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

BUREAU OF ENGRAVING AND PRINTING Respondent	
and	Case No. 3-CA-00262
INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, LODGE 2135, AFL-CIO Charging Party	

Carolyn J. Dixon, Esq.
For the General Counsel

Joseph M. Davis, Esq.
For the Respondent

Gerald Taylor, President
For the Charging Party

Before: ELI NASH, JR.
Administrative Law Judge

DECISION

Statement of the Case

This is a proceeding under the Federal Service Labor-Management Relations Statute, 92 Stat. 1191, 5 U.S.C. section 7101, et seq. (herein called the Statute). It was instituted by the Regional Director of the Washington Region based upon an unfair labor practice charge filed on April 16, 1990, by the International Association of Machinists and Aerospace Workers, Lodge 2135, AFL-CIO (herein called the Union) against the Bureau of Engraving and Printing (herein called Respondent). The Complaint alleges that Respondent violated section 7116(a)(1) and (5) of the Statute by unilaterally implementing a change in parking assignments, without negotiating with the Union over the substance and/or implementation and impact of the change.

Respondent's Answer denied the commission of any unfair labor practice.

A hearing was held before the undersigned in Washington, DC, at which time all parties were represented by counsel and afforded full opportunity to adduce evidence and to call, examine, and cross-examine witnesses and argue orally. Timely briefs were filed and have been duly considered.

Upon consideration of the entire record in this case, including my evaluation of the testimony and evidence presented at the hearing, and from my observation of the witnesses and their demeanor, I make the following findings of fact, conclusions of law, and recommended order.

Findings of Fact

Respondent is a high security manufacturing facility which is responsible for printing U.S. currency, postage stamps and other security documents for the U.S. Government. It employs a number of craft and non-craft employees in support of its mission. The Union represents two separate units of Respondent's employees.

To meet its large production demand in a timely manner, Respondent operates three production shifts around the clock. Those shifts are 7 a.m. to 3 p.m.; 3 p.m. to 11 p.m.; and, 11 p.m. to 7 a.m. Employees in the two bargaining units represented by the Union are employed on each of the three shifts. The need to accommodate the parking requirements for employees on the two late shifts who could not find on-street parking when they reported to work clearly created a necessity for Respondent to make some changes in its parking and to obtain temporary off-site parking.

Prior to January 1990, Respondent provided parking for eligible employees at two locations. One of the parking areas was located on the premises and was comprised of about 134 parking spaces. There was no charge to employees assigned to this lot. The second was located at a General Services Administration (herein called GSA) parking lot located at 12th and C Streets, Southwest. There were about 96 assigned spaces in the GSA lot. Employees assigned spaces in this lot were charge $17.50 per month in accordance with applicable GSA regulations.

Sometime in February 1989, Respondent began developing projections on the loss of parking spaces on premises due to

planned construction projects to commence in 1990. Sometime in August 1989, Respondent requested permission from GSA to procure 80 additional off-site parking spaces for employee carpools at the 12th and C Streets facility. In addition, to alleviate this critical shortage in on-site parking, Respondent executed a purchase order in October 1989, for 62 spaces at Hogates' Restaurant located at 9th and Maine Avenue, Southwest. Respondent then decided to relocate virtually all day shift employee car and vanpools parking off-site to either the 12th and C Streets facility or Hogates' Restaurant.

Neither the Union nor employees were advised by Respondent of its decision to reassign day shift employee car and vanpools to facilities off-site. Around November 17, 1989, Respondent issued its bulletin for the 1990 Parking Open Season. The bulletin reflected business as usual and set forth the steps for obtaining parking permits. The bulletin made no mention that free on-site parking had been virtually eliminated for day shift car and vanpools. The record shows that free on-site parking had been available for employee car and vanpools for years. While 92 spaces were allocated in 1989 for on-site day shift employee car and vanpools, Respondent cut that number to 8 spaces in 1990, and at the same time increased on-site Executive spaces (management parking) from 28 to 35 spaces.

Sometime in early January 1990, without notice or bargaining with the Union, Respondent reassigned 84 day shift employee carpools from free on-site parking to off-site locations at 12th and C Streets or Hogates' Restaurant. Unit employees who had been parking at 12th and C Streets for a fee of $17.50 per month were bumped during this reassignment to the parking lot at Hogates' Restaurant at 9th and Maine Avenue, a 15-minute walk from the Bureau. Around January 17, 1990, when the Union finally learned of the reassignments from Respondent it demanded bargaining. The bargaining request was ignored by Respondent.

