OFFICE OF ADMINISTRATIVE LAW JUDGES

WASHINGTON, D.C. 20424-0001

U.S. SMALL BUSINESS ADMINISTRATION, NEW YORK, NEW YORK
Respondent

and

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 3134

Charging Party

Case Nos. BY-CA-20813
BY-CA-20814
BY-CA-20815
BY-CA-20816

David R. Gray, Esq. and

Thomas Lofton, Esq.

For the Respondent

Carol Waller Pope, Esq. and

Richard D. Zaiger, Esq.

For the General Counsel

Elaine Powell-Belnavis

For the Charging Party

Before: SALVATORE J. ARRIGO

Administrative Law Judge

DECISION

Statement of the Case

This matter arose under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the U.S. Code, 5 U.S.C. § 7101, et seq. (herein the Statute).

Upon unfair labor practice charges having been filed by the captioned Charging Party against the captioned Respondent, the General Counsel of the Federal Labor Relations Authority (herein the Authority), by the Regional Director for the Boston Region, issued a Complaint and Notice of Hearing alleging Respondent

violated the Statute by implementing a reorganization or restructuring of Respondent's New York Regional and District Offices without providing the exclusive collective bargaining representative with reasonable notice and an opportunity to negotiate over the impact and implementation of the change and conducting various formal meetings with bargaining unit employees concerning the matter without providing the exclusive representative with an opportunity to be represented at the meetings.

A hearing on the Complaint was conducted at which all parties were afforded full opportunity to adduce evidence, call, examine and cross-examine witnesses and argue orally. Briefs were filed by Respondent and the General Counsel and have been carefully considered.(1)

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

Findings of Fact

At all times material the American Federation of Government Employees, AFL-CIO (AFGE), National Council of Small Business Administration Locals (the Council) has been the exclusive collective bargaining representative of various of Respondent's employees. Respondent's New York Region is composed of the New York Regional Office located in New York City, and District offices located in: New York City (the same office building and floor as the Regional Office); Buffalo, New York; Syracuse, New York; Newark, New Jersey; and Puerto Rico and the Virgin Islands. The New York District Office has Branch offices on Varick Street, New York City and Melville, Long Island. While AFGE Local 3134 (the Union) represents unit employees attached to either the New York Regional Office or the New York District Office, AFGE Local 3613 represents unit employees in the Buffalo District and AFGE Local 3588 represents employees in the Newark District. When a collective bargaining matter arises which affects more than one Local of AFGE, the Council is the collective bargaining agent appropriate to represent unit employees in that particular situation.

Michael Forbes became the Regional Administrator of Respondent's New York Region in September 1991. In late December 1991 he began to devise a plan to restructure the Region so as to provide more resources to the District offices. By late March 1992, with the assistance of various managers, Forbes had developed a plan whereby various programs would be transferred from the New York Regional Office (NYRO) primarily to the New York District Office, the Newark District Office and the Buffalo District Office. Thus, the Regional Finance and Investment Program and the Regional Minority Small Business and Capital Ownership Development Program would be moved to the New York District Office (NYDO); the Regional Procurement Assistance Program would be moved to the Newark District Office; and the Regional Business Development Program would be moved to the Buffalo District Office. Additionally, since there were already some administrative and personnel operations in the Agency's Central Office in Washington, D.C., all those functions would be moved there to eliminate duplication. Employees who had been working in programs no longer performed by the New York Regional Office would be transferred to the office which would receive the function.

Meanwhile, Forbes also concluded that the Buffalo District was in need of additional employees and in January 1992 Forbes discussed with NYDO management the possible reallocation of employees from the NYDO, which he felt was overstaffed, to Buffalo.(2) In early March 1992 Aubrey Rogers, the NYDO Director, informed Forbes that he had a list of 10 District Office employees that could be transferred to Buffalo.

