

OFFICE OF ADMINISTRATIVE LAW JUDGES

WASHINGTON, D.C. 20424

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UNITED STATES IMMIGRATION AND .

NATURALIZATION SERVICE, .

HONOLULU DISTRICT OFFICE .

HONOLULU, HAWAII .

Respondent .

. and .

Case No. 98-CA-10383

.

NATIONAL IMMIGRATION AND .

NATURALIZATION SERVICE COUNCIL, .

AMERICAN FEDERATION OF .

GOVERNMENT EMPLOYEES, .

LOCAL 2886, AFL-CIO .

Charging Party .

.....

Mr. James Phillip LoSasso For the Respondent

Mr. Dennis Smith For the Charging Party

Yolanda C. Shepherd, 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 Rules and Regulations issued thereunder, 5 C.F.R § 2423.1, et seq., concerns whether Respondent unilaterally implemented a new shift without notifying American Federation of Government Employees, Local 2886, AFL-CIO (hereinafter, the "Union") and affording it an opportunity to negotiate concerning the impact and implementation of a change in working conditions.

This case was initiated by a charge filed on May 30, 1991 (G.C. Ex. 1(a)); the Complaint and Notice of Hearing issued on October 9, 1991 (G.C. Exh. 1(c)) and set the hearing for January 31, 1992. By Order dated January 28, 1992, the date of the hearing was rescheduled for March 5, 1992, pursuant to which a hearing was duly held on March 5, 1992, in Honolulu, Hawaii, before the undersigned. All parties were represented at the hearing, were afforded full opportunity to be heard, to introduce evidence bearing on the issue involved, and were afforded the opportunity to present oral argument which each party waived. At the conclusion of the hearing, April 6, 1992, was fixed as the date for mailing post-hearing briefs, which time was subsequently extended, initially on motion of the General Counsel, with which Respondent joined and the Charging Party did not object, for good cause shown, to April 20, 1992, and thereafter on motion of Respondent, to which the other parties did not object, for good cause shown, to April 30, 1992. General Counsel and Respondent each timely mailed a brief, received on May 3, 1992, which have been carefully considered. Upon the basis of the entire record, I make the following findings and conclusions:

Findings

1. The National Immigration and Naturalization Council, American Federation of Government Employees, AFL-CIO (hereinafter, "INS Council") is the exclusive representative of a nationwide consolidated bargaining unit of employees of the United States Immigration and Naturalization Service (hereinafter "INS"), more fully described in the Agreement of INS and the INS Council (G.C. Exh. 2, Art. 1). The National Immigration Service Council, American Federation of Government Employee, Local 2886, AFL-CIO (Hereinafter, "Union") is an agent of the INS Council in representing employees of INS' Honolulu District Office, Honolulu, Hawaii (hereinafter, "Respondent") (G.C. Exhs. 1(c) and (d)). Respondent employs a substantial number of inspectors, estimated as between 60 to 100, at the Honolulu International Airport (Tr. 19, 24). The inspectors at the Honolulu International Airport currently work on some 20 different shifts (Tr. 111)⁽²⁾ in accordance with the volume of passengers who arrive at the airport at particular times (Tr. 53). The ratio between passengers and inspectors on foreign flights (Tr. 28) is one inspector for each sixty incoming passengers from Canada and one inspector for each 45 incoming passengers from other countries (Tr. 22-23, 28).

2. Airlines control the scheduled times of their flights and Respondent can only react as flight arrivals dictate. Of course, scheduled times of departure and arrival, fixed long in advance, are expectations which become fully realistic only when the estimated times of arrival are established after departure (Agency Exh. 3). Frequency of flights, departure and arrival times are affected by many factors including: the seasons of the year and by the change to and from daylight savings time (Tr. 40, 65, 83). When flights arrive at a time that Respondent has insufficient personnel on duty to handle the volume of incoming passengers it will utilize inspectors on overtime to handle the workload, i.e., hold employees over or call them out early (Tr. 21 [1945 Act Overtime - a continuation of their shift], 22 [1931 Act Overtime - to supplement those already on the shift]). For example, if it had an 0530 shift and on occasion flights arrived before 0530 requiring additional inspectors, it covered, the arrivals by overtime call-outs (Tr.56, 57); but when such arrivals at a different time persists, stringent guidelines on the control of overtime require that the change be handled by increasing the

staffing on existing shifts or by establishing a new shift (Tr. 58).

