

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

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DEPARTMENT OF THE NAVY  
MARINE CORPS LOGISTICS BASE  
ALBANY, GEORGIA  
Respondent  
and  
AMERICAN FEDERATION OF  
GOVERNMENT EMPLOYEES  
Charging Party  
.....

Case No. 4-CA-70665

William Petty  
For Respondent  
Leonard Burnham  
For Charging Party  
Linda J. Norwood, Esq.  
For General Counsel of FLRA  
Before: SAMUEL A. CHAITOVITZ  
Administrative Law Judge

DECISION

Statement of the Case

This is a proceeding under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the U.S. Code, 5 U.S.C. § 7101 et seq., 92 Stat. 1191, hereinafter referred to as the Statute, and the Rules and Regulations of the Federal Labor Relations Authority (FLRA), 5 C.F.R. Chapter XIV, § 2410 et seq.

A charge against the Department of the Navy, Marine Corps Logistics Base, Albany, Georgia, hereinafter called Respondent or Marine Corps Logistics Base, was filed by American Federation of Government Employees, herein called AFGE, on June 23, 1987. Based upon this charge, the General Counsel of the FLRA, by the Regional Director of Region IV,

of the FLRA issued a Complaint and Notice of Hearing alleging that Respondent violated sections 7116(a)(1), and (5) of the Statute by detailing certain employees without notifying AFGE or giving it an opportunity to bargain concerning the impact and implementation of the details. Marine Corps Logistics Base filed an Answer denying it had violated the Statute.

A hearing was conducted before the undersigned in Albany, Georgia. AFGE, Marine Corps Logistics Base and General Counsel of the FLRA were represented and afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence and to argue orally. Post-hearing briefs were filed and have been fully considered.

Based upon the entire record in this matter, my observation of the witnesses and their demeanor, and my evaluation of the evidence, I make the following:

#### Findings of Fact

The Department of Defense is an agency within the meaning of the Statute. Department of the Navy is a primary subdivision of the Department of Defense, within the meaning of the Rules and Regulations of the FLRA. The United States Marine Corps, herein called USMC, is a subdivision of the Department of the Navy. Marine Corps Logistics Base is an activity of the Department of Defense within the meaning of the Rules and Regulations of the FLRA.

At all times material AFGE has been the exclusive collective bargaining representative for a nationwide unit of employees of the USMC, including employees of the Marine Corps Logistics Base, and AFGE and USMC have been parties to a collective bargaining agreement.

AFGE delegated to the Council of Marine Corps Locals (Council 240), herein called the Council, the Authority to represent certain employees in the collective bargaining unit, including employees of the Marine Corps Logistics Base. AFGE Local 2317 is an administrative subdivision of the Council and AFGE for the purposes of representing certain employees in the collective bargaining unit, including employees of the Marine Corps Logistics Base.

The collective bargaining agreement provides in Article 4, Section 1, "Section 1 The employer will notify the council of policy changes originating above the activity

level that give rise to a bargaining obligation under the statute. Where such changes originate at the activity level, the activity will notify the appropriate local union."

Article 16 of the collective bargaining agreement deals with details and temporary promotions.<sup>1/</sup> Article 31,

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<sup>1/</sup> Article 16 provides:

Article 16: Details and Temporary Promotions

Section 1 A detail is a temporary assignment of an employee to a different position (or set of duties) for a specified period with the employee normally returning to his or her regular duties at the end of the detail. Details are intended for meeting temporary needs of an organization when necessary services cannot be obtained by other desirable or practical means.

Section 2 Employees may be detailed to a different position at the same grade level, a higher grade level or a lower grade level; or to a set of duties which have not been classified. OPM and agency directives and the MLA shall apply to detail assignments.

Section 3 Details of more than 30 consecutive days to a position of a different title, series and grade must be documented on an SF-50 and recorded in the employee's Official Personnel Folder (OPF). Details of less than 30 days will be documented by the supervisor and provided to the employee. The employee may submit an SF-172, Amendment to Personal Qualifications Statement, to be included in their OPF.

Section 4 When it is known in advance that a temporary assignment of a unit employee to a position within the unit classified at a higher grade will extend for more than 30 days, the employee, if qualified, shall be temporarily promoted for the period of the assignment. If during the course of an employee's detail to a higher graded position, it becomes apparent that the temporary requirement to fill the position will extend beyond 30 days, management will determine whether to terminate the detail and fill the position through other means or to allow the detailed employee to continue in the assignment. If it is decided

(Footnote continued on next page)

Section 3a(6) provides that employees on extended temporary assignments of over 120 days will have elements and standards established for that assignment. Article 13 sets forth the grievance procedure for disputes over interpretation of the collective bargaining agreement.