On March 31, 1992 Forbes presented a memorandum to Patricia Saika, the Administrator of SBA, detailing his plan to restructure the New York Regional operations. The plan was entitled the "Forbes Field Resource Enhancement Project" (the Plan). A "summary" of the Plan given to Administrator Saiki stated, inter alia:

> To effectively implement the Administrator's directive that the Agency be "district-driven", to address the age-old concern that the Districts are under-resourced, and to reassign the coordinating function so that it is closer to SBA's clientele, I propose to restructure the Regional Office of Region II to place approximately 75 percent of the Regional staff in the District Offices. This plan would take place in stages by function, with the ultimate goal of having all program areas operate out of the District Offices by March 31, 1993. The completed reorganization would leave no more than 12 Full Time Equivalents (FTEs) in the Regional Office. The Office of Administration would become a responsi-bility of Management and Administration in Central Office and be reconstituted as a special unit exclusively serving Region II. The restructuring and reallocation inherent in this plan will not affect salaries or grade levels.
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> . . .
>
> Charts for the composition of the Regional Office and the five District Offices as well as a roster of all current employees and their reassignments after restructuring are attached. References in the charts to District Offices include branches and posts of duty within their purview. Transfers were made with a view toward minimizing disruption of the lives of all affected employees and with concern for employee morale. Every effort will be made to equalize resources among districts once this plan is fully implemented. RECOMMENDATION: That the attached restructuring of SBA's Region II be approved.

An attachment to the summary revealed that the Buffalo District, which includes the Rochester Branch Office, had a then current employee complement of 28 employees with a proposed level of 48 employees after restructuring. The attached roster, listing employees by name and job, indicated that after the restructuring the Buffalo District would have 47 employees, which included 10 named New York District Office employees designated to be transferred to the Buffalo District Office by NYDO Director Rogers in early March, supra.[3]

SBA Administrator Saika approved the Forbes Field Resource Enhancement Project as submitted and on April 15, 1992 the appropriate committees of the U.S. Congress were notified of the matter, as required by law governing the Agency's appropriations. In Administrator Saiki's notification to Congress she did not specifically name the employees to be transferred but noted that some transfers would be made outside the New York City commuting area to "upstate New York".

Meanwhile, on April 6, 1992 Forbes, accompanied by Deputy Regional Administrator Karen Genis, Raymond Barnes, SBA Chief of Labor Relations and Carolyn Smith, SBA Director of Personnel Services met with Local 3134 President Frank Puleo and Vice-President Elaine Belnavis and briefed the Union regarding the plan to restructure. During the meeting Forbes explained the purpose and objectives of the restructuring and the Union received a copy of the Plan summary, but no attachments showing the roster of employees and their location or relocation was included. Forbes informed the Union that New York Regional Office personnel would be reduced to 12 from the then current complement of 68 employees and, in response to an inquiry, revealed that the change would probably be implemented on May 1. He further stated that the Administrator of SBA had approved the restructuring although congressional notification, which had not yet occurred, had to be completed before action could be taken, but Respondent wished to give the Union advanced notice of the change. The Union asked for all available documentation pertaining to the reorganization and requested implementation be delayed while they received the information and negotiated with management over the implementation. Forbes stated he was not seeking the Union's agreement to the change and had no intention of delaying implementation "even one day" since the matter had been contemplated "for almost a year." The Union suggested that in such circumstances additional time to negotiate should be granted, but Forbes disagreed.

At the meeting Labor Relations Chief Barnes indicated he had told, but not yet formally notified, the trustee for the Council of Locals that a restructuring of the New York Regional Office was planned.(4) Management stated that since Local 3134 was the Local affected by the reorganization, it wished to notify them first and the other labor organizations requiring notice would receive it at a later date. Along with the request for documentation the Union also sought representation time for review and preparation for negotiations, which was granted.

Forbes then met with New York Regional Office employees and briefed them on the plan to restructure the Regional Office. Later that day management provided the Union with a copy of Forbes' March 31 summary of the Plan sent to the SBA Administrator with an attachment setting out 63 Regional Office employees by name, title, current location and proposed duty station.

