AIR FORCE FLIGHT TEST CENTER EDWARDS AIR FORCE BASE, CALIFORNIA Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 3854, AFL-CIO Charging Party	Case No. SF-CA-50232

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 **JANUARY 29, 1996**, and addressed to:

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

ELI NASH, JR.
Administrative Law Judge

Dated: December 29, 1995
Washington, DC

MEMORANDUM DATE: December 29, 1995

TO: The Federal Labor Relations Authority

FROM: ELI NASH, JR.
Administrative Law Judge

SUBJECT: AIR FORCE FLIGHT TEST CENTER
EDWARDS AIR FORCE BASE, CALIFORNIA

Respondent

and Case No. SF-CA-50232

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 3854, AFL-CIO

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 FLIGHT TEST CENTER EDWARDS AIR FORCE BASE, CALIFORNIA Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 3854, AFL-CIO Charging Party	Case No. SF-CA-50232

Captain James M. Peters, Esq.
For the Respondent

Lisa Clare Lerner Miller Esq. and
Stephanie Arthur, Esq.
For the General Counsel

Stan Schoen
For the Charging Party

Before: ELI NASH, JR.
Administrative Law Judge

DECISION

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. (Statute).

Based upon an unfair labor practice charge filed on December 15, 1994 by the Charging Party, American Federation of Government Employees, Local 3854, AFL-CIO (herein called the Union), against the Air Force Test Center, Edwards Air Force Base, California (herein called the Respondent), a Complaint and Notice of Hearing was issued by the Regional Director for the San Francisco Region of the Federal Labor

Relations Authority (herein called the Authority or FLRA). The complaint alleges that the Respondent violated section 7116(a)(1) and (5) of the Statute by implementing changes to the Rivet Workforce Program without first notifying and bargaining with the Union.

A hearing was held in Los Angeles, California, on July 20 and 21, 1995. All parties were afforded a full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence. Counsel for the Respondent and the General Counsel filed post-hearing briefs which have been carefully considered.

Based upon the entire record, including my observation of the witnesses and their demeanor, I make the following findings of fact, conclusions of law, and recommendations.

Findings of Fact

A. The Rivetized Workforce Program is Established

This case involves a concept known as the Rivet or Rivetized Workforce. As originally developed by the Air Force in 1988 for its military personnel through the issuance of written directives and guidance, the program was mandatory and designed to allow the Air Force to deploy with fewer people by cross-training aircraft structural mechanics in a number of related skills so that they could be used as needed on a variety of tasks. In the latter part of 1990, without any Air Force directive requiring it, the Respondent decided to develop a rivetized workforce among its civilian employees on a voluntary basis. As the Respondent's witnesses explained at the hearing, the civilian employees work alongside military personnel in the aircraft repair shops on a daily basis, and it made sense to have both groups cross-trained so that more work could be accomplished with fewer workers.

Thus, a plan was devised by the shop chiefs in the Respondent's 412th Equipment Maintenance Squadron under which employees in the sheet metal, painting/corrosion and plastics shops could opt to train and rotate among the three shops, thereby becoming proficient in all three related skills. The idea was that one employee could handle a project from beginning to end without having it pass from shop to shop and employee to employee, thus saving both time and money. Since the new program required employees to take and pass correspondence courses as well as rotate away from their "home" shops for approximately half the year to learn

new skills,[1] the supervisors who actively encouraged the employees to enter the program advised them that upon their successful completion of the training, they would be promoted to the WG-12 grade level.[2] There was considerable dispute at the hearing whether the promotions were to be automatic and "noncompetitive," or whether they were to be not only "competitive" but also subject to the availability of WG-12 level work for the "rivetized" employees to perform. All of the employees who entered the training program testified that they were never told that they would be in competition for
WG-12 positions after successfully completing their training; never in fact applied for such positions; and never were advised that their promotions depended on the existence of WG-12 level work. On the other hand, Beverly Chapman-Roberts, one of the Respondent's position classification specialists, testified that all of the rivetized WG-12 positions were competitively filled even though the employees never applied for such positions and did not know that they were being competitively selected,[3] and that no rivetized employee could fill a WG-12 position

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As described in the record, employees in the program would spend about three months in their home shop; rotate to one of the other shops for three months; rotate back to their home shop for three months; then rotate to the third shop for three months. Accordingly, they would work in their area of expertise for six months and receive on-the-job training in the other skills for six months.

