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

DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION WASHINGTON, D.C. AND MICHIGAN AIRWAY FACILITIES SECTOR, BELLEVILLE, MICHIGAN Respondent	
and	Case No. 5-CA-80334
PROFESSIONAL AIRWAYS SYSTEMS SPECIALISTS, MEBA, AFL-CIO Charging Party	

Donald G. Rider, Esquire
B. P. Thompson, Esquire
For the Respondent

Joseph E. Kolick, Jr., Esquire
Marcus C. Migliore, Esquire - on Brief
Dickstein, Shapiro & Morin
For the Charging Party

Judith A. Ramey, Esquire
For the General Counsel

Before: WILLIAM B. DEVANEY
Administrative Law Judge

DECISION

Statement of the Case

This proceeding, under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the United States Code, 5 U.S.C. § 7101, et seq.[1/] and the

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1/ For conveniences of reference, sections of the Statute hereinafter are, also, referred to without inclusion of the initial "71" of the statutory reference, e.g., Section 7116(a)(5) will be referred to, simply, as "§ 16(a)(5)".

Rules and Regulations issued thereunder, 5 C.F.R. § 2423.1, et seq., concerns whether Respondent violated §§ 16(a)(5) and (1) of the Statute by refusing to bargain on the impact of the temporary non-training assignment of electronic technicians from the Saginaw, Michigan, facility to the Toledo, Ohio, facility, pursuant to Article 25 of the parties' Agreement which specifically provides for temporary assignments, including: selection, per diem and travel and concludes with the provision that, "All matters not specified above, relating to temporary assignments and associated per diem, shall be governed by agency-wide directories". For reasons fully set forth hereinafter, I find that Respondent did not violate § 16(a)(5) or (1) of the Statute.

This case was initiated by a charge filed on May 31, 1988 (G.C. Exh. 1(a)) and the Complaint and Notice of Hearing issued on June 30, 1988 (G.C. Exh. 1(c)); the hearing was fixed for October 3, 1988; but, on motion of the Charging Party (G.C. Exh. 1(g)) to which the other parties did not object, for good cause shown, was rescheduled for November 16, 1988 (G.C. Exh. 1(i)), pursuant to which a hearing was duly held on November 16, 1988, in Detroit, Michigan, before the undersigned. All parties were represented at the hearing, were afforded full opportunity to be heard, to introduce evidence bearing on the issues involved, and were afforded the opportunity to present oral argument which the Charging Party exercised. At the conclusion of the hearing, December 16, 1988, was fixed as the date for mailing post-hearing briefs, which time was subsequently extended, on timely motion of Respondent, to which the other parties did not object, for good cause shown, to January 23, 1989. Charging Party, Respondent and General Counsel each timely mailed an excellent brief, received on or before January 26, 1989, which have been carefully considered. Upon the basis of the entire record, I make the following findings and conclusions:

Findings

1. The Professional Airways Systems Specialists, MEBA, AFL-CIO (hereinafter referred to as "PASS" or the "Union") was certified in 1981 as the exclusive representative of a nationwide bargaining unit of Electronic Technicians and related employees in the FAA Airways Facilities Division. Electronics Technicians maintain and repair the equipment of the nation's air traffic control system (Tr. 18, 30, 87).

2. PASS and the Federal Aviation Administration (FAA) are parties to a nationwide Agreement, their first agreement, which was negotiated between 1982 and 1984, effective August 31, 1984, (Jt. Exh. 1; Tr. 88) and was in full force and effect at the time of the events involved herein.

3. The Michigan Airways Facilities Sector, which encompasses most of the State of Michigan except a part of the upper peninsula, also includes Toledo, Ohio (Res. Exh. 7, Tr. 151-152), and has two Sector Field Areas: One, Detroit Metro Airport; the other Lansing. There are a number of Sector Field Offices, e.g., Pellston, Traverse City, Empire, Muskegon, Grand Rapids, Lansing, Flint, Saginaw, Detroit City, Ypsilanti, Toledo and Coopersville (Tr. 153).

4. Involved in this case are Electronics Technicians in the Saginaw Sector Field Office (hereinafter referred to as "Saginaw") which is under the Lansing Section Field Area (Tr. 18, 19) headed at the time in question by Acting Sector Field Area Manager Russell P. Williams who was also Assistant Manager of the Michigan Airways facilities Sector (Tr. 164). Mr. Edward Threm is manager of the Michigan Airways Facilities Sector (Tr. 151). The Union's Local 106 represents employees in the Michigan Area Facility Sector (Tr. 19).

5. The parties stipulated as follows:

> ". . . On May 10 [1988] the Respondent, by Emil Glasser, Field Office Manager, Saginaw (Michigan) Sector Field Office . . . verbally advised bargaining unit employees (radar technicians) at the Saginaw sector Field Office, that beginning on or about May 23, 1988, the FAA intended to temporarily assign some employees to the Toledo (Ohio) Sector Field Office.
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> ". . . The Union, by memorandum dated May 18, 1988 . . . [Jt. Exh. 2] requested to bargain concerning the temporary assignments.
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> ". . . The Union, by memorandum dated May 19, 1988 . . . [Jt. Exh. 3] requested to bargain concerning the temporary assignments . . . .
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> . . .
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> ". . . The Respondent, by memorandum dated May 25, 1988 . . . [Jt. Exh. 5] advised the Union that . . . the temporary assignments . . . do not require negotiation . . . .

". . . No PASS-FAA negotiations concerning the temporary assignments . . . occurred . . . .

". . . The temporary assignments . . . involved four Saginaw . . . employees, who rotated the assignment on a weekly basis. The temporary assignments commenced on May 23, 1988 and continued to on or about July 1, 1988." (Jt. Exh. 6).

6. The need for assistance at Toledo arose because of the absence of two of Toledo's three radar technicians (Tr. 54, 73) because of training from about the middle of May to the end of June (Tr. 185-186). As noted above, Mr. Glasser informed the four Saginaw radar technicians on May 10, 1988, with Mr. Thomas Hunt, PASS Saginaw representative, present (Tr. 51, 186). The assignment was to be rotated, one week at a time, Monday through Friday, on the clock, (Tr. 187), i.e., the technician assigned for the week would leave Saginaw on Monday morning, drive to Toledo, approximately 160 miles, work the remainder of the Monday shift at Toledo, work a full shift Tuesday through Thursday and Friday morning at Toledo and drive back to Saginaw by the close of business on Friday (Tr. 53-54). While in Toledo, they stayed in a motel, and received per diem as provided in Article 25 of the parties' Agreement (Jt. Exh. 1; Tr. 56, 187). Mr. Glasser asked for volunteers (Tr. 186), got none at that time, and told the technicians to view their own workloads and let him know what rotation they felt would be most advantageous and if there were problems they couldn't solve he would work out an equitable rotation (Tr. 186-188). Mr. Doug Baxter took the first assignment to Toledo (Tr. 56) and later told Mr. Glasser that, ". . . if I needed to have one step in and go in place of someone else or that he would be glad to take an extra rotation or two." "(Tr. 186). Mr. Hunt went the second week, Mr. Baxter the third week, then Messrs. Dennis Willigorski and Michael Combs (Tr. 56, 57) and, since the coverage, as stipulated (Jt. Exh. 6), was actually six weeks rather than five as estimated by Mr. Glasser (Tr. 185) possibly Mr. Baxter again (Tr. 187).