On April 7, 1992 Union President Puleo sent a letter to Regional Administrator Forbes requesting, inter alia, copies of all relevant documents concerning the restructuring plan. Puleo also sought a "moratorium" on implementing the Plan until Forbes had time to "read and review" a Union impact study.(5) The letter concluded:

I reiterate my request that no action be taken to implement the pilot project until negotiations on the

impact, implementation, and if necessary, substance of the proposed change has been completed

with Local 3134.

On April 8, 1992 Union President Puleo met with New York District Office Director Rogers. Rogers said he wanted to discuss something with Puleo "unofficial and informal" and proceeded to tell Puleo that he was making a recommendation to the Regional Administrator to reduce the New York District Office by 10 employees since his office was overstaffed and other offices were understaffed. The employees would be transferred to Buffalo, Rochester and Syracuse. Puleo asked the date for implementation of the action and was told "as soon as possible". Puleo replied he would deal with the matter after he received formal notice from management and was told he would not be getting formal notice because Rogers had the right to transfer people out of his District and it was not a Union question. Puleo nevertheless indicated he wanted time to study the matter and negotiate with management on the subject.

Later that day the Union became aware management had announced an April 9 staff meeting for New York District employees. Puleo proceeded to Rogers' office with Union Vice-President Belnavis and asked Rogers the purpose of the meeting. Rogers informed them that he was going to tell the District employees of the pending transfer of 10 employees. Puleo complained to Rogers that the Union had a right to be present at the meeting but had not received notice of the meeting. Rogers maintained that the transfer of District employees was not a Union matter. The Union asked that the transfers be delayed while it was given an opportunity to negotiate on the subject but Rogers refused, insisting the transfers did not concern the Union.

District Director Rogers met with the approximately 35 NYDO employees on April 9. Rogers informed the group of the Regional Office restructuring plan which, he explained, had nothing to do with the District Office transfers. Rogers then went on to notify employees that because they were overstaffed, the District Office would be decreased by 10 employees by transferring those employees to the Buffalo District. The action would take place in 30 to 60 days. Union Vice-President Belnavis asked what the difference was between a reorganization and restructuring. Rogers refused to discuss the question stating that he merely referred to the Regional Office restructuring because he knew the employees had already heard of it and he would only discuss the District Office transfers, stating the two actions were separate and one had nothing to do with the other. Various questions were asked concerning the proposed transfers. When asked who would be transferred, Rogers indicated the affected employees would be appropriately notified and given necessary information on the matter.

Around April 11 Union representatives again met with Rogers and told him they wished to negotiate on the impact and implementation of the District Office transfers. Rogers maintained that as District Director he could reassign employees as he pleased and the Union had no rights concerning the action.

Regional Administrator Forbes provided Union President Puleo with a letter on April 14, 1992, attaching a roster for the New York Regional restructuring showing the employee's name, location before and after the restructuring, position and grade, similar to that which accompanied Forbes' letter to SBA Administrator Saiki on March 31, supra. Forbes' letter to Puleo noted the roster included the reassignment of certain New York District employees to the Buffalo Office which Forbes characterized as "a separate action unrelated to the restructuring." In the correspondence Forbes granted Puleo and Union Vice-President Belnavis a total of 30 hours each over the following two weeks to engage in "union business." Puleo complained to management that this amount of time was insufficient to prepare for negotiations but was informed that this was all the time Forbes allocated to the Union.

The record reveals that around April 16, 1992 Assistant Regional Administrators Michael Coffee, Francisco Marrero and James Kosci each met with various New York Regional Office unit employees and informed them of their reassignments under the Forbes Plan.(6) Testimony establishes that Coffee called a mandatory meeting of approximately 10 employees in a conference room and informed the employees that their function was being transferred to Washington, D.C. and that they individually would be notified in 10 to 15 days specifically where and when they would be reassigned. Employee relocation would be to Washington, Buffalo, Rochester or Syracuse, and while no promises could be made, management would take into consideration individual hardship situations. Coffee described to the employees the procedure for seeking a hardship exception to relocating. During the meeting, which lasted approximately one hour, employees asked various questions such as who would pay moving expenses and how management could expect them to leave after they had purchased homes. Coffee responded that the Agency would pay for relocation and the employees were lucky to still have their jobs.