3. In 1987, Respondent's first, and primary, shift was the 0600 shift (Tr. 55), but the increase in flights arriving before 0600 necessitated the establishment of a new 0500 shift (Tr. 55) and, accordingly, Respondent on May 14, 1987, gave the Union notice of its intent to implement a 5:00 a.m. work shift; the Union on May 25, 1987, demanded to bargain on the impact and implementation of the proposed change; and the parties negotiated on, or about, May 28, 1987, and agreed⁽³⁾ as follows:

"1) The 5:00 a.m. shift will be implemented as proposed.

"2) The Service has agreed the shift will not be restricted to permanent full-time officers. Those permanent part-time officers authorized to work a thirty-nine hour work week will participate fully and fairly in working the 5:00 a.m. shift assignments." (Agency Exh. 1; Tr. 59, 60, 61)

4. The 0500-1300 shift, initially implemented for supervisors only for the pay period from May 24 to June 6 (Tr. 75) and for Inspectors for the payroll period June 7 to June 20, 1987 (Tr. 76) was staffed sporadically through the balance of 1987 (Agency Exh. 4), specifically for the pay periods: 6/7-6/20; 8/13-9/12; 9/13-9/26; 9/27-10/10; 10/25-11/7; 11/8-11/21; 11/22-12/5; 12/20-1/1/88⁽⁴⁾(Agency Exh. 4). Although Mr. Thompson stated that the 0500 shift was staffed throughout 1988 and that, "To my knowledge, no gaps" (Tr. 93), Joint Exhibit 1 shows no employees scheduled for the 0500-1300 shift in 1988 until the shift for the pay period July 7- July 16; no employees scheduled for the 0500 shift after August 13 until the shift for October 23 - November 5; and none for the November 20 - December 3, 1988, pay period (Jt. Exh. 1). In 1989, no employees were scheduled for the January 15-28 or the April 9-22 pay periods (Jt. Exh. 1). The number of employees scheduled varied from pay period to pay period in 1988 and 1989. For example, from July through December, 1988, from a low of 5, for the pay periods July 17-30, October 23-November 5, November 6-19 and December 4-17, to a high of 13, for the pay period July 31-August 8(Jt. Exh. 1). 1989 showed a low of 6, for the pay period December 3-16, to a high of 18, for the pay periods June 18-July 1, July 2-15, July 30-August 12.

In 1990,⁽⁵⁾ an 0500-1100 shift was added⁽⁶⁾ and the combined total number of employees scheduled (i.e., 0500-1300 and 0500-1100) from the pay period 12/30/89 - 6/2/90 ranged from a low of 7 (2, 0500-1300; 5, 0500-1100), for the pay period February 11-24, to a high of 12, for the pay periods April 8-21, April 22-May 5 and May 6-19 (Jt. Exh. 1). No employees were scheduled for the pay period June 3-16; seven employees on the 0500-1300 shift for the pay period June 17-30; no employees on the pay periods July 1-14 and July 15-28; one employee on the 0500-1300 shift for the pay period July 29-August 11; and no employees thereafter through the remainder of 1990 (Jt. Exh. 1). Mr. Thompson stated that by 1990 Respondent had an 0530 shift, which had become its primary shift (previously 0600), and that by July, 1990, the number of flights arriving before 5:30 a.m. had diminished to the point that the 0500 shift was not needed (Tr. 65).

No employees were scheduled on the 0500 shift in 1991 until May when the number of flights arriving before 5:30 a.m. resumed which necessitated resumption of staffing of the 0500 shift (Agency Exh. 3., Tr. 66).

Accordingly, one employee was scheduled for the 0500-1300 shift⁽⁷⁾ for the pay period May 5-18 and three employees were scheduled for the pay period May 19-June 1, 1991 (Jt. Exh. 1 G.C. Exh. 4; Tr. 41-42).

5. By memorandum dated June 18, 1988, subject, "Amended Assignment of Shifts and Overtime Callout System", Respondent notified the Union President, in part, that,

"Effective June 19, 1988, the following schedule will be implemented:⁽⁸⁾

"1. There will be a minimum of five volunteer officers assigned to the five o'clock shift during the work week . . .