7. Mr. Glasser told the technicians on May 10, 1988, that the temporary assignments were pursuant to Article 25 (Tr. 187) and Mr. Threm, in his letter of May 25, 1988, declining the Union's request to negotiate, stated, in part, as follows:

"Emil Glasser . . ., in accordance with Article 25 . . . of the Contract, communicated the requirements of the job to be done . . .

volunteers were acknowledged and assigned to the extent feasible and equitable rotation of technician assignment is planned.

"The parties at the national level negotiated impact and implementation issues concerning temporary assignments (reference Article 25 of the Contract). . . . In view of this, it is not necessary, nor approximate to negotiate this matter and Article 69 of the Contract does not only. . . . " (Jt. Exh. 5).

8. Article 25 of the parties' Agreement (Jt. Exh. 1), provides as follows:

ARTICLE 25

"TEMPORARY ASSIGNMENT AND ASSOCIATED PER DIEM

Section 1. Selection of personnel for temporary nontraining assignments will be accomplished in accordance with the requirements of the job to be done. These assignments will be made on an equitable basis, subject to job requirements and employee qualifications. Within these requirements, employees volunteering for such assignments will be utilized to the extent feasible. Temporary duty assignments involving travel away from the employees' headquarters are inherent to the Relief Technician, Field Maintenance Party, and Facilities and Equipment positions.

Section 2. Before an employee is required to travel on official business, he/she shall be granted an advance of funds, if he/she so requests. The amount of the advance of funds is calculated utilizing the applicable per diem rate and the estimated number of days of travel.

Section 3. Travel vouchers are to be submitted at least every thirty (30) days and in accordance with local policy. In order to prevent an undue financial burden upon the employee, travel vouchers shall be paid as promptly as possible. In the case of a questionable item or items on a submitted travel voucher, that amount may be withheld by the paying office, pending clarification, but the balance of the claim is to be paid promptly.

Section 4. All matters not specified above, relating to temporary assignments and associated per diem, shall be governed by agency wide directives." (Jt. Exh. 1).

9. Article 69 of the parties' Agreement (Jt. Exh. 1), provides, in pertinent part, as follows:

"ARTICLE 69
"Local/Regional Relationships

Section 1. The Parties have negotiated a comprehensive national agreement that constitutes the entire agreement between them. No separate local or regional supplemental agreements are authorized.

Section 2. In the event the Employer at the regional or local level proposes to change a personnel policy, practice or matter affecting working conditions not covered by this agreement, the Employer shall provide forty-five (45) calendar days' advance written notice to the appropriate local or regional Union representative. The Union shall, within fifteen (15) calendar days of receipt of the notice, notify the Employer in writing at the appropriate regional or local level of its intent to meet to present its views regarding the proposed change. If the Union does not file a timely request for a meeting, the Employer may implement the change as proposed." (Jt. Exh. 1)

10. The Michigan Airways Facilities Sector has about 800 facilities serviced by 150 employees (Tr. 151, 155). The Michigan Airways Facilities Sector does not have any Relief Technicians, Field Maintenance Party or Facilities and Equipment personnel in the terminal radar field or in that speciality (Tr. 174) and there are no relief technicians assigned to Saginaw (Tr. 52).

11. Mr. Threm testified that since he has been manager, from December, 1984 (Tr. 151, 157), it had been customary in Michigan Sector to send employees from one Sector Field Office to another Sector Field Office (Tr. 156) and that such temporary assignments were not limited to Relief Technicians, Field Maintenance Party and Facilities and Equipment personnel (Tr. 157), indeed, as noted above, the Michigan Sector does not have Relief Technicians, Field

maintenance party or facilities and Equipment personnel in the terminal radar speciality[2/] (Tr. 174).

12. Mr. Williams, a supervisor since 1976 (Tr. 175), whose duties at Michigan include correction of staffing shortfalls, testified that,

> "We look to see what is the most efficient method of covering those shortfalls. There's a broad range of things that are looked [sic] [at] and discussed, such things as the use of overtime, leaving a position vacant, use of staff personnel, supervisors, or temporary assignments.
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> . . .
>
> "My entire FAA career I've been very familiar with this type of procedure, and it's continued here in Michigan." (Tr. 165-166).
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> . . .
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> ". . . I had a conversation with both Mr. Glasser, supervisor of the Saginaw SFO and Mr. Dressel, supervisor of the Toledo Sector Field Office. Among the three of us, we rationalized that Saginaw, having four certified radar technicians at Saginaw, and Toledo not enjoying that complement, Saginaw was a primary focus for identifying relief or temporary assignment . . . to support Toledo's needs
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> . . .
>
> ". . . unfortunately Michigan does not have any relief technicians in the terminal radar field or in that speciality. The others that have been referred to are not specialized in the terminal radar field. We don't have it. So that consideration was not long lived." (Tr. 173-174).

2/ Mr. John Chapman is a relief electronics technicians at Detroit (Tr. 180).

Mr. Williams researched the Michigan Sector's travel vouchers for 1987 through October 14, 1988, and prepared Respondent Exhibit 8, dated October 14, 1988, and signed by Mr. Threm, which is a listing of temporary assignments in the Michigan Sector for this period which involved the payment of per diem expenses[3/] (Tr. 166). Respondent's Exhibit 8 shows, inter alia, that five different radar technicians (John Cassens, Michael Coombs, Bev Mansfield, Richard Crinion and Thomas Hayner) on one or more occasions were on temporary assignment (Cassens, a developmental (Tr. 226) on three occasions; and Hayner on four occasions). Respondent Exhibit 8 further shows that other electronic technicians, including navigational communication technicians (Randy Moss) (Tr. 227) (John Cervenec) (Tr. 219); maintenance mechanics (Ken Mancour) (Tr. 223); and one whose special area of training was not specified (W. VanAllsburg), were also on temporary assignment. Of course, all employees shown on Respondent Exhibit 8 are members of the bargaining unit and none was Relief Technician, Field Maintenance party or Facilities and Equipment employee (Tr. 172).