Effective February 1, 1990, unit employee car and vanpools lost their free parking spaces on the premises. Employees were forced to park and pay $17.50 per month at the 12th and C Streets lot or to walk 15 minutes to work from the Hogates' lot. Realizing that it was premature in effecting this reassignment, Respondent notified employees on February 23, 1990, that it was reopening free on-site parking for car and vanpools. However, Respondent established conditions under which this free on-site parking was available for employees. It is uncontroverted that

these two changes, i.e., the reassignment of employee parking on February 1, 1990, and subsequent temporary reopening on February 23, 1990, were implemented by Respondent without notice or bargaining with the Union.

Conclusions

The Respondent contends that it did not change established working conditions of bargaining unit employees, with respect to the assignment of employee parking under the 1990 parking program. Respondent asserts that the record shows that the method of assigning parking to employees did not change and that it followed the same practices in assigning parking spaces as had been utilized in prior years. This argument misses the point since the issue here does not involve the mechanics of how parking assignments to bargaining unit employees were made, but instead involves the ripple effect the assignments from on-site parking to off-site parking had on the conditions of employment of bargaining unit employees.

The Authority has consistently found that parking constitutes a substantively negotiable condition of employment. U.S. Department of the Air Force, Williams Air Force Base, Chandler, Arizona, 38 FLRA 549 (1990); Philadelphia Naval Base, Philadelphia Naval Station and Philadelphia Naval Shipyard, 37 FLRA 79 (1990). Since the matter is substantively negotiable, the Authority has also stated that the de minimis standard does not apply. United States Department of Health and Human Services, Region II, New York, New York, 26 FLRA 814, 826 (1987).

Respondent insists in its brief that "virtually nothing changed" with the implementation of the 1990 parking program. The record discloses, however, that Respondent was aware, as early as February 1989, that construction projects were going to effect the availability of the free on-site parking. To counter this loss Respondent contracted for approximately 62 parking spaces located at 9th and Maine Avenue, Southwest, which spaces it provided to employees free of charge. Even though the spaces were free, they were a greater distance from Respondent's premises and employees associated some safety hazards and the 15 minutes it took to walk to work with parking in this lot. Furthermore, some employees who had parked for years on-site were required to move to the GSA lot where they were required not only to have to walk to work, but were required to pay a $17.50 per month parking fee. Thus, when the parking program was implemented, bargaining unit employees who were moved from

on-site to off-site parking were faced with a dilemma of, either walking 15 minutes to work from Hogates' or paying the $17.50 fee to park in the GSA lot. Respondent neither notified the Union of the problem the construction would create for on-site parkers nor informed it of steps it had decided to implement as a result of the loss of parking spaces on-site due to that construction. The Union learned of Respondent's decision to relocate car and vanpools to off-site locations only after Respondent began the process of shifting bargaining unit employee car and vanpools from the GSA lot to the Hogates' facility. Upon discovering the change in off-site parking the Union requested bargaining, but Respondent ignored the request and allowed the changes to take effect on February 1, 1990.

The Authority has also found that an agency violates section 7116(a)(1) and (5) of the Statute when it changed parking arrangements without providing the exclusive representative prior notice and the opportunity to negotiate over the change. Williams Air Force Base, supra; U.S. Customs Service, Washington, D.C., 29 FLRA 307 (1987). Respondent does not deny that it gave no notice to the Union in this matter but defends based on the Union's having waived its right to bargain in the matter.

Respondent's main defense that it was not required to negotiate the substance of the 1990 parking program, since the Union waived its negotiation rights when it failed to request bargaining over a 1986 parking regulation, lacks merit. A review of that regulation fails to disclose that it addresses the issue of this case, i.e., relocating parkers from on-site to off-site facilities due to construction. Nor does the regulation mention or otherwise limit the Union's bargaining rights over parking. Waivers of course must be clear and unmistakable and are established either expressly or by bargaining history. Where the specific subject of the exclusive representative bargaining demand has not been addressed by the parties or contained in the agreement, no waiver has been found. See U.S. Department of Labor, Washington, D.C., 38 FLRA 1374 (1991); see also U.S. Department of Navy, United States Marine Corps (MPL), Washington, D.C. and Marine Corps Logistics Base, Albany, Georgia, 38 FLRA 632 (1990).