2
At the time that the rivetized workforce program was established, the employees in the affected shops were at various grade levels, none higher than WG-11.

3
In this regard, she testified that the Air Force has a computerized personnel system whereby all employees have their skills and abilities recorded in the data base and therefore may be considered competitively for a job vacancy through a computer search without ever knowing it until notified of their selection for the vacant position. According to Chapman-Roberts, this process is followed because it permits all employees to be considered for every job they qualify to hold even if they are unaware of the vacancy.

unless there was at least some work at that level for the employee to perform.[4]

Several key facts are not in dispute, however. One is that, at the inception of the rivet workforce program, Chapman-Roberts prepared a position description for the new three-trade position (sheet metal, plastics and painting) and classified it "Aircraft Structures Mechanic, WG-3801-12."
In an accompanying memorandum dated March 26, 1991 (Resp. Exh. 7), she set forth how employees could reach the WG-12 level:

> New PD's will be created as three-trade counterparts to the single-trade PD's, at the same grade as the original PD, but with the new WG-3801 series and with skills codes in all three trades. People who begin the training program for rivet workforce will be reassigned to the three-trade PD at the same grade as formerly held on the single-trade PD. On completion of the training plan, management may submit SF-52 requesting Cancel/Establish/Fill on the encumbered authorization at the WG-12 level. The staffing specialist may complete the action through alternative certifi-cation procedures. Since AF's trend is to have all positions included in the rivet structure, the section may conceivably have all authorized position[s] eventually reclassified to the WG-3801-12 level.

Second, it is undisputed that all employees who voluntarily entered and successfully completed the rivet workforce training program were promoted into the new three-trade position at the WG-12 level.

B. The Rivetized Workforce Program is Modified in 1993

According to Chapman-Roberts, the rivetized workforce program was modified in 1993 because the Respondent perceived that the original program which had been in operation since the end of 1990 was failing to comply with merit principles. More specifically, Chapman-Roberts explained that employees could enter into the training

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[4] She testified that in a wage grade position description, the highest level of work in the PD will determine what the grade level of the entire position will be. That is, even if an employee performs only some WG-12 work but mostly lower-graded work, the appropriate grade of the position is WG-12.

program noncompetitively as the plan was originally designed, and that the only competition occurred at the point where a WG-12 position was to be filled. Since the only employees who could compete successfully for promotion to the WG-12 level were those who had successfully completed the rivetized workforce training, the competition was viewed as a sham. To correct this infirmity, the Respondent modified its procedures so that the competition occurred at the point of entry into the training program rather than after completion of the training. Accordingly, as reflected in Chapman-Roberts's memo dated April 16, 1993 (Resp. Exh. 2):

> When management determines that the organization has sufficient work to require such a [WG-12] level of performance, an SF-52 will be submitted for competitive fill using a vacant authorization at either the full performance level or the WG-09 or WG-11 entry or intermediate level. Once a selection is made, employees may embark on training plans in occupations other than the one already known by the employee. The PD for the targeted Rivet position will carry skill codes in all three trades. Once training is completed and [the] employee can work with normal independence on complex projects, management may submit for promotion to the WG-12 level.

The Union received a copy of the above memo but its request to negotiate was untimely submitted under the parties' agreement. In bringing this fact to the Union's attention by memo dated
May 27, 1993 (Resp. Exh. 14), the Respondent expressed surprise that the Union wanted to negotiate because management expected the Union would be "pleased to see that competition was being held upon entry into a multi-skill position description." No further communication between the parties concerning the rivetized workforce program occurred until November 1994, as described in subsection D below.

C. The Transfer of Aircraft and Mechanics from Wright-Patterson Air Force Base, Ohio to Edwards Air Force Base, California in mid-1993 and Other Changes in the Respondent's Rivetized Workforce Program

After the Respondent's memo was issued in April 1993, four employees entered the rivetized workforce program. Two of these employees, Randolph Morehead and Thomas Stephens, transferred to the Respondent from Wright-Patterson Air Force Base in July 1993. Both employees testified without

contradiction that they and other mechanics were heavily recruited by several of the Respondent's management officials and supervisors starting in December 1992 to relocate from Ohio to California and were promised promotions to WG-12 upon completion of whatever rivetized training they might require after they had transferred to the Respondent. Their recruit-ment was necessitated because 24 aircraft on which these mechanics had been working were targeted for relocation from Wright-Patterson to Edwards Air Force Base.