Respondent Exhibit 9 is a tabulation of temporary assignments in other mid-west Sectors for the 1988 fiscal years (October 1, 1987 to September 30, 1988), and shows: Ohio 0; Indiana 4; Illinois 3; Chicago 2; Wisconsin 16; Minnesota 0; and Dakota 10.

13. Mr. Emil Glasser, Manager of the Saginaw Field Office for about four years (Tr. 182) and with FAA as an electronics technician or Supervisory Electronics Technician since 1960 (Tr. 183), testified that in this Sector, only Saginaw, Grand Rapids, Muskegon and Toledo have the exact same type of radar system which is a tube type, i.e. non-solid state (Tr. 185). Mr. Glasser stated that on at least four occasions in the last couple of years people from Saginaw had been sent on temporary duty assignments (Tr. 185). Mr. Glasser further stated that in 1984 he was Field Office Manager in Battle Creek and in 1984 he had detailed employees overnight to other locations at least twice (Tr. 213-214); and when in the Indianapolis Sector it had also, ". . . been accepted practice to go to a field

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3/ Temporary assignments to maintain equipment at outlying points, such as from Saginaw to Houghton Lake--a roundtrip distance of well over 100 miles (Tr. 45 46)--although routinely performed are not included because no per diem was involved.

office and see if their resources were available to support another field office during periods of short staffing . . . . "(Tr. 215).

14. Mr. Thomas E. Demske, an electronics technician at Canton, Michigan (Tr. 16-17) since March, 1987 (Tr. 29) when he left McCook, Illinois, where he had been a relief technician for about eight years (Tr. 29), initially testified that in August, 1987, "Some employees from Empire, Michigan Sector Field Office were temporarily detailed to Coopersville, Michigan"[4/] (Tr. 23) and in October, 1987, "Some of the same employees from the Empire, Michigan Sector field Office were to be detailed to Joliet, Illinois. . . ." (Tr. 24)[5/]; "The next one that I recall is the Saginaw technicians going, being sent to Toledo . . . ." (Tr. 24); and ". . . It was very unusual for temporary assignments to involve regular, I call them regular technicians that are not any relief or field maintenance party or F&E positions. Those were rare." (Tr. 25).

When confronted with Respondent Exhibit 8, Mr. Demske conceded familiarity with the temporary assignments (Tr. 217) and could only quibble, one was developmental (Tr. 218), some volunteered (Tr. 219, 223, 225, 226), job was in Sector office (Tr. 224), for one day (Tr. 222), little different job (Tr. 223).

Conclusions

The Complaint alleges that Respondent.

> ". . . failed to provide the Union with notice and/or refused to bargain concerning the impact and implementation of Respondent's decision to detail . . . employees from the Saginaw . . . to the Toledo . . . Office." (G.C. Exh. 1(c), Par. VI)

In truth, the Union never sought to bargain about impact and implementation! To the contrary, the Union's position was, and is, that Article 25 applied only to Relief Technicians, Field Maintenance Party, and Facilities and Equipment

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4/ This does not appear on Respondent Exhibit 8, on which the only Empire detail was to Belleville (5/1/87-8/2/87).

5/ This, also, does not appear on Respondent Exhibit 8.

positions and, therefore, when Respondent applied Article 25 to other employees, here, specifically, to radar technicians, it changed conditions of employment and, accordingly, Article 69 applied, i.e. "In the event the Employer . . . proposes to change a personnel policy, practice or matter affecting working conditions not covered by the agreement, the Employer shall provide . . . advance written notice. . . ." (Jt. Exh. 1, Article 69, Section 2). Thus, Mr. Terrence W. Apkarian, President of Michigan Local 106 of the Union and the Michigan Sector Representative (Tr. 19), in his letter of May 18, 1988, to Mr. Threm, stated,

> "It has come to my attention that you intend to change the working conditions of the RADAR/ARTS unit at MES SFO by detailing them as a (sic) relief technicians to TOL SFO.
>
> "Under Article 69, you must provide PASS with a specific notice regarding any change affecting either established past practices, personnel policies or working conditions. . . ." (Jt. Exh. 2)

Mr. Hunt, Secretary of Local 106 and Saginaw union representative (Tr. 19, 20), in his letter of May 19, 1988, to Mr. Glasser stated, in part,

> "This is in response to what I believe 'May' have been your notification of a change in working conditions for MBS SFO employees on 5/10/88.
>
> "Specifically I am referring to your mention of a detail to Toledo, Ohio. . . ." (Jt. Exh. 3).

In his testimony, Mr. Hunt stated, in part, as follows:

> ". . . We do not believe that it [Article 25] applies to this assignment of Saginaw employees to Toledo at all." (Tr. 21). . .
>
> ". . . we feel that Article 25 pertains to three unique type of employees, relief technicians, field maintenance party people and F&E or facilities and equipment positions. None of those type, those categories of technicians exist at Saginaw. We feel that because of that it does not cover these people." (Tr. 22).

1. No Change of Conditions of Employment

Article 25 of the parties' Agreement addresses temporary non-training assignments and associated per diem (Jt. Exh. 1, Article 25). Nothing in Article 25 limits its application to any type or classification of employee. To the contrary, the opening sentence of Section 1 states,

> "Selection of personnel for temporary nontraining assignments will be accomplished in accordance with the requirements of the job to be done." (Jt. Exh. 1, Article 25, Section 1.).

Section 1 then continues,

> "These assignments will be made on an equitable basis, subject to job requirements and employee qualifications. Within these requirements, employees volunteering for such assignments will be used to the extent feasible." (id.).

Certainly no limitation to any class, type or classification. Nor does the concluding sentence of Section 1 evince any limitation. The concluding sentence is,

> "Temporary duty assignments involving travel away from the employee's headquarters are inherent to the Relief Technician, Field Maintenance Party, and Facilities and Equipment positions." (id.).