Testimony further reveals that Assistant Regional Administrator Marrero, in April 1992, separately called each of the three employees under his supervision to his office and explained that under the restructuring plan, which still required congressional approval, their unit was scheduled to go to the New York District Office. Employees asked, and Marrero answered, questions concerning details of the restructuring plan and how it would affect work responsibilities and supervision.

With regard to Assistant Regional Administrator Kosci, the record reveals he met with the approximately 10 employees under his supervision both individually and in a group in April 1992 to discuss the restructuring plan. During the group meeting Kosci gave the employees a roster which contained the names and the future assigned locations of the NYRO employees in his unit.(7) Kosci indicated to the employees that the transfers would not detrimentally affect grade or pay but stated the reassignments were mandatory. Kosci acknowledged, upon being questioned, that he made the selection as to which employees would remain in New York City and which would be required to relocate.

As to the nine New York District Office unit employees selected for transfer out of the New York District Office, Respondent provided each of them with written notification of their reassignments on April 22, 1992.(8) The letters advised each employee that transfers would be effective July 12, 1992 and if the employee decided to decline the assignment, removal from federal service would follow ". . . in accordance with applicable procedures governing involuntary separation for failure to accept a directed reassignment." Employees were required to respond within 10 days.

On May 13, 1992 Union President Puleo wrote to New York District Director Rogers and demanded that Respondent "cease and desist any action on the proposed transfers until after the Union has had a full and fair opportunity to negotiate on this issue." Puleo reminded Respondent that it had previously "failed to respond to the Union's oral request to negotiate" and noted that this letter was "the Union's formal demand to negotiate under the laws controlling collective bargaining." By letter dated May 28, 1992 Rogers replied to Puleo stating:

This is in response to your May 13, 1992 letter to me regarding the reassignments of certain employees of the New York District Office. I fully understand your concerns about the impact of the reassignments upon the bargaining unit members. Please be assured that any concerns that you may have concerning

any entitlement due any bargaining unit member will be given a full and fair consideration.

As you are aware, among management's inherent rights under 5 U.S.C. 7106(a)(2)(B) is the right to assign and reassign employees. The Master Agreement at Article Six, Section 1b reiterates this right and further, Article Thirty Three, Sections 5 and 6 defines as well as provides specific requirements for management to follow when it exercises its right to reassign employees. Also, Article Thirty Five provides certain entitlement due an employee who receives a directed reassignment notice and management's use of directed reassignment is restricted by Section 2. The letters of April 22, 1992 fulfill these contractual obligations.

A review of the statistics relating to the reassign-ments reveals the following: one supervisory loan officer, GM-13 and seven employees who are bargaining unit members. Of the seven bargaining unit members, four employees are currently on dues withholding. Please be advised that management's decision to reassign any particular employee was made without consideration for the employee's membership in the union.

For all of the reasons enunciated above, your request to negotiate the reassignments of April 22, 1992 is considered to be inappropriate.

With regard to Forbes' restructuring plan, on May 1, 1992 Labor Relations Chief Barnes sent the following letter to Manuel Mellado, the newly designated President of AFGE Council 228:

The purpose of this letter is to officially notify AFGE Council 228 of the Agency's intention, as a pilot initiative, to restructure the Regional Office in New York.

Commencing April 2, I informally notified Peggy Kans AFGE Council 228's Trustee, that a restructure of the New York Regional Office was planned that impacted upon the Region II Locals. By memorandum dated April 3, Regional Administrator Forbes notified Local President Puleo of his intention to hold an All Employee Meeting with the Regional Office staff on Monday, April 6, 1992. At

a 10:30 a.m. meeting Mr. Forbes briefed the officers of AFGE Local 3134 concerning management's decision to restructure the Regional Office and provided them with a copy of the approved 606.