On May 18, 1987, Master Sergeant R. L. Cook, the head of the Garrison Mobile Equipment Station (GME) in the Facilities and Services Division, held a meeting with the section steward, Ocie Ward. Cook informed Ward that Cook planned on detailing four bargaining unit employees in the section to positions involving different duties for a period of one-hundred and twenty (120) days. Cook told Ward that Cook would detail two Automotive Repair Inspectors (WG-11), Jesse Nelms and Dennis Griffin; Nelms would be detailed to a GS-3 Utilization Clerk, and Griffin would be detailed to a WG-10 Electromotive Equipment Mechanic position. In addition, two WG-6 Mobile Equipment Servicers,<sup>2/</sup> David Deal and an

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(Footnote 1 continued from previous page)

that the detailed employee should continue in the position, he or she will be temporarily promoted effective on the 31st day of the assignment.

Section 5 Extended details during major reorganizations may be an exception to the policy of this Article provided the details are accomplished in accordance with OPM and agency regulations.

Section 6 Temporary promotions in excess of 120 days shall be made under competitive merit staffing procedures. Prior service under all temporary promotions or details to higher graded positions within the preceding 12 months is included in the determination of the 120 day limitation. Details to higher graded positions and temporary promotions of 120 days or less need not be filled through competitive procedures. When competitive procedures are not used, management shall give careful consideration to rotating the temporary assignment among those employees with the necessary skills and abilities. Noncompetitive details and temporary promotions will be assigned fairly and equitably.

Section 7 Employees who are temporarily detailed or promoted will be permitted to retain dues deduction.

<sup>2/</sup> The Servicers essentially performed oil changes and lubrications and checked the lights on the vehicles.

employee named Nixon, would be detailed; Deal would go into a position called "unclassified duties," also at a WG-6 rating, and would assist mechanics. Nixon would be detailed to tire repair duties.<sup>3/</sup> As a result of detailing the Servicicers the four or five mechanics in the shop would begin doing the Servicicers' duties, which included lubricating and oil changes.

On that same afternoon, Master Sergeant Cook began meeting with the employees to be detailed. He informed each one and instructed them to begin the new duties immediately. No one in management gave any notice of these details to AFGE Local 2317 President Leonard Burnham.<sup>4/</sup> Burnham was the appropriate person to be notified of changes and he had not designated anyone else to accept such notice.

None of the detailed employees suffered reduction in base pay as a result of the detail. Griffin in his job as inspector did not perform repair or maintenance work on vehicles, rather he examined vehicles and determined the needed work and drafted the work orders. He did this with respect to the "green fleet." Nelms in his job as inspector performed the same duties for the "yellow fleet." Both Griffin and Nelms had desks in the shop where they completed their paper work.

After his detail to Mechanic position, WG-10 Griffin performed mechanic's duties repairing vehicles and doing maintenance. The work was dirtier and required more physical exertion than did Griffin's job as inspector. Griffin no longer worked at a desk and, several weeks after the detail, he developed a skin rash and returned to his inspector duties.

Since his detail to Utilization Clerk, Nelms has a desk in the shop office where he performs clerical duties, including keeping records of vehicles and repairs and maintenance and he writes orders for mechanics. Nelms also checks the computer to see if maintenance is due on vehicles. Nelms also had a different supervisor than he did when he performed his inspector duties.

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<sup>3/</sup> Nixon resigned his position shortly after the details began.

<sup>4/</sup> Ocie Ward had no time at all to relay the information about the details to Burnham since the details began immediately after his meeting with Cook.

When Griffin returned to his inspector duties, the actual inspector duties had changed. Nelms was no longer doing inspector work and the number of vehicles to be inspected increased. The inspector was no longer required to do in-progress inspections or complete work orders.

Deal, in his Servicer position, performed maintenance work, including lubrication and oil changes, checking various coolant systems, checking the lights and brakes and electrical systems and did tire repairs. As a tire repairer, the position to which Deal was detailed, Deal did not regularly work on mechanical equipment, as he did as a Servicer. He lost experience on equipment and expected that he would be disadvantaged in competing for jobs with mechanics. The tire repairer duties involved more physical exertion and Deal injured his wrist performing these duties. The Servicer position offered Deal greater opportunities for promotion than the tire repairer position.