To be sure, part of the job of Relief Technicians, Field Maintenance Party personnel, and Facilities and Equipment personnel is travelling away from their permanent duty station (Tr. 29-30, 161, 162, 166) and the concluding sentence of Section 1 of Article 25 so states; but the concluding sentence of Section 1 does not by its literal language limit, or purport to limit, temporary nontraining assignments to Relief Technician, Field Maintenance Party personnel and Facilities and Equipment personnel. Section 1 is clear, is unambiguous, and is specific that, "Selection of personnel for temporary nontraining assignments will be accomplished in accordance with the requirements of the job to done." The language of Article 25 also appeared verbatim

in the predecessor 1977 collective bargaining Agreement[6/], and the consistent practice as established by the testimony of Messrs. Threm, Williams and Glasser, which I credit, showed that it had always been the practice to send employees from one Sector field office to another during periods of short staffing and such temporary assignments had not been limited to Relief Technician, Field Maintenance Party and Facilities and Equipment personnel. Moreover, respondent Exhibit 8 shows that for 1987 through October 14, 1988, there were fourteen temporary assignments in the Michigan Sector involving five different radar technicians and four other employees none of whom was a Relief Technician, Field Maintenance Party personnel or Facilities and Equipment personnel. In addition, Respondent Exhibit 9 shows temporary details during the 1988 fiscal year (10/1/87 - 9/30/88) in Indiana, Illinois, Chicago, Wisconsin and Dakota Sectors. The Union witnesses' assertions that temporary assignment of employees, other than Relief Technicians, Field Maintenance Party and Facilities and Equipment personnel, was "very unusual" or "rare" were not persuasive in light of the testimony of Respondent's witnesses; but even if Mr. Demske, for example, were correct, he did not deny that such temporary assignments had occurred but contended only that they were very unusual or rare which does nothing to deny Respondent's right to select personnel for temporary assignments in accordance with the requirements of the job to be done.

Finally, it is apparent from the Union's bargaining proposals in the negotiations which culminated in the 1984 Agreement that it had no question or reservation that any bargaining unit employee was subject to temporary assignments. Thus, in its proposed Article 52, entitled "Travel, Temporary Duty and Associated Per Diem", in

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6/ Agreement between the Federal Aviation Science and Technological Association, the former exclusive representative, and Respondent, Respondent Exhibit 1, Article 20, Sections 1, 3, 4 and 5. Section 2 of Article 20 was deleted and it is noted that: (a) the last sentence which related to the FAA Academy, was incorporated in Article 26, "FAA Academy Training Travel" (Jt. Exh. 1, Article 26), as Section 5; and (b) the first sentence, "Employees assigned to temporary duty shall receive the full per diem applicable to their travel situation as prescribed by law and regulation" was redundant in light of Section 4 of the Union's Agreement (Jt. Exh. (1) (Section 5 of the FASTA Agreement-Res. Exh. 1).

Section 7 it proposed:

> "Section 7. Prior to temporary assignments open volunteer bids shall be solicited on a national basis. Selection for these assignments shall be made on a seniority basis in a fair, equitable manner agreeable to the Union. If no volunteer bids are submitted, a reverse seniority system shall be used in the selection. Any employee has the right of refusal. This section does not apply to training assignments or bargaining unit employees assigned to such duties as technician-in-depth, sector relief positions, field maintenance party crew, F&E crews and etc." (Res. Exh. 2, Article 52, Section 7. Tr. 123, 127-128) (Emphasis supplied).

Accordingly, while the Union sought to encumber the existing selection process (e.g., national bidding; reverse seniority), it proposed that the selection process did not apply to relief positions, etc.--not that only technician -in-depth, sector relief position, field maintenance party crew, F&E crews were subject to temporary assignments.

Therefore, Respondent did not change any established condition of employment when it selected radar technicians for temporary assignment. To the contrary, Respondent acted fully in accord with the provisions of Article 25 of its Agreement and fully in accord will long established practice. As Respondent was not changing an existing condition of employment, the Union had no right to insist upon bargaining. That is, there is no duty to bargain about § 6(b)(2) procedures and/or § 6(b)(3) arrangements for adversely affected employees in the absence of a change of a conditions of employment. Department of Health and Human Services, Social Security Administrative, Baltimore, Maryland, 18 FLRA 743, 757 (1985); Naval Amphibious Base, Little Creek, Norfolk, Virginia, 9 FLRA 774, 777 (1982).

Further, because temporary assignments are governed by Article 25 of the Agreement, and Respondent did not change any established condition of employment, Article 69 of the Agreement has no application. That is, Article 69, by its express terms, applies only when, ". . . the Employer . . . proposes to change a personnel policy, practices or matter

affecting working conditions not covered by the agreement . . . . " (Jt. Exh. 1, Article 69, Section 1) (Emphasis supplied). Moreover, except as provided in Section 2, above, Section 1 of Article 69, which provides, "The Parties have negotiated a comprehensive national agreement that constitutes the entire agreement between them. No separate local or regional supplemental agreements are authorized." (Jt. Exh. 1, Article 69, Section 1) precludes further mid-term bargaining.

Finally, the Authority, consistent with the Court's remand, NTEU v. FLRA, 810 F.2d 295 (D.C. Cir. 1987), in Internal Revenue Service, 29 FLRA 162 (1987) held, that,

> ". . . the duty to bargain in good faith imposed by the Statute requires an agency to bargain during the term of a collective bargaining agreement on negotiable union proposals concerning matters which are not contained in the agreement unless the Union has waived its right to bargain about the subject matter involved. . . ." (29 FLRA at 166) (Emphasis supplied).

Accord, U.S. Army Corps of Engineers, Kansas City District, Kansas City, Missouri, 31 FLRA 1231, 1234, (1988). Of course, here, the temporary assignment of employees was expressly addressed by the Agreement of the parties (Jt. Exh. 1, Article 25). Because the matter of temporary assignments was contained in the Agreement, there was no duty to bargain mid-term. In addition, because the matter of temporary assignments was contained within the Agreement, this case does not involve a question of waiver.

Nor, under the circumstances of this case, was there any failure to give the Union adequate notice of the proposed temporary assignments. Union Saginaw representative Thomas Hunt was present when Mr. Glasser informed the radar technicians on May 10, 1988, that the temporary assignments would begin on or about, May 23, 1988. Both Mr. Hunt, as PASS Representative, and Mr. Apkarian, PASS Michigan Sector Representative, responded by letters dated May 19 and 18 respectively.