On April 15, the Deputy Regional Administrator provided Local 3134 with a copy of the tentative staffing plan for the proposed restructure. The enclosed staffing plan provides a clear picture of the proposed before and after assignments of all Regional Office employees. Also, I am enclosing a copy of the 606 dated March 31, 1992, entitled: Pilot Project Restructuring Region II Operations. The 606 responds to the Administrator's directive that the Agency be "District-driven" and addresses the age-old concern that the Districts are under-resourced.

This restructure, when fully implemented, will provide coordinating functions that are closer to SBA's clientele. This action will reduce the number of employees in the Regional Office from approximately 68 personnel to about 12 persons. Under the Master Agreement, Council 228 has fifteen days from receipt to respond to this notice.

Please note that the Agency's implementation will be in full compliance with the following provisions of the Master Agreement: Specifically Article Four, Section 4 and Article Thirty-three. Please direct all requests for information and/or correspondence to my attention.

Mellado responded to Barnes on May 11, 1992, as follows:

As I informed you, I received your letter dated May 1, 1992 on Tuesday May 5, 1992. After our conversation, I spoke to Mr. Frank Puleo, President of Local 3134, New York District.

As his Local is the one directly affected by the proposed changes, I assigned to this Local the responsibility to deal directly with your office all matters in reference to the (restructuring) of Region II's office.

I will be in contact with Mr. Puleo and if you need to contact me regarding any matter involving SBA's labor relations, do not hesitate to do so. . . .

On May 13, 1992 Union President Puleo wrote Barnes the following letter:

This (is) in regard to the proposed restructure of the New York Regional Office (a/k/a Forbes Field Resource Enhancement Project).

As you are well aware, the Pilot project will have profound, far-reaching and potentially deleterious effect (sic) on all employees of Region II. Accordingly, Local 3134 hereby demands that you cease and desist any action to implement the Pilot project until the Union has had a full and fair opportunity to negotiate and bargain on this issue to the fullest extent.

In view of the serious nature of this matter, a prompt reply is requested.

By letter dated May 21, 1992 Regional Administrator Forbes sent the following reply to Puleo:

This is in response to your letter dated May 13, 1992, to Raymond L. Barnes, Chief, Labor Relations, a copy of which was delivered to me on September 20, 1992.(9)

I fully appreciate and understand your concerns about the impact that the restructuring might have on bargaining unit members of Local 3134, and I want to assure you that every consideration will be given by the agency to any specific concerns concerning any particular employee that the Union may have. I will make myself available to review with you any such concerns that may exist, or, in my absence, please feel free to review any such concerns with Karin L. Genis, Deputy Regional Administrator. I assure you that any concerns that may arise regarding the impact of the restructuring plan on bargaining unit members (will) be given full and fair consideration by the agency.

The Union was given official notice by letter dated May 1, 1992, of the agency's intention, as a pilot initiative, to restructure the Regional Office in New York. The Union was given fifteen days from receipt

to respond to the notice. Under Article Four, Section 4, of the Master Agreement the Union is required, if it wishes to negotiate with respect to a proposed change, to give notification, in writing, of its desire to do so, which notice shall state the specific language for a written agreement. Your letter of May 13, 1992, does not comply with the Master Agreement. It fails to state the specific proposal the Union wishes to offer for negotiation, and does not include specific language for a written agreement. It merely demands that the agency cease and desist any action to implement the pilot project until the Union has had an opportunity to negotiate and bargain on this issue. Your demand, or request, does not meet the requirements for a specific proposal, and we will proceed with plans for restructuring.