When the Servicers ceased doing the lubrication work and oil changes, the four or five Automotive Mechanics, who worked in the Garrison Module Equipment Shop, unit members, began doing these duties in addition to their own regular duties.

After the details were effected and the employees had been working in their new duties, sometime in June 1987, one of the employees, Dennis Griffin, complained to Ward about his situation. Ward and Griffin approached Cook with Griffin's problems. Cook stated that he could do nothing about it. Ward reminded Cook that management should have bargained with the Local Union President on the details. Cook replied that he did not know anything about the Union "regulations." The employees remained in their details; and the AFGE filed an unfair labor charge.<sup>5/</sup>

There had been 15 prior details without notice to AFGE Local 2317 and the union did not request to bargain about these details. There is no evidence to show AFGE Local 2317 knew about these details. There are about 750 unit employees at the Marine Corps Logistics Base.

#### Discussion and Conclusions

The FLRA has held that an agency violates sections 7116 (a)(1) and (5) of the Statute when it exercises a management

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<sup>5/</sup> The meeting was not a grievance meeting, as defined in the collective bargaining agreement, Article 13, and as described by Ocie Ward.

right within the meaning of section 7106(a)(2) of the Statute if it fails to negotiate about the implementation of the change and appropriate arrangements for employees adversely affected by the change.<sup>6/</sup> See, Internal Revenue Service, Washington, D.C. and Internal Revenue Service, Denver District, Denver, Colorado, 27 FLRA 664 (1987), hereinafter called IRS Denver).

In the subject, even though the detailed employees suffered no loss of pay, it is clear, and I conclude, that the details of the four employees constituted a change in conditions of employment which obliged the agency to bargain about the impact and implementation of the change, see section 7106(b)(2) and (3) of the Statute and IRS Denver, supra, and Department of Health and Human Services, Family Support Administration, 30 FLRA No. 43 (1987), unless for some reason the union had given up its rights to be notified and to bargain or because the impact of the change was de minimis.

The record establishes that with respect to the subject details, the impact on the detailed employees was not de minimis. The affect on the detailed employees was substantial, their work was less desirable after the details, it involved less skill and technical ability, and it could have adversely affected promotion potential. It also meant other unit employees had to perform more work to pick up the slack because of the absence of the detailed employees. Accordingly, the impact of the change was hardly de minimis. Cf. Department of Health and Human Services, Social Security Administration, 24 FLRA 403 (1986) and see also IRS Denver, supra.

Thus, absent some waiver, AFGE was entitled to adequate advance notice of the details and an opportunity to bargain about their impact and implementation.

AFGE Local 2317 President Burnham was the appropriate person to be notified of the details and Marine Corps Logistics Base failed to notify him. The fact that Marine Corps Logistics Base gave Shop Steward Ward notification does not satisfy its obligation to notify the agent identified by AFGE to receive such notification. See Headquarters, XVII Airborne Corps, Fort Bragg, North Carolina, 15 FLRA 790 (1984). Further, the notification to Ward, even if he had been the appropriate person to notify, was not sufficient because it was given immediately before the details went into

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<sup>6/</sup> Hereinafter referred to as "impact and implementation."

effect. Notification of a change must be sufficiently in advance of the event to permit the union and the activity to meaningfully meet and confer, which necessarily involves ample opportunity for the union to fully explore the matter. See Bureau of Government Financial Operations Headquarters, 11 FLRA 334 (1983) and March Air Force Base, California, 25 FLRA No. 20 (1987). In light of the foregoing, therefore, I conclude that Marine Corps Logistics Base did not give AFGE sufficient notice of the details.

Marine Corps Logistics Base contends that details are a common employment feature at the Marine Corps Logistics Base and that therefore it was not obligated to give notice and bargain about the impact and implementation of the details. The record establishes fifteen other details about which AFGE was not notified and which AFGE did not request to bargain. However, there are about 750 employees of the Marine Corps Logistics Base and there was no showing AFGE even learned or knew about these fifteen details or the nature and extent of the details. The record fails to establish AFGE acquiesced in this procedure. See Department of Health and Human Services, Social Security Administration, Baltimore, Maryland, 18 FLRA 743 (1985). The FLRA has held that the mere failure to request impact and implementation bargaining on prior details, standing alone, did not alter a union's statutory right to request bargaining when another detail is announced. IRS Denver, supra at 666.