Accordingly, as Respondent did not violate § 16(a)(5) or (1) of the Statute by refusing to bargain concerning a

matter specifically provided for in the Agreement of parties, I recommend that the Complaint be dismissed.7/

2. Complaint must be dismissed if Article 25 is subject to differing, arguable interpretations

Respondent violated §§ 16(a)(5) and (1) of the Statute if, as the Union and General Counsel asserted, Article 25 applied only to Relief Technician, Field Maintenance Party, and Facilities and Equipment position. I have found that Article 25 of the Agreement, by clear and unambiguous language, is not limited to Relief Technicians, Field Maintenance Party and Relief Technicians but, rather, applied to all employees, i.e., "Selection of personnel for temporary nontraining assignments will be accomplished in accordance with the requirements of the job to be done . . . ." (Jt. Exh. 1, Article 25, Section 1.). I do not find General Counsel's and the Union's interpretation of Article 25, although beyond question differing, to be an arguable interpretation, i.e., not a plausible interpretation of Article 25. Nor does the past practice or bargaining history offer the slightest support to their asserted interpretation.

Nevertheless, if I have erred and contrary to my conclusion, Article 25 is deemed subject to differing and arguable interpretations as to whether Article 25 applied only to Relief Technician, Field Maintenance Party, and Facilities and Equipment positions, the Complaint must, none the less, be dismissed because an ". . . alleged unfair labor practice which involves differing and arguable interpretations of a collective bargaining agreement is not appropriate for resolution under unfair labor practice procedures . . . In such cases, the aggrieved party's remedy is through the negotiated grievance procedures."

7/ As noted above, the Complaint alleged a refusal to bargain concerning the impact and implementation of Respondent's decision to detail employees to Toledo. As shown, the Union never requested to bargain about impact and implementation but, rather, sought to bargain the asserted "change" of working conditions. Thus, the allegation of the Complaint must be dismissed because it is without support. Nor is there any provision of the Agreement permitting impact and implementation bargaining on a matter provided for in the Agreement. Cf. U.S. Custom Services, Washington, D.C., 29 FLRA 307, 327 (1987).

United States Marine Corps, Washington, D.C., et al., 33 FLRA No. 14, 33 FLRA 105, 114 (1988).

For the reasons set forth above, I recommend that the Authority adopt the following:

ORDER

The Complaint in Case No. 5-CA-80334 be, and the same is hereby, dismissed.

William B. Devaney

WILLIAM B. DEVANEY
Administrative Law Judge

Dated: March 1, 1990
Washington, D.C.

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

DEPARTMENT OF TRANSPORTATION FEDERAL AVIATION ADMINISTRATION WASHINGTON, D.C. AND MICHIGAN AIRWAY FACILITIES SECTOR, BELLEVILLE, MICHIGAN Respondent	
and	Case No. 5-CA-80458
PROFESSIONAL AIRWAYS SYSTEMS SPECIALISTS, MEBA, AFL-CIO Charging Party	

B. P. Thompson, Esquire
Donald G. Rider, Esquire
For the Respondent

Mr. Terrence W. Apkarian
For the Charging Party

Judith A. Ramey, Esquire
For the General Counsel

Before: WILLIAM B. DEVANEY
Administrative Law Judge

DECISION

Statement of the Case

This proceeding, under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the United States Code, 5 U.S.C. § 7101, et seq.[1/] and the

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

Rules and Regulations issued thereunder, 5 C.F.R. 2423.1, et seq., concerns whether, in view of the provisions of Article 25 of the parties' Agreement dealing with temporary assignments, the temporary assignment of a radar technician from one sector field office, here Saginaw, to a neighboring sector field office, here Flint, one day per week for approximately eight weeks to relieve a personnel shortage constituted a change of conditions of employment. This case is quite like Case No. 5-CA-80334, which involved the temporary assignment of employees from Saginaw to Toledo, Ohio, except that here the employee was not required to be away from home for a period but left Saginaw "on the clock"; drove to Flint, about 55 miles (actually, road maps show the distance as only 37 miles from Saginaw to Flint, but not necessarily the distance between FAA facilities); performed work as required and returned to Saginaw before the end of the shift. General Counsel asserts that work assignments of this nature are not addressed by Article 25. For reasons set forth hereinafter, I find that the temporary assignments were governed by Article 25.

This case was initiated by a charge filed on August 17, 1988 (G.C. Exh. 1(a)-1)[2/], the Complaint and Notice of Hearing issued on October 21, 1988 (G.C. Exh. 1(c)-1); and the hearing was set for November 16, 1988, following the hearing in Case No. 5-CA-80334. As the hearing in Case No. 5-CA-80334 was not completed until 6:30 p.m., on November 16, the hearing herein was rescheduled for November 17, 1988, pursuant to which a hearing was duly held on November 17, 1988, in Detroit, Michigan, before the undersigned. All parties were represented at the hearing, were afforded full opportunity to be heard, to introduce evidence bearing on the issues involved, and were afforded the opportunity to present oral argument which each party

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2/ The parties requested that the transcript and exhibits in Case No. 5-CA-80334 be incorporated as part of the record in this case. The request was granted. To distinguish the transcript and exhibits from Case No. 5-CA-80334, the transcript herein, Case No. 5-CA-80458, will be designated "Tr-1" followed by the page number, e.g., Tr-1-6; Tr-1-9; Tr-1-10; and the exhibit numbers herein will be followed by "-1-",, e.g., G.C. Exh. 1(a)-1; G.C. Exh. 2-1; Jt. Exh. 1-1. Transcript references without the "-1" and exhibits without the "-1", of course, designate transcript references or exhibits from Case No. 5-CA-80334.

waived. At the conclusion of the hearing, December 19, 1988, was fixed as the date for mailing post-hearing briefs, which time was subsequently extended, on timely motion of Respondent, to which the other parties did not object, for good cause shown, to January 23, 1989. General Counsel timely mailed an excellent brief, received on January 26, 1989, and Respondent filed an excellent single brief for Case Nos. 5-CA-80334 and 5-CA-80458, received on January 23, 1989, which have been carefully considered. Upon the basis of the entire record, including my observation of the witnesses and their demeanor, I make the following findings and conclusions:

Findings

1. The findings in Case No. 5-CA-80334 are hereby incorporated by reference and need not be repeated except as necessary.

2. The Professional Airways Systems Specialists, MEBA, AFL-CIO (hereinafter referred to as "PASS" or the "Union") was certified in 1981 as the exclusive representative of a nationwide bargaining unit of Electronic Technicians and related employees in the FAA Airways Facilities Division. Electronics Technicians maintain and repair the equipment of the nation's air traffic control system (Tr. 18, 30, 87).

3. PASS and the Federal Aviation Administration (FAA) are parties to a nationwide Agreement, their first agreement, which was negotiated between 1982 and 1984, effective August 31, 1984, (Jt. Exh. 1; Tr. 88) and was in full force and effect at the time of the events involved herein.

