that is appropriate for collective bargaining. On January 31, 1995, the Union and the Respondent executed a Memorandum of Agreement (MOA) concerning the establishment of alternative work schedules (AWS) within the U.S. Army Signal School and Fort Gordon. Among other things, the MOA (at paragraph 4a) provides:

> Directors . . . will determine whether an AWS will be implemented within their organizations. If a director has implemented an AWS within his organization, he can later terminate AWS if he finds the AWS has adversely affected the operation of his directorate, for example, that it has reduced productivity, diminished the level of services furnished to the public, or increased the cost of operation within his organization.

In February 1995, pursuant to the MOA, Respondent implemented an AWS policy which included a 4-10 compressed work schedule.[1] On December 20, 1995, the Respondent, by Colonel Richard D. Lee, Director of the Regimental Directorate of Training (RDT), terminated the 4-10 CWS for bargaining unit employees in the RDT.[2] Respondent stipulated that it did not give the Union notice of or an opportunity to negotiate concerning the foregoing change.

Contentions of the Parties

A. The Respondent

In its motion for summary judgment, the Respondent notes the absence of a genuine issue as to any material fact, and c ontends that the sole issue is whether the matter of terminating an existing AWS by a director was contained in or covered by the parties' MOA so as to preclude further bargain-ing during the term of the MOA within the meaning of the Authority's decision in *U.S. Department of Health and*

[1] It is undisputed that the AWS policy permitted unit employees to select a 4-10 CWS which enabled them to work only 4 days per week for 10 hours each, and to have the fifth day off. The employees also could choose an 8-9/1-8 schedule in which they were required to work 8 9-hour days and 1 8-hour day during each bi-weekly period, with the tenth workday off.

[2] In his memorandum to supervisors and civilian employees, Colonel Lee stated in pertinent part:

> [U]pon review of the current policy, management has determined it necessary to make some changes to the current policy due to workload priorities and the availability and accessibility of both employees and supervisors throughout the workday and workweek. This policy is subject to review after six months. If changes are made, a new memorandum will be published.
>
> [T]he following changes to the AWS policy within RDOT are effective with the pay period beginning 7 January 1996.
>
> a. CWS will no longer be offered to supervisory employees.
>
> b. Only one type of CWS will be offered - the "8-9/1-8" schedule. Employees will have nine workdays and one SDO.

Human Services, Social Security Administration, Baltimore, Maryland, 47 FLRA 1004 (1993)(*SSA*).

In this regard, the Respondent asserts that paragraph 4a of the MOA expressly addresses the types of situations under which a director can terminate AWS within his directorate, and therefore this case meets the first test articulated in *SSA*: the matter in dispute is *expressly contained in* the parties' agreement. Second, the Respondent argues that if the matter is not expressly contained in the MOA, it is "inseparably bound up" with the subject matter of paragraph 4a: the termination of AWS. Finally, if not covered by either of the first two prongs of the *SSA* test, the Respondent contends that the bargaining history of the MOA shows that the parties reasonably should have contemplated that the MOA would foreclose further bargaining over the subject of termination of existing AWS.[3]

Accordingly, the Respondent asserts that when Colonel Lee terminated one aspect of the AWS program within the RDT, he was acting as authorized by the MOA; that the Union could have filed a grievance if it disagreed; and that the Union should have negotiated additional rights into the MOA if it had wanted a further role in challenging management's termination of existing AWS programs.

B. The General Counsel

The General Counsel's cross-motion for summary judgment first urges that the Respondent's motion be denied because its reliance on the "covered by" analysis set forth in the *SSA* decision is inapplicable to the instant dispute. Rather, the General Counsel contends that this case is governed by the terms of the Federal Employees Flexible and Compressed Work Schedules Act of 1982, Pub. L. No. 97-221, 96 Stat. 227 (codified at 5 U.S.C. §§ 3401, 6101 and note, 6106, 6120-6133) made permanent in Pub. L. 99-196, 99 Stat. 1350 (1986)(the Act), which mandates that the establishment and termination of AWS/CWS are to be negotiated fully and