I would point out that the May 1, 1992, letter from Mr. Barnes was not the first notice that was given to the Union concerning the proposed restructuring. You will recall that on April 6, 1992, I met with you and briefed you concerning the proposed restructuring of the Regional Office and provided you with a copy of the approved Form 606. In addition, on April 15, 1992, the Deputy Regional Administrator provided you with a copy of the tentative staffing plan for the proposed restructure.

I am hopeful that the Union will come to appreciate the benefit that I believe this restructuring will ultimately mean for all employees of the Region. As always, I appreciate your counsel.

On May 22, 1992 Regional Administrator Forbes sent letters to numerous New York Regional Office employees notifying them that the decision to restructure the New York Region was being implemented and informing each employee of the particular location and date of the employee's reassignment. Thus, approximately 12 unit employees were reassigned to the New York District Office (no relocation involved); 17 employees to the Newark, New Jersey District Office, and the Picatinny Arsenal and Ft. Monmouth Posts of Duty; 2 employees to the Melville, New York Post of Duty; 3 employees to the Syracuse, New York District Office and Albany Post of Duty; and 2 employees to the Buffalo, New York District Office. Transfers were effective on specified dates between June 15 and September 8, 1992 and those employees transferred outside the New York City commuting area were informed that if the offer of transfer was declined, action to remove the employee from federal service would be instituted.

After reassignment under the Forbes restructuring plan, some employees' duties changed, some employees' critical elements and performance standards used in annual performance ratings changed, and substantial increases in travel time was experienced by some of the numerous employees whose job location changed from the New York City office.

As to the transfer of employees from the New York District Office to the Buffalo District, only two of the nine unit employees reassigned actually went to Buffalo. The others took involuntary retirement, found other federal jobs or were removed from government employment.

Additional Findings of Fact, Discussion and Conclusions

The General Counsel contends the transfer of New York District Office employees to Buffalo should be viewed as being an essential part of the Forbes New York Regional Office restructuring plan. The General Counsel argues that: implementation of the Forbes plan began on April 22, 1992 when notices of reassignment were issued to New York District Office employees; the Council, as the proper representative to negotiate on the Plan, should have been provided notice of the Forbes plan and been provided an opportunity to negotiate on its impact and implementation prior to the issuance of the April 22 notices of reassignment; and since notice of the proposed change was not given to Council President Mellado until May 1, 1992, Respondent unilaterally implemented a change in conditions of employment without fulfilling its bargaining obligations thereby violating section 7116(a)(1) and (5) of the Statute.

The General Counsel further contends that even if the Forbes restructuring plan and the reassignment of New York District Office employees to the Buffalo District Office are determined to be separate and distinct changes, Respondent nevertheless violated its Statutory bargaining obligation by failing to give notice of the transfers to Union officials representing the various affected District Office, i.e., Buffalo and Newark, and, allegedly by failing to give Local 3134 reasonable notice of the Regional Office restructuring. The General Counsel argues that Respondent failed to give the Union reasonable notice of the change and contends the language of the parties' collective bargaining agreement, relative to a minimum 15 day notice requirement, does not constitute a waiver of "reasonable" notice required by the agreement and the Statute.

The General Counsel also alleges the employee meetings conducted by Assistant Regional Administrators Coffee, Marrero and Kosci, above, without Union notification, constituted formal discussions within the meaning of the Statute in violation of section 7116(a)(1) and (8) of the Statute. Regarding a remedy, the General Counsel urges "that a full status quo ante remedy be ordered including backpay, restoration of benefits, lost dues to the Union, re-employment in the positions held prior to Respondent's unlawful action, and restoration of the New York Regional office in its entirety".

Respondent takes the position that the restructuring of the New York Regional Office and the reassignment of New York District Office employees were completely separate actions and maintains Respondent complied with applicable provisions of the collective bargaining agreement dealing with its bargaining obligations when taking these actions. As to the employee meetings called by the Assistant Regional Administrators, Respondent suggests that since none of Local 3134's substantive rights were affected by these sessions, any violation of the Statute would be only technical in nature and should therefore be found to be de minimis. Respondent urges that if corrective relief is envisioned, due to "the magnitude of costs involved, the prospective disruption of operations, and the potential to impede its accomplishment of its mission. . . .", the parties should be provided an opportunity to supplement the record with information specifically addressing the burden on Respondent and the extent and form of any corrective action.