4. The Michigan Airways Facilities Sector has two Sector Field Areas: One, Detroit Metro Airport; the other Lansing. There are a number of Sector Field Offices, e.g., Pellston, Traverse City, Empire, Muskegon, Grand Rapids, Lansing, Flint, Saginaw, Detroit City, Ypsilanti, Toledo and Coopersville (Tr. 153).

5. Involved in this case are the Saginaw Sector Field Office (hereinafter referred to as "Saginaw") and the Flint Sector Field Office (hereinafter referred to as "Flint"), both under the Lansing Sector Field Area (Tr. 18, 19; Tr 1-39) headed at the time in question by Acting Sector Field Area Manager Russell P. Williams who was also Assistant manager of the Michigan Airways Facilities Sector (Tr. 164). Mr. Edward Threm is manager of the Michigan

Airways Facilities Sector (Tr. 151). The Union's Local 106 represents employees in the Michigan Area Facilities Sector (Tr. 19).

6. The parties stipulated as follows:

"On August 4, 1988, the Respondent, by Emil Glasser, Saginaw, Michigan Sector Field Office (SFO) manager,[3/] advised Thomas Hunt, PASS representative for Saginaw SFO, that beginning August 8, 1988, certain Saginaw . . . employees . . . would be required to perform some of the workload of . . . Flint . . .

". . . On August 5, 1988, Mr. Glasser, in a meeting, communicated the same information . . . to the Saginaw SFO radar technicians . . .

". . . By memorandum of August 9, 1988 . . . the Union, by Mr. Hunt requested to bargain concerning the Flint workload assignment . . . and included three bargaining proposals. [Jt. Exh. 2-1.]

[Mr. Hunt's proposals were:
"1. Employees will receive copies of certification authority documents . . . prior to implementation of this new assignment.
"2. No MBS employee will be assigned to FNT call-back list.
"3. MBS employees will be given recognition from the repeated assistance and coverage throughout the MCH Sector." (Jt. Exh. 2-1)]

" . . . By memorandum of August 10, 1988 . . . Respondent replied . . . Mr. Glasser provided Mr. Hunt, with certain

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3/ At the time, Mr. Glasser was also acting supervisor (manager) of the Flint SFO, because of the retirement of the former Flint manager, Mr. O'Brien, and Mr. Michael Combs, at other times a bargaining Unit employee, was acting supervisor at Saginaw (Tr-1-38).

information and stated that 'FAA mgnt's position on TDY assignment was stated in a May 25, 1988 memorandum from Edward Threm' . . . Mr. Glasser attached a copy of the May 25 memorandum . . . [Jt. Exh. 5; Jt. Exh. 3-1, attachment, p. 3].

[Mr. Glasser responded to Mr. Hunt's proposals as follows:

"(1) Cert Authority is somewhat dependent on Cert's held by individual tech's. Primary cert/work is the TPX-42, with assistance as required on equip common to MBS and FNT . . . Individual Cert. Authority will be supplied to ea tech as paper work routed through AFS. (2) No changes to call back lists. (3) Recognition for quality work and active participation is always a goal of FAA mgt. Assigned duties/TDY assignments are not in themselves cause for recognition." (Jt. Exh. 3-1)].

". . . The Flint workload assignment ended on or about September 30, 1988.

"No PASS-FAA negotiations concerning the Flint workload assignment which commenced on August 8, 1988 occurred. . . ." (Jt. Exh. 4-1)

7. Article 25 of the parties' Agreement provides as follows:

"ARTICLE 25
Temporary Assignment and Associated Per Diem

Section 1. Selection of personnel for temporary nontraining assignments will be accomplished in accordance with the requirements of the job to be done. These assignments will be made on an equitable basis, subject to job requirements and employee qualifications. Within these requirements, employees volunteering for such assignments will be utilized to the extent

feasible. Temporary duty assignments involving travel away from the employee's headquarters are inherent to the Relief Technician, Field Maintenance Party, and Facilities and Equipment positions.

Section 2. Before an employee is required to travel on official business, he/she shall be granted an advance of funds, if he/she so requests. The amount of the advance of funds is calculated utilizing the applicable per diem rate and the estimated number of days of travel.

Section 3. Travel vouchers are to be submitted at least every thirty (30) days and in accordance with local policy. In order to prevent an undue financial burden upon the employee, travel vouchers shall be paid as promptly as possible. In the case of a questionable item or items on a submitted travel voucher, that amount may be withheld by the paying office, pending clarification, but the balance of the claim is to be paid promptly.

Section 4. All matters not specified above, relating to temporary assignments and associated per diem, shall be governed by agencywide directives." (Jt. Exh. 1).

8. One technician went to Flint each Thursday (Tr-1-29, 38, 39, 41) during August and September because of the absence, on training, of one of Flint's two radar technicians, Mr. Kessler (Tr.-1-38). The remaining technician, Mr. Horton, lacked one major certification on a data processing system (Tr-1-38) so the principal function was to attend to certification work on the TPX-42, which Mr. Horton could not, lacking certification, perform (Jt. Exh. 3-1; Tr-1-39-40, 42) and, if time permitted, assist Mr. Horton on any other work (Tr-1-40). Each left on the clock from Saginaw, using either a government vehicle or his own as each elected, and returned on the clock from Flint (Tr-1-39). Testimony would indicate that the distance was about 55 miles, but road maps shown the distance between Saginaw and Flint as 37 miles. Sometimes the employee spent only an hour or two at Flint and was back in Saginaw shortly after lunch (Tr-1-42), but on other occasions did not get back until just before quitting time (Tr-1-42). The Flint assignment was rotated among the three radar technicians at Saginaw (Tr-1-29).

9. Alpena, Michigan, is about 150 miles north of Saginaw (Tr-1-19; Res. Exh. 7). Respondent has, essentially, an equipment site there which is under the Pellston Sector Field Office (Tr-1-19). Alpena had had a single employee who left for another job in Lansing about June, 1987. Because no one was left at Alpena, its workload had to be picked up by some other office and Respondent selected Saginaw (Tr-1-18). The record shows no fixed schedule and, apparently, an employee is sent to Alpena on an irregular, as needed, basis (Tr-1-19). Because of the distance, detail to Alpena involves overnight stay (Tr-1-19) and, on occasion, may require several days at Alpena (Tr-1-19). On July 16, 1987, a former representative of Respondent's Michigan Airways Facilities Sector, Mr. John Chamberlain, and Mr. Thomas E. Demske, PASS Lansing SFO representative, entered into a Memorandum of Understanding (MOU) concerning the "Temporary Reassignment of Alpena, Michigan Workload" (G.C. Exh. 2-1).4/ The MOU was initially for a period not to exceed one year but in 1988 was renegotiated and extended indefinitely (Tr-1-18-19). Mr. Demske testified that Article 25 was never raised (Tr-1-16).