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[3] Respondent's chief negotiator of the MOA, J. Warner Foster, in an affidavit attached to the agency's motion for summary judgment, stated that during the negotiations he intended to cover the termination of AWS programs, and did not intend to leave the matter open for impact and implementation bargaining. As further stated in his affidavit, Mr. Foster intended to provide for the conditions under which a director could terminate AWS without bargaining over that decision, and to leave the Union with the remedy of filing a grievance if it believed that the director had acted improperly in doing so.

specifically provides procedures applicable to the termination of CWS programs. In this regard, the General Counsel notes that the Authority has held AWS/CWS to be fully negotiable, subject only to the requirements of the Act itself;[4] that Congress specifically provided a procedure governing the termination of CWS plans;[5] that the Federal Service Impasses Panel (the Panel) has held that such procedure provides the exclusive means to terminate an AWS/CWS "unless parties clearly and unmistakably agree otherwise;"[6] and that the parties did not so agree herein.[7] Accordingly, the General Counsel contends that summary judgment is appropriate and that the Respondent should be held to have violated section 7116(a)(1) and (5) of the Statute for termi-nating CWS for bargaining unit employees

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The General Counsel cites, among others, the Authority's decision in *American Federation of Government Employees, Local 1934 and Department of the Air Force, 3415 ABG, Lowry AFB, Colorado*, 23 FLRA 872, 874 (1986)(*Lowry*).

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Specifically, the General Counsel relies on the provisions of the Act found at 5 U.S.C. § 6131(c) and the Act's legisla-tive history, S. Rep. No. 97-365, 97th Cong., 2d Sess. (1982), *reprinted in* 1982 U.S. Code Cong. & Ad. News at 566-67, 578.

6
The foregoing quote is from the Panel's Decision and Order in *Department of the Army, Fort Carson, Evans Army Community Hospital, Fort Carson, Colorado and Local 1345, American Federation of Government Employees, AFL-CIO*, Case No. 96 FSIP 53 at p.4 (June 27, 1996), Panel Release No. 388.

7
In this regard, the General Counsel refers to the affidavit of the Union's chief negotiator, James Stinchcomb, an exhibit accompanying the cross-motion for summary judgment, in which Mr. Stinchcomb states that "it was not [his] intention to give [Respondent] the unconditional right to terminate AWS without regard to the procedures of the Act." He further states that the Union intended "the MOA would be used in addition to--and not in place of--the procedures set forth in the Act."

without notifying and bargaining with the Union over the decision to do so.[8]

Conclusions

A. Appropriateness of Summary Judgment

It has long been established that the purpose of summary judgment is to avoid useless, expensive, and time-consuming trials when there are no genuine issues of material fact to be tried. *State of California National Guard*, 8 FLRA 54, 60 (1982). Thus, section 2423.19(k) of the Authority's Rules and Regulations specifically authorizes Administrative Law Judges to grant motions for summary judgment in lieu of hearings when only legal issues are involved, so long as the parties have had an opportunity to present written argument. *Id.; see also Department of Veterans Affairs, Veterans Affairs Medical Center, Nashville, Tennessee*, 50 FLRA 220, 222 (1995). As the Authority indicated in *Department of the Navy, U.S. Naval Ordnance Station, Louisville, Kentucky*, 33 FLRA 3, 4 (1988):

> Motions for summary judgment filed with Administrative Law Judges pursuant to section 2423.19 of our Regulations serve the same purpose and have the same requirements as motions for summary judgment filed with United States District Courts pursuant to Rule 56 of the Federal Rules of Civil Procedure. Rule 56 (a) provides that a motion for summary judgment may be accompanied by supporting affidavits. The motion is to be granted if the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Rule 56(c)."