. . .

"3. . . . These changes will remain in effect until July 16, 1988 - subject to further review and Union/Management negotiations.

These changes will not affect the normal rotation of each officer's scheduled day off." (G.C. Exh. 5)

6. By memorandum dated July 4, 1988, also subject, "Amended Assignment of Shifts and Overtime Callout System", Respondent notified the Union President, in part, that,

"The following schedule is temporarily implemented effective July 17, 1988, and until further notice:

"1. All Honolulu International Airport full-time Immigration Inspectors, Senior Immigration Inspector, and Supervisory Immigration Inspectors will be assigned standard shifts Monday through Friday of the basic work week. All full-time Inspectors will have Saturday and Sunday as scheduled days off.

There will be a minimum of six volunteer, full-time officers assigned to the five o'clock shift and six volunteer, full-time, journeyman officers assigned eight o'clock shift. All other assignments will be allocated to the six o'clock shift. These assignments are subject to a management determination of other

primary needs (i.e. two assigned 0730 for EXAMS detail).

"2. Saturday will be staffed by a minimum of thirty-two officers, including part-time Immigration Inspectors already scheduled to work . . .

Two shifts (0500 and 0600) will be staffed initially - subject to change as flight arrivals dictate. Assignments will be mandatory. Once assigned, an officer may trade the assignment to an eligible, unassigned officer. Swapping of assigned shifts will be allowed" (G.C. Exh. 6).

As noted in n.4, above, Mr. Thompson stated that the whole of Part 2 of this memorandum refers to Saturday only (Tr. 101).

As Mr. Thompson testified that the reason for the June 18 and July 4, 1988 notices to the Union (G.C. Exhs. 5 and 6) were the changes being implemented (Tr. 96, 97, 98). Thus, ". . . for the first time, we refer to volunteer officers. . . as opposed just to assignments in previous days . . ." (Tr. 96-97); ". . . because we were making wholesale changes . . ." (Tr. 99); ". . . we were allowing volunteers into those shifts, and in case we didn't have enough volunteers, then it would be rotated . . ." (Tr. 100).

7. From 1987, when it established the 0500-1300 shift (and similarly as to the 0500-1100 and 0500-1200 shifts from their establishment in 1990 (G.C. Exh. 3)) Respondent continuously showed the shift on Duty Assignment Sheets (Agency Exh. 4; G.C. Exh 3) even when the shift was not manned because, "It was considered an existing shift for management to use as needed." (Tr. 79). Mr. Thompson emphasized that,

". . . we reserved the right to add to those shifts, subtract from those shifts, discontinue assigning those and assigning those shifts.

"This occurred on that shift, as well as other shifts.

. . .

"A . . .for instance, we have a six o'clock shift, a seven o'clock shift, an eight o'clock shift, and on one or more of those shifts, we have changed personnel without union notification because they were existing shifts.

"And, in particular, the seven o'clock shift, we have in the past

discontinued assigning officers to that shift for periods of time when there was not a real need.

"Q Were they extensive periods of time?

"A Yes. There were some short periods of time. It was a matter of what we call winter scheduling. This affected primarily the afternoon flights that came in from Canada, and those are more significant and higher in number during the winter months

"Q So this five o'clock shift wasn't the only shift that saw this type of pattern occurring to it?

"A No.

"Q Did you ever get a complaint on that seven o'clock shift that you mentioned?

"A No." (Tr. 82-84).

8. Article 29 - Hours of Work - Section A (5) of the parties' Agreement provides:

"(5) Assignments to tours of duty shall be posted 5 days in advance in the appropriate work area covering a 4 week period. Individual changes in the tours of duty schedule shall be posted in the work area no later than one (1) week prior to the beginning of the workday affected" (G. C. Exh. 2, Art. 29, Sec. A(5)).

9. It was conceded that each employee learns of his shift assignment from the schedule which, pursuant to the Agreement of the parties as set forth above, is posted in advance. Thus, Mr. Stemsle testified, in part, as follows:

"Q How do employees know what shift they will be working?