Finally, I find that AFGE did not waive its statutory right to notification and to bargain about the impact and implementation of the details. Any such waiver of a statutory right has to be clear and unmistakable. Cf. Department of Labor, Wage and Hour Division, 21 FLRA 484 (1986). Article 16 of the collective bargaining agreement deals with Details and Temporary Promotions and deals with some of the procedures to be followed and some general impact arrangements. But Article 16 did not on its face even attempt to deal with the impact and implementation of specific individual details nor did it attempt to deal with the local considerations, which it recognized in Article 4. Rather, it is clear Article 16 was an attempt to settle the general national considerations concerning details and temporary promotions, it does not constitute a waiver of AFGE's right to bargain about the impact and implementation of individual details on the local level involving local considerations. Article 16 did not constitute a waiver of the union's right to bargain concerning all aspects of impact and implementation of details. See Naval Amphibious Base, Little Creek, Norfolk, Virginia, 9 FLRA 774 (1982) where the FLRA held that the collective bargaining agreement

did establish substantially all the procedures and arrangements in non-disciplinary adverse action.<sup>7/</sup>

Thus I conclude Marine Corps Logistics Base did violate section 7116(a)(1) and (5) of the Statute by failing and refusing to notify AFGE or bargaining with it concerning the impact and implementation of the details.

With respect to remedy, there being no showing that a status quo ante remedy would be unduly disruptive, I conclude such a remedy is appropriate.

Having concluded SSA violated section 7116(a)(1) and (5) of the Statute, I recommend the Authority issue the following Order:

#### ORDER

Pursuant to section 2423.29 of the Federal Labor Relations Authority's Rules and Regulations and section 7118 of the Statute, it is hereby ordered that the Department of the Navy, Marine Corps Logistics Base, Albany, Georgia, shall:

1. Cease and desist from:

(a) Failing and refusing to meet and negotiate with the American Federation of Government Employees, Local 2317, the agent of the exclusive bargaining representative of their employees, American Federation of Government Employees, over the procedures which it will observe in exercising its authority with regard to the detail of bargaining unit employees and concerning appropriate arrangements for employees adversely affected by such changes.

(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:

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<sup>7/</sup> Marine Corps Logistics Base seems to urge this matter should have been pursued through the contract grievance procedure. This is rejected because the alleged violation is a failure to comply with a statutory obligation not a violation of the collective bargaining agreement.

(a) Notify the American Federation of Government Employees, Local 2317, the agent of the exclusive bargaining representative of their employees, American Federation of Government Employees, of any intention to detail employees and, upon request, negotiate with such representative concerning the procedures to be observed in implementing such detail and concerning appropriate arrangements for employees adversely affected by such detail.

(b) Rescind details of employees made on May 18, 1987, with respect to those employees still on such details.

(c) Post at its facilities in Albany, 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 a responsible official 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.

(d) Pursuant to section 2423.30 of the Authority's Rules and Regulations, notify the Regional Director, Region IV, Federal Labor Relations Authority, 1371 Peachtree Street, N.E., Suite 736, Atlanta, GA 30367, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

Issued, Washington, D.C., August 31, 1988

  
SAMUEL A. CHAITOVITZ  
Administrative Law Judge

NOTICE TO ALL EMPLOYEES

PURSUANT TO

A DECISION AND ORDER OF THE

FEDERAL LABOR RELATIONS AUTHORITY

AND IN ORDER TO EFFECTUATE THE POLICIES OF

CHAPTER 71 OF TITLE 5 OF THE

UNITED STATES CODE

FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS STATUTE

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT fail and refuse to meet and negotiate with the American Federation of Government Employees, Local 2317, the agent of the exclusive bargaining representative of our employees, American Federation of Government Employees, over the procedures which we will observe in exercising our authority with regard to the detail of bargaining unit employees and concerning appropriate arrangements for employees adversely affected by such changes.

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

WE WILL notify the American Federation of Government Employees, Local 2317, the agent of the exclusive bargaining representative of our employees, American Federation of Government Employees, of any intention to detail employees and, upon request, negotiate with such representative concerning the procedures to be observed in implementing such detail and concerning appropriate arrangements for employees adversely affected by such detail.

WE WILL rescind details of employees made on May 18, 1987 with respect to those employees still on such details.

\_\_\_\_\_  
(Activity)

Dated: \_\_\_\_\_ 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, Region IV, whose address is: 1371 Peachtree Street, N.E., Suite 736, Atlanta, GA 30367, and whose telephone number is: (404) 347-2324.