The relevant collective bargaining provisions herein are as follows:

ARTICLE FOUR CHANGES IN PERSONNEL POLICIES, PRACTICES AND CONDITIONS OF EMPLOYMENT

Section 1. **Employer Notification.** Before implementing a change in personnel policy, practice, procedure, or condition of employment applicable to employees in the bargaining unit, the Employer will notify the appropriate Union representative in accordance with the provisions of this Article.

. . . . .

Section 3. **Notification Procedure.** Notification of proposed changes as described in Section 1, above, may include a final date for the Union to request negotiation with respect to the proposed change. When a final date for the Union to request negotiations is specified, such final date shall be reasonable so as to allow the Union adequate time to prepare a request for negotiations, but in no case shall such final date be less than fifteen (15) calendar days from the date of receipt of the notification of the proposed change. When the notification does not include a final date for the Union to request negotiations, and the Union wishes to negotiate, it shall make such request within thirty (30) calendar days from the date of receipt of the notification. The parties recognize that either party may be unavoidably absent, and in such cases, by mutual consent, extending of the time limits shall not be unreasonably withheld.

Section 4. **Union Requests for Negotiations.** When the Union desires to negotiate with respect to a proposed change, it shall notify the Agency official from whom the notification was received of such desire, in writing, and within the specified time period, if any, or within the standard time period. Such notice shall state the specific

proposal the Union wishes to offer for negotiation, including specific language for a written agreement. The Union's notice shall also state the identity of the Union official authorized to enter into a binding agreement and the names of other Union representatives who are authorized to participate in the negotiations. . . .

Section 5. **Negotiation Levels.** The parties agree that local issues shall be discussed and negotiated locally at the level where the issue arises insofar as possible. Nothing herein shall be construed, however, to prevent either party from designating representatives of its choice for negotiation or consultation.

. . . . . .

Section 7. **Notification Procedure--Field.** If a change proposed by the Agency affects bargaining unit employees in a single Regional, District or Branch Office or Post of Duty, the appropriate Union representative to receive the notification of the change shall be the Union representative as furnished to the Agency under Article 11, Section 1. The notification from the Agency shall be in writing, be specific and identify the Agency official authorized to enter into a binding agreement.

Section 8. **Regional Proposals.** If a proposed change is initiated and controlled as a Regional program affecting bargaining unit employees in more than one office within a Region, the Employer's notification shall be communicated to the Vice President of the Council of Locals whose jurisdiction includes the Region in which the change is proposed. The notification shall be in writing, be specific and identify the Agency official authorized to enter into a binding agreement. . . .

ARTICLE THIRTY THREE REORGANIZATIONAND REASSIGNMENT

Section 1. **Definition of Reorganization.** A reorganization is defined as the planned

elimination, addition, or redistribution of significant functions or duties in an organization and/or organizational unit.

. . . . .

Section 4. **Notification of Reorganization.** The Union will be notified of any reorganization affecting bargaining unit employees in accordance with Article Four of this Agreement. The Employer will provide the Union, upon request, any relevant records pertaining to any reorganization affecting bargaining unit employees, except those records and documents which constitute internal management communication. If a reorganization results in an adverse action, reduction-in-force, or transfer of function, the notice period specified in the appropriate Article shall apply.

Section 5. **Definition of Reassignment.** A reassignment is defined as the change of an employee from one position to another, at the same grade, without promotion or demotion. Employees will be provided a copy of the position description for the position to which the employee is reassigned.

Section 6. **Notification of Reassignment.** Except where necessitated by unforeseen circumstances which could have a detrimental effect on the organi-zational element's operations, employees shall receive written notification of a reassignment at least fifteen (15) calendar days prior to the effective date of the reassignment.