Stephens testified that he was a WG-11 mechanic at Wright-Patterson with 20 years' seniority and in no danger of losing his job, but that he decided to transfer to the Respondent because of the promised promotion to WG-12 even though the cost of living was much higher in California.[5] Despite management's assurances, however, Stephens was not given an opportunity for rivet training until June 1994, almost a year after his transfer. He completed that training in August 1994 and began his rotation among the three shops immediately, but he has never been promoted to WG-12 even though he is doing WG-12 work and is busier than he was at Wright-Patterson Air Force Base prior to the transfer.

Morehead's testimony was similar to that of Stephens, and again was largely uncontradicted. Morehead testified that he had been a WG-11 mechanic with rivetized training at Wright-Patterson for several years when he was heavily recruited in December 1992 to transfer to Edwards along with the aircraft on which he had been working. He decided to transfer solely because of the repeated assurance that he would be upgraded to WG-12 upon completion of the rivetized training program at Edwards. He completed the training, including rotation among the three shops for about a year, and was then recommended in July 1994 by the flight chief, Kenneth Pennock, for a promo-tion to WG-12 (GC Exh. 42). The recommendation was rejected without explanation, but when Morehead inquired, he was told that the position was filled competitively and he didn't get it, but that he was lucky to have a job at all. At that point he became concerned about the loss of employment and stopped inquiring about the promotion. When the promotion was denied, however, Morehead's wife and family returned to Ohio. They are still separated and Morehead is still a WG-11 rivetized mechanic at the Respondent's facility in California.

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For example, Stephens testified that his house payments increased from $200 to $900 per month.

The other two employees who entered the rivetized training program after April 1993 were Stephen Hartung and Julio Sanchez-Orsini. Both testified that they were urged repeatedly by their supervisors at Edwards AFB to enter the rivet training program, and that they were promised a promotion to WG-12 upon its successful completion. Hartung completed his rivet training in May 1994 and has received perfect performance appraisals from his supervisors ever since. He was recommended for a promotion to WG-12 by his supervisors in January 1995, but the recommendation was rejected by Chapman-Roberts on April 14, 1995, based upon an audit conducted on April 4 which "revealed that no WG-12 level work, as described in the full performance PD, is being assigned to the employee" (GC Exh. 56). Sanchez-Orsini began his rivet training in November 1993 and rotated among the three shops until November 10, 1994, when he was returned to his "home" shop and told that there would be no more rotation. He has never been promoted to WG-12.

D. <u>The November 1994 Meeting with Chapman-Roberts to Discuss Respondent's Rivetized Workforce Program</u>

In November 1994, because of widespread confusion concerning the operation of the Respondent's rivetized workforce program and increasing complaints from the affected employees, Classification Specialist Chapman-Roberts held a meeting to explain the program and answer questions. Although she testified that the meeting was designed to clarify the existing operation of the program and that nothing changed at or as a result of the meeting, all of the employees who attended it testified to the contrary. Thus, Donald White, a WG-12 rivetized mechanic, testified that the Respondent announced at the meeting that there would no longer be promotions to WG-12 upon completion of training. Thomas Stephens testified that the employees were told that the program was "on hold," and that supervisors at the meeting indicated that the employees "ought to be lucky to even have a job." Similarly, Julio Sanchez-Orsini testified that the Respondent announced that "they made a mistake, that manage-ment screwed up, and the only way to fix it was just stop everything. The 3801-12s stayed the 3801-12s. The 3801-11s will stay 3801-11s, and that we would not rotate any longer, and that we better be glad that we got the training." Stephen Hartung testified that he got the impression from the meeting that "the rivet workforce was going to be eliminated." Finally, Amye Coates, one of the Respondent's supervisors who attended the meeting, testified that Chapman-Roberts explained "why there wasn't (sic) going to be any more, basically, promotions, or there wasn't any more work for the rivetized workforce."

It is clear and undisputed that rotation of the rivetized workforce was discontinued in November 1994, after the meeting. It is equally clear from the record that the Respondent's supervisors were uniformly disappointed in the way that the rivetized workforce program was working out. As they explained, the rivetized employees who were rotated from shop to shop tended to lose some of their acquired skills by the time they rotated out and back again, and therefore had to be partially retrained before they could be fully productive. Additionally, the supervisors indicated that the program did not work in practice the way it was designed in theory because employees were unable to take a project from start to finish due to the unavailability of machinery in each shop when the rivetized employees needed it. Therefore, they testified that the Respondent was not experiencing the increased savings and efficiency that the program was intended to achieve. In view of this record testimony, I conclude that it is far more likely that the Respondent announced the demise of rotations and promotions for the rivetized workforce at the November 1994 meeting than that "nothing was changed" at and after the meeting. Thus, I credit the employees' version of what occurred at the November meeting.