Respondent and the General Counsel have filed motions for summary judgment accompanied by supporting affidavits from the respective chief negotiators of the MOA, both

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[8] In the alternative, the General Counsel suggests that in light of the factual dispute between the parties as to their actual intentions in negotiating paragraph 4a of the MOA and the analytical framework required by the Authority's decision in *Internal Revenue Service, Washington, D.C.*, 47 FLRA 1091 (1993), the Respondent's motion for summary judgment should be denied and the matter should proceed to a full evidentiary hearing.

contending that there is no genuine issue as to any material fact and that summary judgment should be granted in their favor. The only disagreement between the parties concerning any factual question is the intent behind paragraph 4a of the MOA. While the parties discussed that provision during negotiations, they do not claim that agreement was reached as to the extent of Respondent's obligations in the event it determined that CWS should be terminated for the unit employees in a directorate. For the reasons stated below, I conclude that it is immaterial in the circumstances of this case that the parties are unable to agree on the intent behind paragraph 4a of the MOA, and that summary judgment is appropriate herein.

B. The Applicable Law

The Authority has held, and the parties acknowledge, that Congress intended the use of flexible and compressed work schedules (i.e., AWS) to be fully negotiable, subject only to the provisions of the Act itself. *See Lowry,* 23 FLRA at 873-74; *AFSCME, Local 2027 and ACTION*, 28 FLRA 621, 623 (1987); *Space Systems Division, Los Angeles Air Force Base, Los Angeles, California*, 45 FLRA 899, 903 (1992). In accordance with the legislative history of the Act, the Authority has concluded that the collective bargaining process was intended to include "the institution, implementation, administration and termination of alternative work schedules." *See National Association of Government Employees, Local R12-167 and Office of the Adjutant General, State of California*, 27 FLRA 349, 352-54 (1987) (*State of California*), *reversed as to other matters sub nom. California National Guard and DOD v. FLRA*, 854 F.2d 1396 (D.C. Cir. 1988); *ACTION*, 28 FLRA at 623. Under 5 U.S.C. § 6130(a)(1), the termination of alternative work schedules for employees covered by an agreement providing for the use of AWS must be in accordance with 5 U.S.C. § 6131. *See U.S. Environ-mental Protection Agency, Research Triangle Park, North Carolina and American Federation of Government Employees, Local 3347*, 43 FLRA 87, 93 (1991)(*EPA*). Accordingly, an agency's termination of AWS without following the requirements of 5 U.S.C. § 6131 would constitute an unfair labor practice under the Statute. *See U.S. Department of the Air Force, 416 CSG, Griffiss Air Force Base, Rome, New York*, 38 FLRA 1136, 1150 (1990).

C. Termination of AWS Under Section 6131 of the Act

Under 5 U.S.C. § 6131(a), if an agency head finds that a particular AWS has had or would have an "adverse impact" on the agency--defined as a reduction in productivity, a diminished level of services to the public, or an increase in

the cost of agency operations--, the agency head shall determine not to establish or (if already established) continue such schedule. However, under 5 U.S.C. § 6131(c)(3)(A), if the agency seeks to terminate an AWS established under a collective bargaining agreement, the agency may reopen the agreement and bargain with the employees' exclusive representative concerning the decision to terminate the AWS. If bargaining between the parties over termination of the AWS reaches an impasse, the parties shall present the impasse to the Federal Service Impasses Panel in accordance with 5 U.S.C. § 6131(c)(3)(B) and Part 2472 of the Panel's Regulations. In short, the agency must bargain to impasse over its decision to terminate an existing AWS and, under 5 U.S.C. § 6131(c)(3)(D), may not terminate that schedule unless the collective bargaining agreement expires or final action is taken by the Panel. *See EPA*, 43 FLRA at 93.

In the legislative history accompanying the Act, Congress explained the foregoing provisions in the following terms:

> The result of the experimental program showed that the use of alternative work schedules can be beneficial to all concerned when the schedules are used properly. The most important considera-tion in the utilization of these schedules is whether service to the public is being harmed in any significant way. . . . If government managers find that their unit's mission is not being effectively accomplished due to scheduling arrangements of their employees, they need the flexibility to alter these arrangements within the confines of certain basic employee protections.
>
> On the other hand, one of the most protected rights gained by the organized labor movement is the inviolability of the collective bargaining process. Once an item is deemed a bargainable issue, it takes an extraordinary situation to show that bargaining itself is not in the public interest. . . . In light of the fact that alternative work schedules under the experimental program were bargainable, the question becomes "Has bargaining over alternative work schedules hindered the effective management of government and thereby reduced service to the public?" The Committee finds the answer to be generally no. The Committee finds that in certain situations alternative work schedules do not and will not