"A They have a schedule, a two-week schedule, made up to coincide with the pay periods, and that schedule is posted approximately a week ahead of the time . . ." (Tr. 20)

". . . it's [the Duty Assignment Sheets]; as you can see, several pages long, and I'm more concerned about what my hours are than anybody else's.

"Q Sure.

"A I have no reason to go looking through it to find out who is working what shift.

. . .

"A . . . There's 32 shifts, I think, at the top of the thing now, and I look at what my shifts are . . ." (Tr. 25-26).

10. Mr. Thompson stated that in 1991, as an option, Respondent could have added personnel to the midnight shift (Tr. 82). He stated,

"A Probably the more cost effective would be to add to the midnight shift.⁽⁹⁾

The efficiency of it would be somewhat a loss because you wouldn't have them obviously beyond eight o'clock unless they were on overtime pay, and that's when you need quite a few officers . . ." (Tr. 82)

Mr. Griffon admitted that it would have been entirely possible, as an alternative, to have "beefed-up" the midnight shift, but he expressed the same caveat as Mr. Thompson that,

"A The problem with that scenario is that you would be taking people from a more needed shift." (Tr. 35).

Mr. Donald A. Radcliff, District Director (Tr. 105), stated that the early flights in May, 1991, would not have been covered by overtime. He testified,

"A One of the thing that the service has been doing for several years is seeking

to reduce overtime costs and serve the public in means other than through the expenditure of overtime.

"And I would have increased the staff on other shifts before I would have gone to overtime." (Tr. 111)

Conclusions

Respondent in 1987 gave notice to the Union, pursuant to Article 9A of the parties' Agreement (G.C. Exh. 2), of its intent to implement an 0500-1300 shift and, after negotiating on the impact and implementation of the proposed change and reaching agreement, as set forth in the memorandum dated May 28, 1987 (Agency Exh. 1), the shift was implemented, initially for supervisors only for the pay period May 24-June 6, 1987, and for Inspectors for the pay period June 7-June 20, 1987(Agency Exh. 4). From its implementation, the 0500-1300 shift has been maintained as an established and existing shift on Respondent's Duty Assignment Sheets (G.C. Exhs. 3, 4; Agency Exh. 4), although it has not been continuously staffed. Rather, the staffing of the 0500-1300 shift, like the staffing of all other shifts, has varied as the frequency of incoming flights has varied. Thus, in 1987, the 0500 shift was not staffed from the pay periods 6/23 through 10/24 (Agency Exh.4); in 1988 from the pay periods 1/2 through 7/17, 8/14 through 10/22 and 11/20 through 12/3. (Jt. Exh. 1); and in 1989 from 1/15 through 1/28 and 4/9 through 4/22 (Jt. Exh. 1). In 1990⁽¹⁰⁾, the 0500 shift was notstaffed from the pay period June 3-16; seven employees were scheduled for the June 17-30 pay period; none for the pay periods July 1 through 28; one employee for the pay period July 29-August 11; and none thereafter until the pay period May 5-18, 1991, when one employee was scheduled, with three employees scheduled the following pay period of May 19 through June 1, 1991 (Jt. Exh. 1). Not only were there recurring and repeated periods when the shift was not staffed at all, but the number of employees assigned when the shift was staffed fluctuated widely, e.g., in 1988 from a low of 5 to a high of 18; in 1989 from a low of 6 to a high of 18; in 1990 from a low of 1 to a high of 12; and in 1991 from 1 to 3 employees for the two pay periods of staffing shown (Jt. Exh. 1).

Here, the Agreement of the parties provides that assignments to tours of duty shall be posted 5 days in advance (G.C. Exh. 2. and 29, Sec. A(5)) and the record shows that the tours of duty are Respondent's established shifts as shown on its Duty Assignment Sheets. It is conceded that the employees understand that the various established shifts are shown on the top of the Duty Assignment Sheets and each employee, "look at what my shifts are" (Tr. 25-26). It is also conceded that Respondent has consistently added and subtracted employees, and has discontinued and resumed assigning employees, on other shifts without notice to the Union because those shifts, like the 0500-1300 shift, were existing shifts.

The employees here are not assigned to shifts with a reasonable expectation of remaining on that shift. To the contrary, here, the employee's expectation of remaining on any assigned shift extends to a single posted pay period (Tr. 20, 25-26). Here, the pattern and practice is to assign Inspectors as needed. Thus, the number of Inspectors on any given shift may be increased or decreased, including the total discontinuance of staffing a particular shift, when the need for Inspectors or that shift has ceased, with the resumption of assignment of employees when the need returns.