Conclusions of Law and Recommendations

A. Preliminary Matters

As a preliminary matter, the Respondent contends that the Union's unfair labor practice charge in this case, filed on December 15, 1994, was untimely under section 7118(a)(4)(A) of the Statute because the only change in conditions of employ-ment affecting the rivetized workforce program occurred in April 1993 rather than in November 1994, and therefore more than six months before the charge was filed. For the reasons set forth below, I find that the changes occurring in November 1994 were not merely a continuation of the changes in the program which the Respondent implemented in April 1993 after notifying the Union and affording it the opportunity to negotiate. Accordingly, I reject the Respondent's contention that the charge in this case was untimely and that the complaint should be dismissed.

I also reject the General Counsel's contention that the Respondent violated section 7116(a)(1) and (5) of the Statute by discontinuing a "career ladder" under which all mechanics successfully completing the rivetized workforce training program were entitled to automatic and noncompetitive promotions to the WG-12 grade level. Rather, I find, based on the record evidence set forth above, that from the inception of the Respondent's program to rivetize

some of its civilian workforce, promotions to the WG-3801-12 position were competi-tive personnel actions under the Air Force's computerized system even though the employees may have had no knowledge that their consideration for promotion was competitive. Thus, the Respondent's 1991 and 1993 memoranda concerning the operation of the rivetized workforce program both indicated that WG-12 positions were to be filled competitively, and the various promotion actions taken thereunder specified that the employees' selections for promotion to the WG-12 positions were pursuant to "cert." lists and other competitive procedures. Accordingly, I conclude that the Respondent did not unilaterally discontinue a career ladder policy in violation of the Statute.

B. The Duty to Bargain Violation

However, such finding does not end the inquiry in this case. The complaint alleges that the Respondent violated section 7116(a)(1) and (5) of the Statute by making changes in the rivet workforce program without first notifying and bar-gaining with the Union. It is undisputed, and I find, that the rivet workforce program affects the conditions of employment of bargaining unit employees. See Department of the Air Force, Headquarters, Air Force Logistics Command, Wright-Patterson Air Force Base, Ohio, 25 FLRA 541, 544 (1987). It is also undisputed that the Respondent was required to notify the Union of any proposed changes in the program and afford the Union an opportunity to bargain before such changes were implemented. Indeed, this is exactly what the Respondent did before implementing changes to the rivet workforce program in April 1993. The Respondent admits that it gave the Union no notice of proposed changes in November 1994, contending that no changes in the program were implemented at that time. Accordingly, the sole issue to be resolved is whether changes to the rivet workforce program were implemented in November 1994. As indicated above, I conclude that the record evidence supports a finding that the Respondent discontinued the rotation and competitive promotion of its rivetized mechanics in November 1994, and that such unilateral action constituted a violation of its duty to bargain in good faith under the Statute.

As the Respondent's witnesses explained at the hearing, particularly Beverly Chapman-Roberts who was involved with the rivet workforce program from its inception in late 1990 or early 1991, entry into the program originally was voluntary and noncompetitive. Employees went through the extensive examination and training phases of the program and, after the training was successfully completed, became

eligible for competitive promotion to the WG-12 level. The fact that every employee who was able to successfully complete rivet training received a promotion to the WG-3801-12 position was the inevitable consequence of a system where the only employees eligible to be considered for the position were those who had been noncompetitively selected for and subsequently received rivet training in all three required skills. To correct this perceived departure from merit principles, the program was specifically revised in April 1993 to make the competitive selection process occur at the point of entry into rivet training rather than during the process of considering candi-dates for a WG-3801-12 position following rivet training. Accordingly, as set forth above, the Respondent's memo describing the operation of the rivet workforce program as of April 1993 specified that employees would be competitively selected for rivet training "[w]hen management determines that the organization has sufficient work to require such a [WG-12] level of performance," and that "[o]nce training is completed and [the] employee can work with normal independence on complex projects, management may submit for promotion to the WG-12 level."