10. Mr. Glasser testified that, ". . . I and present management believes that Article 25 covers temporary duty assignment, whether it be for a day or five days." (Tr-1-40-41, 44). Mr. Glasser further testified that Saginaw had, at least for the four years he had been there, pursuant to Article 25, maintained other outlying facilities, one at Houghton Lake, Michigan, which is about 90 miles northwest of Saginaw and requires service once a month; (Tr-1-42, 48); another at Alma, Michigan, which is about 50 miles west of Saginaw and requires service about four times per year (Tr-1-42, 48).

4/ On February 2, 1988, the former manager of Respondent's Lansing SFO, Mr. Eugene R. Post, and Mr. Demske entered into a further "Memorandum of Understanding, Temporary Reassignment of FNT SFO Workload" (Tr-1-20) whereby Saginaw provided assistance to Flint in the same manner as the August-September detail involved herein. Because the February, 1988, MOU, General Counsel Exhibit 3-1 for identification, was part of a settlement agreement of unfair labor practice charges, in Case No. 5-CA-80144, it was rejected (Tr-1-22-23).

Conclusions

1. Respondent changed no condition of employment

The Complaint alleges a violation of §§ 16(a)(5) and (1) of the Statute by Respondent's failure and refused to bargain

> ". . . concerning the impact and implementation of Respondent's decision to require MBS [Saginaw] radar technicians to perform additional but similar job functions at FNT [Flint] . . . ."
> (G.C. Exh. 1(c)-1, Par. VI)

The Union asserted that the announced temporary assignment was a change in working conditions and sought to bargain, pursuant to Article 69, on the proposed change of working conditions (Jt. Exh. 2-1). The Union's proposals were, however, directed to impact (Jt. Exh. 2-1).

In Case No. 5-CA-80334, the Union asserted that Article 25 (Jt. Exh. 1, Article 25) applied only to: ". . . the Relief Technician, Field Maintenance Party, and Facilities and Equipment positions." (Jt. Exh. 1, Art. 25, Section 1). Here, General Counsel asserts,

> "This assignment was not a detail or temporary reassignment. It did not require being away from home for a period, and such work assignment of this nature is not addressed in the PASS/FAA contract. . . ."
> (Tr-1-11 (Emphasis supplied).

And Mr. Demske testified,

> "The language in Article 25 speaks of temporary duty assignments. Temporary duty assignments, in my view, involve non-training. Assignments where an individual is given a set of travel orders, physically leaves his normal duty station, is relieved of his normal workload, travels, and has other workload at another site, as in the Toledo case. . . ." (Tr-1-15)

The asserted limitation of Article 25 here is as lacking in support as the asserted limitation of Article 25 in Case No. 5-CA-80334 [the Toledo case].

Article 25 provides:

> "Section 1. Selection of personnel for temporary nontraining assignments will be accomplished in accordance with the requirements of the job to be done. These assignments will be made on an equitable basis, subject to job requirements and employee qualifications. . . ." (Jt. Exh. 1, Article 25, Section 1).

Contrary to General Counsel's assertion, Article 25 is not limited to temporary assignments requiring travel, or travel away from home "for a period", or travel orders, although, certainty, Article 25 makes provision for travel, per diem, advance of funds for travel, etc.5/

Mr. Demske's testimony that, "In the past . . . this type of assignment, occasioned by a manpower shortage at a particular facility, was usually handled by a relief technician. . . ." (General Counsel's Brief, p. 7) simply is not true in the Michigan Sector6/. First, the consistent practice as established by the testimony Messrs. Threm, Williams and Glasser, as stated in Case No. 5-CA-80334, showed that it had always been the practice to send employees from one sector field office to another during periods of short staffing. Second, Michigan does not have relief technicians in the terminal radar field (Tr. 173-174). Third, Respondent Exhibit 8 showed that for 1987 through October 14, 1988, there had been fourteen temporary assignments in the Michigan sector which involved five

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5/ While not necessary for decision, since technicians on temporary assignment from Saginaw to Flint did, indeed, physically leave their normal duty station [Saginaw], did travel, and did have a duty assignment at another site [Flint], I agree with Mr. Demske that "temporary assignment" within the meaning of Article 25 does envision the movement from one duty assignment to another duty assignment. Cf. Department of Transportation, Federal Aviation Administration, Washington, D.C., 20 FLRA 481 (1985).

6/ Mr. Demske had been a relief technician at McCook, Illinois, for about eight years before moving to Canton, Michigan (Tr. 17, 29), where he works as a radar technician in the ". . . long range radar field." (Tr. 18).

different radar technicians and four other employees. In addition, Respondent Exhibit 9 showed temporary details during the 1988 fiscal year in Indiana, Illinois, Chicago, Wisconsin and Dakota Sectors. Fourth, radar technicians are regularly sent on temporary assignment from Saginaw to Houghton Lake (monthly), to Alma (four times per year) (Tr 1-48). In addition, Saginaw, since early in 1987, has maintained equipment at Alpena (Tr 1-18, 19) and Empire employees have also been detailed to Coopersville, Michigan, and to Joliet, Illinois (Tr. 23, 24).7/

Therefore, for reasons stated above and in Case No. 5-CA-80334, I conclude that Respondent did not change any established condition of employment when it selected radar technicians for temporary assignment from Saginaw to Flint. Obviously, while detached for duty in Flint, employees were, in fact, relieved of duties in Saginaw since they were not present to perform those duties. In making such temporary assignments, Respondent acted fully in accord with the provisions of Article 25 of its Agreement and fully in accord with long established practice. As Respondent did not change an existing condition of employment in making the temporary assignments8/, the Union had no right to

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7/ In Case No. 5-CA-80344, the Union and General Counsel accepted that Article 25 applied when employees were detailed to another work site and returned on the same day, but argued that Article 25 did not apply when per diem was involved. Accordingly, Respondent Exhibit 8 was limited to temporary assignments which involved payment of per diem.

8/ The parties did execute a memorandum of Understanding on July 16, 1987 (G.C. Exh. 2-1; Tr 1-17), concerning "Temporary Reassignment of Alpena Michigan Workload", which MOU in 1988 was extended indefinitely; and on February 2, 1988, in settlement of unfair labor practice charges, executed a further MOU concerning, "Temporary Reassignment of FNT SFO Workload" (Tr 1-20). Mr. Demske testified without contradiction that Article 25 was never raised or mentioned in connection with these MOU's (Tr 1-24).