There is no disagreement that when an agency establishes a new tour of duty it is obligated to notify the union and, upon request, negotiate concerning the procedures to be observed by management and appropriate arrangements for employees adversely affected (I & I bargaining) United States Immigration and Naturalization Service, Honolulu District Office, Honolulu, Hawaii, 43 FLRA 608, 618 (1991) (hereinafter "INS. Honolulu") (through a failure of notice, activity unilaterally implemented a new 2100-0500 shift). But here, Respondent, after completion of I & I negotiations, had established the 0500 shift in 1987, and, in 1991, made no change in established working conditions when it resumed staffing of the shift, as the 0500 shift had been maintained as an established shift; had continuously been carried on Duty Assignment Sheets as an established shift; employees were fully aware that it was an established shift; Respondent acted wholly in accordance with the agreements of the parties; and Respondent's action was consistent with prior practice that it assign employees to any particular shift (tour of duty) as needed. When it made changes concerning the 0500 shift, Respondent gave the Union notice: in 1987, with regard to Saturday staffing (Agency Exh. 2) and in 1988, with respect to assignment of volunteers (G.C. Exhs. 5 and 6); but neither upon discontinuance of assignment of employees to a shift nor upon resumption of assignment of employees to the shift has it given the union notice because established shifts are staffed to meet needs, subject only to the provisions of Article 29, Section A(5), of the Agreement of the parties (G.C. Exh. 2), that assignments to tours of duty be posted not less than 5 days in advance.

Department of the Air Force, Nellis Air Force Base, Nevada, 41 FLRA 1011 (1991) (hereinafter "Nellis AFB"), cited and principally relied upon by General Counsel, is quite different and is wholly distinguishable. In Nellis AFB, supra, equipment maintenance employees had worked two shifts: the day shift (0600-1500) and the night, or swing, shift (1445-2315); the activity notified the union that it intended to discontinue the night shift and transfer the employees to the day shift; but it accomplished the discontinuance piecemeal. Although employees over the years had, by request, transferred back and forth between the two shifts, the parties' collective bargaining agreement provided, in part, that "changes in work schedules will be kept to an absolute minimum" and there was no practice of assigning employees, pay-period by pay-period, to one or the other of the two shifts. That discontinuance of the night shift, and/or the involuntary transfer of the employees from the night shift to the day shift, changed the conditions of employment is plain. Employees on each shift expected to remain, and did remain, on the shift to which assigned. There was no pattern of rotation from one shift to the other and, as noted, the agreement of the parties, ". . . to minimize work disruption and the adverse impact on employees . . ." mandated that changes in work schedule be kept to an absolute minimum.

By contrast, here, unlike Nellis AFB, supra, there was a pattern of rotation of employees among shifts; employees had no expectation of remaining on a particular shift; the Agreement of the parties permitted the assignment of employees by the posting of assignments 5 days in advance; the consistent practice was to staff established shifts as needed, *i.e.*, to increase the number of employees assigned, to decrease the number of employees assigned, to discontinue staffing of the shift and to resume staffing of the shift as needed to meet the varying arrivals of foreign flights; recognition by employees that they were subject to assignment to established shifts shown on the Duty Assignment Sheets; and that Inspectors determine what shift they will be working by checking the posted, two-week schedule.

Similarly, Department of the Air Force, Scott Air Force Base, Illinois, 33 FLRA 532 (1988) (hereinafter "Scott AFB")⁽¹¹⁾aff'd on other grounds, *sub nom. National Association of Government Employees, Local R7-23 v. FLRA*, 893 F.2d 380 (D.C. Cir. 1990), involved the change of the hours of the Battery Shop from 0300-1130 to 0700-1530. In Scott AFB, supra, as in Nellis AFB, supra, there was no practice of rotating the single employee of the Battery Shop to any other shift, and as in Nellis AFB, supra, the activity in Scott AFB, supra, discontinued the 0300 shift and established a new 0700 shift, which was an undeniable change in the

conditions of employment of the Battery Shop employee. For reasons set forth above with respect to and Nellis AFB, Scott AFB also is quite different from and wholly distinguishable from the present case.