A fair reading of the Respondent's April 1993 memo, consistent with Chapman-Roberts's explanation of the intent behind the changes embodied in it, is that employees not only would be competitively selected for rivet training but that such selection would occur only when management determined that rivet training was justified by the existence of sufficient WG-12 level work to be performed. Further, again consistent with the Respondent's explanation, employees successfully completing the rivet training would be noncompetitively promoted to the WG-12 level upon their supervisors' verification that they "can work with normal independence on complex projects." That is, under the revised program, the only basis for denying a promotion to a rivetized mechanic is that he has failed to demonstrate the ability to work with normal independence on complex projects.[6] The existence of sufficient work at the WG-12 level to justify a promotion was determined by management before the employee was competitively selected for rivet training in the first place.

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[6] The record reflects that the shop supervisors would not certify an employee as having successfully completed the training program until they were satisfied that the employee had demonstrated the ability to perform independently and with sufficient skill every task listed by management on the training forms.

The employees selected for rivet training under the 1993 memo but denied promotion to the WG-12 level in this case were not treated in a manner consistent with the Respondent's own description of how the rivet workforce program was to operate. Thus, all four employees successfully completed rivet training and were certified as having the requisite ability to perform all three related skills. There was no evidence presented that any of the four rivetized employees lacked the necessary skills to "work with normal independence on complex projects." On the contrary, two of the employees--Morehead and Hartung--were recommended by their supervisors for promotion to WG-12 but the recommendations were rejected. The record does not reflect whether the other two rivetized employees--Sanchez-Orsini and Stephens--were recommended for promotion. However, Sanchez-Orsini completed his rivet training in November 1994, just as the Respondent was announcing to supervisors and employees alike that rotations among the three shops would stop and that promotions to the WG-12 level would cease. Stephens successfully completed his rivet training in August 1994 but was not promoted despite his 20 years of experience as an aircraft mechanic and the assurances he received from the Respondent's supervisors and management officials that he would receive a promotion to WG-12 upon transferring from Wright-Patterson to Edwards Air Force Base and completing rivet training.

I conclude that all four employees were denied promotion to the WG-12 level because the Respondent decided to discontinue the program unilaterally in November 1994, and not because the rivet employees lacked the requisite skills or sufficient WG-12 work to perform. I base this conclusion on the testimony of the Respondent's supervisors that they were dissatisfied with how the rivet workforce program was working out in practice, and their desire that the rotation of the rivetized employees be ended so that each employee could concentrate on the work of one shop exclusively. While the Respondent was well within its rights to decide that the rivetized workforce program should be discontinued, it was not entitled to take such action without informing the Union of that decision and providing an opportunity for negotiation. Accordingly, the Respondent's unilateral action in November 1994 to end the rotation of rivetized mechanics and to discontinue the practice under its 1993 memo of promoting all rivetized mechanics to the WG-12 level constituted a violation of section 7116(a)(1) and (5) of the Statute.

C. <u>The Appropriate Remedy</u>

As a remedy for the violation found, the General Counsel has requested a status quo ante order and backpay for the adversely affected employees. More particularly, the General Counsel asserts that a status quo ante remedy is appropriate in the circumstances of this case under the well-established criteria set forth in Federal Correctional Institution, 8 FLRA 604 (1982), and that backpay is appropriate under the criteria specified in the Back Pay Act, 5 U.S.C. § 5596. For the reasons stated below, I agree.

In Federal Correctional Institution, the Authority adopted a framework for determining on a case-by-case basis whether a status quo ante remedy is appropriate where an agency has changed conditions of employment by exercising its reserved management rights without first satisfying its bar-gaining obligations under section 7106(b)(2) and (3) of the Statute. In such cases, the Authority will consider, among other things: (1) whether the union was given proper notice; (2) whether the union requested bargaining; (3) the willful-ness of the agency's actions; (4) the nature and extent of the impact experienced by adversely affected employees; and (5) to what degree a status quo ante remedy would disrupt or impair the efficiency and effectiveness of the agency's operations. Id. at 606; United States Department of Justice, United States Immigration and Naturalization Service, El Paso District Office, 34 FLRA 1035, 1041-42 (1990).