General Counsel would classify the assignment to Flint as "additional workload" rather than a temporary assignment; but this was not an additional workload situation such as was involved in Department of Transportation, supra, n.5. To the contrary, the employee assigned to Flint left

(Footnote continued)

insist upon bargaining, i.e., there is no duty to bargain about § 6(b)(2) procedures and/or § 6(b)(3) arrangements for

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(Footnote 8 Continued)

Saginaw, drove to Flint, and performed duty at Flint. The fact that per diem was not involved is immaterial. [Both Department of Transportation, supra, and Federal Aviation Administration, 20 FLRA 430 (1985) arose before the Union and Respondent negotiated their Agreement (Jt. Exh. 1) in 1984]. General Counsel asserts that the assignment to Flint was not a temporary assignment within the meaning of Article 25 (General Counsel's Brief, p. 10) and states,

> ". . . Emil Glasser was unable to name one other instance in his experience when Article 25 was identified by FAA as being applicable to such a situation . . . . Respondent presented no evidence of any such instance, where FAA had previously considered Article 25 as applicable. . . ." (General Counsel's Brief, p. 10).

It is correct that Respondent had not identified Article 25 as being applicable; but it is wholly incorrect that Respondent had not considered such assignments covered by Article 25. First, Mr. Glasser stated that there were ". . . a lot of instances" (Tr 1-45) that management considered such assignments subject to Article 25. He was then asked,

> "Q Previous to that . . . [Toledo] can you cite a specific example when a workload assignment has been cited to the Union as being covered by Article 25 (Emphasis supplied)?
>
> . . .
>
> "A No." (Tr 1-46)

Second, whether Article 25 was "cited" to the Union, the record shows a consistent practice of sending employees from one Sector Field Office to another since the Agreement (Jt. Exh. 1, Article 25) has been in effect, and, moreover, Respondent did so pursuant to Article 25 (Tr. 157, 160, 165, 166, 173-174, 185-186, 213-214, 215; Tr 1-45; Res. Exhs. 8 and 9). Third, General Counsel seeks to obfuscate by

(Footnote 8 Continued)

adversely affected employees in the absence of a change of a condition of employment. Department of Health and Human

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(Footnote 8 Continued)

referring to "workload" assignment. In truth, the reason for every temporary assignment, except possibly for training which is not involved and which is excluded from Article 25, is workload. Fourth, that Article 25 governs all temporary assignments of employees from one duty assignment to another duty assignment is obvious from its terms and required no citation is amply shown by the total absence of protest, challenge, or question by the Union to the numerous temporary assignments until 1988. Fifth, to the extent that it might be argued that the MOUs created a condition of employment modifying Article 25, and General Counsel does not appear to so contend, such argument must fail, for as the Authority has stated, Department of the Navy, Naval Weapons Station Concord, Concord, California, 33 FLRA No. 90, 33 FLRA 770 (1988),

> ". . . A matter does not become a condition of employment through past practice or the parties' agreement. Rather, an independent analysis of whether a matter is a condition of employment at the time a dispute arises is necessary." (33 FLRA at 771)

Here, Article 25 of the parties' agreement provides for temporary assignments; the consistent practice of the Respondent has been to send employees from one Sector Field Office to another to meet, ". . . the requirements of the job to be done . . ." (Jt. Exh. 1, Art. 25, Section 1). The execution of a MOU with respect to Alpena (I am aware of the MOU concerning Flint, but because it was part of the settlement of unfair labor practice charges, I do not consider this as evidence of any further practice) was contrary to Article 25; was contrary to established practice; and had not been continued for any significant period -- indeed, the record show only a single, isolated instance. Norfolk Naval Shipyard, 25 FLRA 277, 286 (1987). Moreover, the most that can be said of the Alpena MOU is that Respondent elected to negotiate in that instance, not that it was required to negotiate. That is, because Respondent made no change in existing conditions of employment, as established by Article 25 and the consistent practice thereunder, it was under no duty to bargain about 6(b)(2) procedures or 6(b)(3) arrangements; but it was free, if it elected, to bargain, as it did with respect to Alpena.

Services, Social Security Administration, Baltimore, Maryland, 18 FLRA 743, 757 (1985); Naval Amphibious Base, Little Creek, Norfolk, Virginia, 9 FLRA 774, 777 (1982).

Accordingly, as Respondent did not violate § 16(a)(5) or (1) by refusing to bargain concerning the impact and implementation of temporary assignments made pursuant to terms of the parties' negotiated agreement, it is recommended that the Complaint be dismissed.

2. Complaint must be dismissed if Article 25 is subject to differing, arguable interpretations

Respondent violated §§ 16(a)(5) and (1) of the Statute if, as General Counsel asserts, Article 25 does not apply to temporary assignments, such as to Flint, where the employee leaves his regular duty assignment for another duty assignment for not more than a single day. I have found that Article 25 of the Agreement, by clear and unambiguous language, is not limited to temporary assignments lasting for more than one day, i.e., which involve per diem, but, rather applies to all temporary assignments whereby the employee moves from one duty assignment to another duty assignment. I do not find General Counsel's interpretation of Article 25, although beyond question differing, to be an arguable interpretation, i.e., not a plausible interpretation of Article 25. Nor does the bargaining history or the prevailing past practice support General Counsel's asserted interpretation.

Nevertheless, unlike Case No. 5-CA-80334, here the record does show execution of a MOU concerning temporary assignments to Alpena, Michigan in 1987, which was renewed and indefinitely, extended in 1988, and the execution of a further MOU concerning temporary assignments to Flint, Michigan, as part of the settlement of unfair labor practice changes, in 1988. If I have erred, and contrary to my conclusion, Article 25 is deemed, particularly in view of the MOUs, subject to differing and arguable interpretations as to whether Article 25 applies to temporary assignments not involving per diem, nevertheless, the Complaint must be dismissed because an,

> ". . . alleged unfair labor practice which involves differing arguable interpretations of a collective bargaining agreement is not appropriate for resolution under unfair labor practice procedures. . . . In such cases, the aggrieved Party's remedy is

through the negotiated grievance procedures. . . ." United States Marine Corps, Washington, D.C., et al., 33 FLRA No. 14, 33 FLRA 105, 114 (1988).

For the foregoing reasons, it is recommended that the Authority adopt the following:

ORDER

The Complaint in Case No. 5-CA-80458 be, and the same is hereby, dismissed.

William B. Devaney

WILLIAM B DEVANEY
Administrative Law Judge

Dated: April 2, 1990
Washington, D.C.