> work. The remedy for such situations lies in building standards in the law for when a particular schedule is inappropriate, not encroaching into the sphere of negotiation. The
> Committee reasserts the position that the use of alternative work schedules is negotiable.
>
> * * *
>
> Sometimes, however, a particular schedule, initially considered to be a positive arrangement, turns sour after implementation. The agency must be permitted to seek a change. Normally, the pure bargaining process would prohibit one party from unilaterally reopening a negotiated agreement. The Committee finds, however, that such an extraordinary remedy is prudent in this case. There may well be, and have been, cases where a particular schedule is not working. In these cases, an agency is granted the limited right to reopen an agreement to seek termination of an egregious schedule. Once an agreement is reopened, the termination of a schedule will be fully negotiable. Once again, if the parties reach an impasse, they may request the Federal Service Impasses Panel to resolve the issue of termination. In no circum-stances may an agency terminate a schedule which is subject to a negotiated agreement before the Panel makes a final determination. The burden again will be on the agency to show there has been an adverse agency impact. The Panel must make a decision on this issue within 60 days of its initial involvement.

S. Rep. No. 365, 97th Cong., 2d Sess. 4-5 (1982), *reprinted in* 1982 U.S. Code Cong. & Admin. News 565, 566-67.

In light of the language and legislative history of the Act referred to above, I conclude that Congress clearly "intended [the Act] to be a separate and self-sufficient piece of legislation" and to treat AWS differently from other bargainable subjects. *See Bureau of Land Management, Lakeview District Office, Lakeview, Oregon*, 864 F.2d 89, 93 (9th Cir. 1988). Thus, as Congress noted in the legislative history of the Act quoted above, ordinarily the bargaining process "would prohibit one party from unilaterally reopening a negotiated agreement." This is because, as the Authority and the courts have recognized, "[i]mplicit in [t]he

statutory purpose [to promote collective bargaining] is the need to provide the parties to such an agreement with stability and repose with respect to matters reduced to writing in the agreement." *SSA*, 47 FLRA at 1017, quoting from *Department of the Navy, Marine Corps Logistics Base, Albany, Georgia v. FLRA*, 962 F.2d 48, 59 (D.C. Cir. 1992). It is in this context that the "contained in" or "covered by" doctrine has meaning. That is, stability and repose are advanced when parties are precluded from insisting upon negotiating over matters that are contained in or covered by their agreement for the life of such agreement.

With regard to AWS, however, Congress specifically created an exception to the foregoing rule. As noted above, Congress recognized that a bilaterally established AWS program might "turn[] sour after implementation" and specifically provided that an agency could reopen an agreement during its term in order to negotiate the termination of an AWS when the agency later determined that the established schedule was having an adverse impact as defined in the Act. That is, Congress chose to depart from the Statute's purpose of fostering stability and repose in the workplace through collective bargaining when it provided in the Act that an agency could reopen and seek to terminate a bilaterally established and fully negotiable AWS plan. At the same time, however, Congress sought to protect "the inviolability of the collective bargaining process" by declaring that "[o]nce an agreement is reopened, the termination of a schedule will be fully negotiable." Therefore, Congress specified that "if the parties reach an impasse, they may request the Federal Service Impasses Panel to resolve the issue of termination" and that "[i]n no circumstances may an agency terminate a schedule which is subject to a negotiated agreement before the Panel makes a final determination."

In view of the scheme created by Congress under the Act, I conclude that the analytical framework embodied in the Authority's *SSA* decision is inapplicable in cases such as this. That is, if an agency such as the Respondent herein is empowered to reopen an existing AWS agreement and seek to modify or terminate it, then the other party to that agreement should not be bound by its terms but instead should have the right to negotiate fully, as envisioned by Congress, whether the existing AWS plan must be terminated or modified. If the parties are unable to agree and reach an impasse, then the matter should be referred to the Panel for a determination based on whether the agency was able to demonstrate that the existing AWS plan has had an adverse agency impact as defined in the Act. The Authority has recognized that the parties should negotiate in the first

instance over AWS plans and, if they need "assistance to resolve a dispute concerning the alleged adverse agency impact, they must present their dispute to the Federal Service Impasses Panel . . . ." *Lowry*, 23 FLRA at 873.