In this case, the Respondent gave the Union no advance notice of the changes it was making to the rivet workforce program, specifically cancellation of the rivet employees' rotation among the shops and the promotion of rivet employees to the WG-12 level upon completion of training and demonstration of the ability to work with normal independence on complex projects. Since the Union had no advance notice of the changes, it could not have requested bargaining before the changes were implemented. Moreover, since the Respondent maintained at all times that no changes to the rivet workforce program were being made, it would have been futile for the Union to request bargaining after the changes were announced in November 1994. See U.S. Department of the Navy, Naval Avionics Center, Indianapolis, Indiana, 36 FLRA 567, 572 (1990). With regard to the willfulness of the Respondent's actions, I find it difficult to comprehend how the same individual who drafted the April 1993 memo describing how the rivet workforce program was to operate could testify that employees who successfully completed the rivet training and were submitted by their supervisors for promotion to the

WG-12 level might be denied the promotion based on the unavailability of WG-12 work when the program was designed so that employees would not be selected for rivet training unless management determined initially that there was "sufficient work to require such a level of performance." As to the nature and extent of the impact experienced by the adversely affected employees, two of them transferred from Ohio to California and thereby incurred substantially higher living costs based on the Respondent's repeated assurance that they would be promoted to the WG-12 level upon completion of whatever rivet training they might require. When Morehead was denied the recommended promotion, his family returned to Ohio. Stephens, who had sufficient seniority in Ohio to retain his WG-11 job there, would not have relocated to the Respondent's facility without the promise of a promotion. All four employees who went through the extensive examination and on-the-job training to become rivetized mechanics were denied the quid pro quo of a promotion for all their efforts. Addition-ally, with the end of rotations, these employees would be likely to lose the skills they worked so hard to acquire, and therefore would lose both the ability to handle complex projects with normal independence and the qualifications to be WG-12 rivetized mechanics. Finally, the Respondent has presented no evidence to show that promoting the four WG-11 employees to WG-12 would disrupt or impair the agency's operations. Management would simply be placing these employees on a par with all of the other mechanics who went through the rivet workforce program and were promoted to WG-12 during the four years prior to November 1994.

To be sure, the Respondent could then decide to curtail or eliminate the program. Under the terms of the 1993 program, the Respondent could simply determine that there was insufficient WG-12 work available to justify the cost of training and promoting any more mechanics. With regard to the existing group of rivetized mechanics, the Respondent could decide to eliminate rotations or even to reduce the number of such employees in its workforce. However, these latter decisions could not lawfully be implemented without first notifying the Union and bargaining upon request concerning the impact and implementation thereof.

Finally, the General Counsel's request that backpay be ordered for the four rivetized employees who were denied promotions to the WG-12 level is well-founded. In Federal Aviation Administration, Washington, D.C., 27 FLRA 230 (1987), the Authority formulated an approach for determining whether backpay remedies are appropriate in cases involving agency refusals to bargain over impact and implementation.

Under that approach, the Authority stated, a backpay award must comply with the Back Pay Act, 5 U.S.C. § 5596, and requires determinations that: (1) an employee was affected by an unjustified or unwarranted agency personnel action; (2) the unjustified personnel action resulted in a withdrawal or reduction in pay, allowances, or differentials of the employee; and (3) the withdrawal or reduction would not have occurred but for the unjustified action. Id. at 232-34; see also Department of Health and Human Services, Social Security Administration, Dallas Region, Dallas, Texas, 32 FLRA 521, 526 (1988).

The first requirement is met when it is established that an employee was affected by an unfair labor practice under the Statute, including a refusal-to-bargain violation under section 7116(a)(5). See Federal Aviation Administration, 27 FLRA at 233. In this case, as found above, the Respondent's refusal to bargain over its decision to change the rivet workforce program adversely affected the four employees who had successfully completed their rivet training but were denied promotions to WG-12. The second element is satisfied when it is shown that the unjustified personnel action (i.e., the refusal to bargain) resulted in the withdrawal or reduction in the employee's pay, allowances, or differentials within the meaning of the Back Pay Act. In this case, the unilateral change in conditions of employment constituting the unjustified personnel action resulted in the withdrawal or reduction in the four affected employees' pay because it denied them promotions from WG-11 to WG-12 upon completion of their rivet training. The final determination necessary for an award of backpay is that but for the unjustified personnel action, the employee would not have suffered the withdrawal or reduction. As the Authority has recognized, "[i]n some unfair labor practice cases this causal relationship is clearly established [and] [i]n these cases, we will continue to specifically order backpay as corrective action for the unfair labor practice involved to make the employee whole." Federal Aviation Administration, 27 FLRA at 233-34. This is such a clear case. That is, but for the Respondent's decision to depart from the operation of its established rivet workforce program, the four affected employees would have been promoted to the WG-12 level upon the successful completion of rivet training, there being no contention that the employees were unable to work with normal independence on complex projects. Accordingly, I conclude that the four employees are entitled to backpay with interest retroactive to the dates on which they completed their training and/or their supervisors submitted SF-52 forms requesting their promotion.