Of course, here, the 0500-1300 shift was implemented in 1987 after notice to the Union, negotiations and agreement with the Union (Agency Exh. 1). Later in 1987, following further meetings with the Union, provisions for Saturday staffing were implemented (Agency Exh.2); in 1988, provision for staffing, inter alia, the 0500 shift with volunteers and changes in Saturday staffing were implemented (G.C. Exhs. 5 and 6); and in 1991, prior to the resumption of staffing the 0500 shift, volunteers were sought (Tr. 31). The Agreement of the parties (G.C. Exh. 2, Art. 29, Sec. A(5)) provides for the assignment of employees to tours of duty.⁽¹²⁾ The record firmly shows, without contradiction, that existing shifts are shown on the top of Respondent's Duty Assignment Sheets; that employees are assigned to all shifts, including non-staffing, as Respondent's fluctuating needs require; and that Respondent has consistently, over the years, assigned employees to existing shifts, as shown on the Duty Assignment Sheets, following periods of non-staffing of the shift. Tours of duty of employees is a condition of employment and the long continued practice of staffing all existing shifts, as shown on the Duty Assignment Sheets, as needed, including the discontinuance of staffing a shift when not needed and the resumption of staffing of the shift when needed, has become a condition of employment. Inasmuch as Respondent made no change in conditions of employment it had no obligation to give the Union notice or to bargain. Accordingly, having found that Respondent did not violate § 16(a)(1) or (5) of the Statute, it is recommended that the Authority adopt the following,

ORDER

The Complaint in Case No. 98-CA-10383 be, and the same is hereby, dismissed.

WILLIAM B. DEVANEY

Administrative Law Judge

: June 18, 1993

Washington, DC

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)".

2. In point of fact, Respondent's Duty Assignment Sheets for the pay period June 17-30, 1990, showed 32 shifts (G.C. Exh. 3; Tr. 26) and 35 shifts for the pay period May 5-18, 1991 (G.C. Exh.4). In part, the number of shifts results from the fact that for the great majority, but not all, of the starting times there are three shifts:

one for fulltime employees and the other two for part-time employee, e.g., 0500-1100; 0500-1200; 0500-1300. Indeed, for two starting times there are even more shifts: 0700-1300; 0700-1330; 0700-1400; 0700-1430; 0700-1500; 0700-1530; and 0800-1400; 0800-1500; 0800-1600; 0800-1630. On the other hand, for some starting times there is a single shift, e.g.: 0430-1230; 1600-2400; 1700-2400; 1800-2400; 1300-1700; 1030-1630.

3. General Counsel asserts, inter alia, that, ". . . Respondent did not produce this phantom agreement, or any evidence of the contents of the agreement . . ." (General Counsel's Brief, pp. 9-10).

I do not agree. Agency Exhibit 1 states that it represents the agreement of the parties: ". . . agreement was reached as follows . . ."; Mr. Dennis Thompson, Operations Supervisor (Tr. 52), one of Respondent's negotiators at the May 28, 1987, negotiations, and the author of Agency Exhibit 1, for the signature of Port Director Susan Ponce, Respondent's other negotiator, testified without contradiction that negotiations were completed and that the Union's concerns were resolved: ". . . It indicates a resolution, which was a union concern, Item 2 in particular." (Tr. 61. See, also, Tr. 59, 60).

Although Mr. Thompson stated that, ". . . I would presume we did" (Tr. 88) sign an agreement and, if they did, Agency Exhibit 1 is not that agreement (Tr. 88). The record does not establish that there was a signed "agreement"; but if there were, presumably the Union would have had a copy. Not only did General Counsel not offer the "agreement", but no testimony or evidence was offered to challenge or dispute the stated agreement of the parties as set forth in Agency Exhibit 1. I conclude, contrary to the assertion of the General Counsel, which is contrary to the record as shown above, that Agency Exhibit 1 does, as it states, reflect the agreement of the parties with respect to the I and I negotiations of the proposed 5:00 a.m. shift on, or about, May 28, 1987.