If the Respondent had followed the above process in the instant case, the parties might have been able to resolve on their own whether CWS for the employees in the RDT should be terminated based on a demonstrated adverse agency impact. If they were unable to resolve the dispute on their own, they could have referred the matter to the Panel as Congress intended. In that forum, if the Respondent chose to raise the language of paragraph 4a of the parties' MOA as authorization for its unilateral termination of CWS for the employees in the RDT, the Panel would have had the opportunity to review the MOA as a threshold matter. In that connection, in a recent Decision and Order where a union requested the Panel's assistance to resolve an impasse over whether an existing 4/10 CWS plan should be terminated for certain of the agency's employees, the Panel stated:

> Our analysis of these statutory provisions [in 5 U.S.C. § 6131] leads us to conclude that unless parties clearly and unmistakably agree otherwise, the Act provides the exclusive means for termi-nating an AWS. In our view, the Panel lacks the authority to order the termination of this AWS in the absence of the Employer's meeting its statutory burden of demonstrating that the existing schedule has caused an adverse agency impact . . . . [I]t is clear from our examination of the parties' AWS agreement and their written submissions that the Union has not agreed to allow the Employer to bypass this statutory requirement. (Footnotes omitted.)

Department of the Army, Fort Carson, Evans Army Community Hospital, Fort Carson, Colorado and Local 1345, American Federation of Government Employees, AFL-CIO, Case No. 96 FSIP 53, FSIP Release No. 388 (July 8, 1996) (*Fort Carson*), at 4-5.

Accordingly, if the instant dispute had been submitted to the Panel, the Respondent would have had the burden under the Act to demonstrate that the existing CWS had caused an adverse agency impact *unless the parties clearly and unmistakably agreed otherwise*.

The Respondent's failure to notify the Union of the decision to terminate the existing CWS plan for employees in the RDT led to this dispute being litigated before the undersigned pursuant to the unfair labor practice procedures in section 7118 of the Statute rather than being resolved by the Panel pursuant to the procedures established by Congress in § 6131 of the Act. Nevertheless, in view of the special role that Congress created for the Panel in administering the provisions of the Act, I conclude that the Panel's decision in *Fort Carson* interpreting § 6131 is entitled to precedential significance. In any event, if the issue were before me as a matter of first impression, I would reach the same conclusion that the Panel did in *Fort Carson*, given the clearly stated intent of Congress to preserve not only the right of agencies to terminate existing AWS plans but also the right of unions to bargain over agencies' determinations that such schedules have caused adverse agency impact and therefore must be terminated.

Applying the principles of *Fort Carson* to the instant case, it is undisputed that the Respondent has not shown that the existing CWS plan for employees in the RDT caused an adverse agency impact which necessitated its termination. Indeed, the Respondent contends that paragraph 4a of the parties' MOA makes it unnecessary for the Respondent to show the existence of such an adverse agency impact before terminating an established AWS plan, as would otherwise be required under 5 U.S.C. § 6131. Accordingly, I next consider the second question identified in *Fort Carson*: whether the Act's "exclusive means for terminating an AWS" have been superseded because the "parties clearly and unmistakably agree[d] otherwise." For the reasons set forth below, I conclude that they have not.

First, in view of the strongly stated intent of Congress to preserve a union's right to bargain fully over an agency's determination to terminate an existing AWS, I conclude that an agency which asserts that the parties have agreed otherwise carries the burden of proving such a clear and unmistakable agreement. In this case, the parties are in dispute with regard to the intent of the terms in paragraph 4a of their MOA. Therefore, the Respondent has failed to meet its burden herein. Second, the pertinent language of paragraph 4a in the parties' MOA tracks the requirements of § 6131(a) and (b). Thus, the Act provides that "if . . . an agency finds that a particular flexible or compressed schedule . . . has had . . . an adverse agency impact, the agency *shall promptly determine not to . . . continue such schedule . . . .*" (Emphasis added.) Section 6131(b) further defines "adverse agency impact" in precisely the same terms that are embodied in paragraph 4a of