Based on the foregoing findings and conclusions, it is recommended that the Authority issue the following:

ORDER

Pursuant to section 2423.29 of the Rules and Regulations of the Federal Labor Relations Authority and section 7118 of the Statute, it is hereby ordered that the Air Force Flight Test Center, Edwards Air Force Base, California, shall:

1. Cease and desist from:

(a) Unilaterally implementing changes to the Rivet Workforce Program, including discontinuation of the practice of rotating rivetized employees and promoting them to the WG-12 level upon completion of rivet training if they can work with normal independence on complex projects, without providing the American Federation of Government Employees, Local 3854, AFL-CIO, the exclusive representative of its employees, with notice and the opportunity to bargain over the impact and implementation of such changes in the future.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of 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) Rescind the changes to the Rivet Workforce Program which were implemented in or after November 1994, reinstitute the Rivet Workforce Program as it existed as of April 16, 1993, and provide the American Federation of Government Employees, Local 3854, AFL-CIO, the exclusive representative of its employees, with notice and the opportunity to bargain over the impact and implementation of any changes in the future.

(b) Promote to WG-12 all employees who successfully completed rivet training between April 16, 1993 and November 1994, retroactive to the date that each completed his training and/or was recommended for promotion by his supervisor, including Thomas Stephens, Randolph Morehead, Julio Sanchez-Orsini, and Stephen Hartung, and provide the employees with backpay and interest in accordance with the Back Pay Act, 5 U.S.C. § 5596.

(c) Post at its facilities copies of the attached Notice on forms to be furnished by the Federal Labor Relations Authority. On receipt of such forms, they shall be signed by the 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 ensure that such Notices are not altered, defaced, or covered by any other material.

(d) Pursuant to section 2423.30 of the Authority's Rules and Regulations, notify the Regional Director, San Francisco Region, Federal Labor Relations Authority, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply.

Issued, December 29, 1995, Washington, D.C.

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ELI NASH, JR.
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 implement changes to the Rivet Workforce Program, including discontinuation of the practice of rotating rivetized employees and promoting them to the WG-12 level upon completion of rivet training if they can work with normal independence on complex projects, without providing the American Federation of Government Employees, Local 3854, AFL-CIO, the exclusive representative of our employees, with notice and the opportunity to bargain over the impact and implementation of such changes in the future.

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

WE WILL rescind the changes to the Rivet Workforce Program which were implemented in or after November 1994, reinstitute the Rivet Workforce Program as it existed as of April 16, 1993, and provide the American Federation of Government Employees, Local 3854, AFL-CIO, the exclusive representative of our employees, with notice and the opportunity to bargain over the impact and implementation of any changes in the future.

WE WILL promote to WG-12 all employees who successfully completed rivet training between April 16, 1993 and November 1994, retroactive to the date that each completed his training and/or was recommended for promotion by his supervisor, including Thomas Stephens, Randolph Morehead, Julio Sanchez-Orsini, and Stephen Hartung, and provide the employees with backpay and interest in accordance with the Back Pay Act, 5 U.S.C. § 5596.

_____

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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, whose address is: 901 Market Street, Suite 220, San Francisco, CA 94103, and whose telephone number is: (415) 356-5000.

CERTIFICATE OF SERVICE

I hereby certify that copies of this DECISION issued by ELI NASH, JR., Administrative Law Judge, in Case No. SF-CA-50232, were sent to the following parties in the manner indicated:

CERTIFIED MAIL:

Captain James M. Peters
Air Force Legal Services Agency
Central Labor Law Office
1501 Wilson Blvd., 7th Floor
Arlington, VA 22209

Stan Schoen, Representative
American Federation of Government
Employees, Local 3854, AFL-CIO
P.O. Box 87
Edwards AFB, CA 93523

Stefanie Arthur, Esq.
Counsel for the General Counsel
Federal Labor Relations Authority
901 Market St., Suite 220
San Francisco, CA 94103-1791

REGULAR MAIL:

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

Dated: December 29, 1995

Washington, DC