4. On, or about, June 29, 1987, Port Director Ponce and Union Vice President Cariaga met and, pursuant to their conversation, a schedule was temporarily implemented as set forth in Agency Exhibit 2. As an 0500 shift is mentioned, Respondent understandably asserts that the statement, "Subject to change as flight arrivals dictate" related to the staffing of the 0500 shift generally (Respondent's Brief, p.4). General Counsel, however, says, "not so"; that Agency Exhibit 2, in its entirety, applied only to Saturdays (General Counsel's Brief p.3 n.2). General Counsel is correct that Mr. Thompson testified that Agency Exhibit 2 related only to Saturdays (Tr. 89-90). Further, he testified that it, ". . . doesn't relate to the earlier letter [i.e., Respondent Exhibit 1] at all." (Tr. 89). Indeed, Mr. Thompson testified that an identical statement in Part 2 of the July 4, 1988, memoran-

dum (G.C. Exh. 6) also, ". . . specifically addresses Saturday . . ." (Tr. 101).

5. To be wholly accurate, beginning with the pay period December 31, 1989 - January 13, 1990 (Jt. Exh. 1).

6. Actually, General Counsel Exhibit 3 shows that an 0500-1200 shift was also implemented in 1990. Further, General Counsel Exhibit 3 shows three shifts in 1991 - not a single 0500-1300 shift as shown on Jt. Exh.1 - as follows: 0500-1100; 0500-1200; and 0500-1300. Moreover, General Counsel Exhibit 3 shows that for the pay period May 5-18, 1991, three employees were scheduled on the 0500-1100 shift: Tokushiga, Kalama and Verhoeff; that Tokushiga was scheduled for the 0500-1300 shift on May 11 and 18 (Saturdays); that Kalama was scheduled on the 0500-1300 shift on May 13; and that Verhoeff was scheduled on the 0500-1300 shift on May 15; that Senior Inspector Hammer may have been scheduled on the 0500-1300 shift on May 7; and that Senior Inspector Stenslie may have been scheduled on the 0500-1300 shift on May 6, 1991, although he made no mention of his having worked the 0500 shift in his testimony but asserted that he was told Respondent had reinstated the staffing of 5:00 a.m. shift (Tr. 27).

7. But see, n.6, above.

8. Nevertheless, Jt. Exh. 1 shows no employees scheduled until the pay period July 3-16, 1988.

9. General Counsel Exhibit 4 shows that for the pay period May 5-18, 1991, six employees were scheduled on the 0000-0800 shift: Aiello, Robenson, Shinsato, Ito, Tanaka and Parks.

Although not referred to, General Council Exhibit 4 further shows two employees (Hammer and Willis) were scheduled for the 0430-1230 shift. This, too, would have been an equally viable alternative.

10. As noted above and in n. 5 and 6, both an 0500-1100 shift and an 0500-1200 shift were added. The separate 0500 shifts are not in issue.

11. Veterans Administration Medical Center, Prescott, Arizona, 46 FLRA No. 41, 46 FLRA 471 (1992) (hereinafter "VA Prescott"), like Nellis AFB and Scott AFB, involved a change of conditions of employment, unlike the present case where employees were regularly assigned to different tours of duty. In VA Prescott, the work schedules of two housekeeping aids were changed: one, who for at least six years had worked Saturday through Tuesday, was changed to Thursday through Sunday; and the other, who for at least a year had worked Monday through Thursday, was changed to Monday, Tuesday, Thursday and Friday. See, also, United States Custom Service, Southwest Region, El Paso, Texas, 44 FLRA 1128 (1992).

12. Although the agreements of the parties address the 0500 shift and the assignment of employees to shifts, compare: U.S. Department of Transportation, Federal Aviation Administration, Washington, DC and Michigan Airway Facilities Sector, Belleville, Michigan, 44 FLRA 482, 494 (1992); Department of the Navy, Marine Corps Logistics Base, Albany, Georgia v. FLRA, et al., 962 F.2d 48 (D.C. Cir. 1992), decision on remand, 45 FLRA No. 46, 45 FLRA 533 (1992); Internal Revenue Service v. FLRA, 963 F.2d 429, 433-434, 439, 441 (1992), the issue in this case, namely, whether a shift, after lawful implementation, remains an existing shift to which employees may, without notice or bargaining, be assigned following a period when the shift was not staffed, is not addressed.