the parties' MOA. Accordingly, when paragraph 4a of the MOA states that ". . . a director . . . can later terminate AWS if he finds the AWS has adversely affected the operation of his directorate, for example, that it has reduced productivity, diminished the level of services furnished to the public, or increased the cost of operation within his organization," it merely restates the requirements of 5 U.S.C. § 6131(a) and (b) with one omission. It omits that part of § 6131(a) which makes the agency's right and obligation to terminate established AWS plans "subject to subsection (c) of this section," i.e., subject to the procedures which permit the agency to reopen the agreement to seek termination of the schedule involved through negotiations with the employees' exclusive bargaining represen-tative, and require any impasse to be resolved by the Panel before an existing AWS plan can be terminated. In my view, the omission of any reference to the requirements of § 6131(c) in paragraph 4a of the parties' MOA falls far short of signifying that the Union clearly and unmistakably agreed to allow the Respondent to terminate any or all established AWS plans without demonstrating the existence of adverse agency impact justifying such action.

Under all of the foregoing circumstances, I conclude that the Respondent's unilateral termination of the established CWS plan covering the employees in its RDT constituted a violation of section 7116(a)(1) and (5) of the Statute, and that the General Counsel's Cross Motion for Summary Judgment should be granted. I further find that the Respondent's Motion for Summary Judgment should be denied.

Having found that the Respondent violated section 7116 (a)(1) and (5) of the Statute as alleged in the complaint, it is recommended that the Authority issue the following:

ORDER

Pursuant to section 2423.29 of the Authority's Rules and Regulations and section 7118 of the Statute, it is hereby ordered that the United States Army Signal Center and Fort Gordon, Fort Gordon, Georgia, shall:

1. Cease and desist from:

(a) Terminating existing compressed work schedules of employees in the Regimental Directorate of Training without providing the exclusive representative of those employees notice and an opportunity to negotiate to the extent required by the Flexible and Compressed Work Schedules Act of 1982.

(b) In any like or related manner interfering with, restraining or coercing its employees in the exercise of rights assured them by the 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, reestablish the compressed work schedules for the employees in the Regimental Directorate of Training which were unilaterally terminated by Colonel Richard D. Lee on December 20, 1995, and provide the American Federation of Government Employees, Local 2017, the exclusive representative of the affected employees, the opportunity to negotiate with respect to any proposed changes.

(b) Post at its facilities 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 Base Commander 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, 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.

Issued, Washington, D.C., February 14, 1997

_____
SAMUEL A. CHAITOVITZ
Chief Administrative Law Judge

NOTICE TO ALL EMPLOYEES

POSTED BY ORDER OF THE

FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the United States Army Signal Center and Fort Gordon, Fort Gordon, 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 terminate existing compressed work schedules of employees in the Regimental Directorate of Training without providing the exclusive representative of those employees notice and an opportunity to negotiate to the extent required by the Flexible and Compressed Work Schedules Act of 1982.

WE WILL NOT in any like or related manner interfere with, restrain or coerce our employees in the exercise of rights assured them by the Statute.

WE WILL, upon request, reestablish the compressed work schedules for the employees in the Regimental Directorate of Training which were unilaterally terminated by Colonel Richard D. Lee on December 20, 1995, and provide the American Federation of Government Employees, Local 2017, the exclusive representative of the affected employees, the opportunity to negotiate with respect to any proposed changes.

_____
__ (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 Two Tower, 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 SAMUEL A. CHAITOVITZ, Chief Administrative Law Judge, in Case No. AT-CA-60621, were sent to the following parties in the manner indicated:

CERTIFIED MAIL:

Sherrod G. Patterson, Esq.
Counsel for the General Counsel
Federal Labor Relations Authority
Marquis Two Tower - Suite 701
285 Peachtree Center Avenue
Atlanta, GA 30303-1270

James R. Baugh, Esq.
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ATTN: ATZH-JAL
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James Stinchcomb, National Representative
American Federation of Government
Employees, AFL-CIO
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Kay Raney, President
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REGULAR MAIL:

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Dated: February 14, 1997
Washington, DC