Respondent contends only that the Union did not request to bargain over the 1986 parking regulation. Such a contention does not establish a waiver by past practice. Department of the Navy, Marine Corp Logistics, Albany, Georgia, 39 FLRA 1060 (1991). Furthermore, a single

instance of bargaining on a matter does not create a past practice. While Respondent points to specific areas allowing it to displace carpools because of agency requirements or to bump carpools for handicapped persons, the regulation nowhere specifically addresses the subject of the Union's bargaining request herein. The interpretation given to the regulation by Respondent was, of course, the one most favorable to its position. Although Respondent's view might be a reasonable interpretation, it is not the only one. Since the regulation does not specifically address the relocation from on-site to other facilities due to construction, it is found that no clear and unmistakable waiver exists in this case.

Absent any evidence that Respondent notified the Union and negotiated with it concerning the unilateral changes in the 1990 parking program it is found that Respondent violated section 7116(a)(1) and (5) of the Statute.

Finally, it appears that a status quo ante remedy, including make whole relief for employees who were reassigned from free parking on-site to pay parking at the GSA lot, at the cost of $17.50 per month, is appropriate in the case.*/

Accordingly, it is recommended that the Authority adopt the following:

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 Bureau of Engraving and Printing, shall:

1. Cease and desist from:

(a) Unilaterally implementing changes in the working conditions of bargaining unit employees, by implementing its 1990 parking program, without first notifying the International Association of Machinists and Aerospace Workers, Lodge 2135, AFL-CIO, the exclusive representative of certain of its employees, and affording it an opportunity to bargain concerning the substance and/or the impact and implementation of said changes.

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*/ For further discussion of remedy in a similar parking arrangement case, see U.S. Department of Labor, OALJ 91-56, dated May 24, 1991.

(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 February 1, 1990, and February 23, 1990, reassignment of carpool and vanpool parking spaces.

(b) Restore the on-site lot on the premises to bargaining unit employees for parking on a first-come, first-serve basis as it existed prior to February 1, 1990.

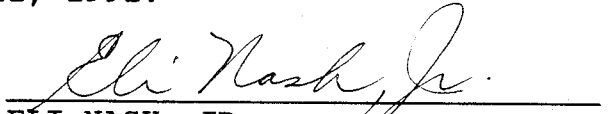
(c) Make whole, any employee, for payment of $17.50 per month, who was reassigned from on-site parking to parking at the GSA lot.

(d) Notify and upon request negotiate with the International Association of Machinists and Aerospace Workers, Lodge 2135, AFL-CIO, the exclusive representative of its employees of any intended changes in conditions of employment including intended changes in parking policies and afford it the opportunity to bargain over said changes.

(e) Post at its facility copies of the attached Notice on forms to be furnished by the Federal Labor Relations Authority. Upon receipt of such forms, they shall be signed by the Director or a designee and shall be posted and maintained for 60 consecutive days thereafter, in conspicuous places, including all bulletin boards and other places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that such Notices are not altered, defaced, or covered by any other material.

(f) Pursuant to section 2423.30 of the Authority's Rules and Regulations, notify the Regional Director of the Washington Region, Federal Labor Relations Authority, 1111 - 18th Street, NW, 7th Floor, Washington, DC 20033-0758, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

Issued, Washington, DC, June 11, 1991.



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 institute unilateral changes in the working conditions of bargaining unit employees by implementing a parking program, without first notifying the International Association of Machinists and Aerospace Workers, Lodge 2135, AFL-CIO, the exclusive representative of certain of our employees, and affording it an opportunity to bargain concerning the substance and/or the impact and implementation of said 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 rescind the February 1, 1990 and February 23, 1990, reassignment of carpool and vanpool parking spaces.

WE WILL restore the on-site lot on the premises to bargaining unit employees for parking on a first-come, first-serve basis as it existed prior to February 1, 1990.

WE WILL make, whole any employee, for payment of $17.50 per month, who was reassigned from on-site parking to parking at the GSA lot.

WE WILL notify and upon request negotiate with the International Association of Machinists and Aerospace Workers, Lodge 2135, AFL-CIO, the exclusive representative of our employees of any intended changes in conditions of employment including intended changes in parking policies and afford it the opportunity to bargain over said changes.

_____

(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 of the Washington Region, whose address is: 1111 - 18th Street, NW, 7th Floor, Washington, DC 20033-0758, and whose telephone number is: (202) 653-8500.