ARTICLE THIRTY FIVE PERMANENT CHANGE OF STATION

Section 1. **Definition.** Permanent change of station refers to the transfer of an individual employee from one location to another beyond commuting range, by:

a. competitive selection;

b. voluntary reassignment; or

c. directed reassignment.

Section 2. **Limitation.** Permanent change of station (PCS) may not be used or threatened for disciplinary reasons or as a reprisal action aginst an employee.

Section 3. **Reimbursement**. Reimbursement for travel, per diem, and other allowable expenses incurred in a PCS shall be paid by the Employer in accordance with applicable laws and regulations.

Section 4. **Grievances.** An employee who is permantently transferred for reasons related to performance may grieve the transfer under the grievance procedure contained in Article Forty.

I find and conclude the transfer of employees from the New York District Office to the Buffalo District was functionally related to the Forbes restructuring plan and therefore must be considered as part of that plan. The timing of the decision and notification to the Union and employees strongly suggests this conclusion. While Respondent may have recognized a need for additional employees in the Buffalo District for some time, that need was not met until the Forbes plan was conceptualized and the source of fulfilling the need, employees from the New York District Office, became available.(10)

Forbes' March 31, 1992 summary of the Plan sent to SBA Administrator Saiki for approval clearly acknowledges that the employee transfer from the New York District Office to the Buffalo District was procedurally incorporated into, and made part and parcel of, the overall plan when Forbes states in the summary: "Charts for the composition of the Regional Office and the five District Offices as well as a roster of all current employees and their reassignments after restructuring are attached." Indeed, under "Recommendation" in the summary, Forbes asks that "the attached restructuring" be approved, obviously referring to the placement of employees contained in the roster. It is this document, as submitted by Forbes, that Administrator Saiki approved. While under the plan a couple of employees were to be transferred from the New York Regional Office to "Upstate New York", the roster approved by the SBA Administrator gives no indication or clue that transfers from the New York District Office to the Buffalo District were not an essential part of the Forbes restructuring plan. Further, the SBA Administrator submitted to Congressional appropriations committees this same plan on April 15, 1992, noting that the restructuring plan included transfer of employees to "upstate New York."

In all these circumstances I conclude the transfer from the New York District Office to the Buffalo District was an integral part of the Forbes restructuring plan and not a separate transfer action under the parties'

collective bargaining agreement. I further conclude that the Forbes restructuring plan, including the New York District Office transfer, had a reasonably foreseeable impact on employees that was more than de minimis and accordingly, Respondent had an obligation under the Statute to bargain with the Union on the impact and implementation of the change in employees' conditions of employment.

Turning now to the issue of whether Respondent provided the collective bargaining representative with notice and a opportunity to negotiate regarding the restructuring as required by the Statute, since the restructuring affected numerous District offices in the New York Region, the Council was clearly the proper collective bargaining representative to negotiate with Respondent on the matter. The Council was told by Chief of Labor Relations Barnes in early April 1992 that a restructuring of the New York Regional Office was planned, but nothing more definite than that was conveyed. Formal notice was given to the Council by Respondent's May 1, 1992 letter to Council President Mellado, which he received on May 5. That notice included the "summary" explanation of the restructuring Forbes originally gave the SBA Administrator dated March 31, 1992 and a roster of New York Regional Office employees, their present locations and locations after the restructuring was implemented. The notice referred to relevant portions of the parties' collective bargaining agreement and gave the Council 15 days to reply to the notification if negotiations were desired. (See Article Four, Section 3). No specific mention was made of the New York District Office employees' transfers to the Buffalo District. However, by May 5 Local 3134 President Puleo had been designated as the collective bargaining agent for the Council and by May 22 Puleo had been fully informed as to the details of not only the restructuring of the Region, but the New York District Office transfers as well.

By separate letters to Respondent dated May 13 Puleo: demanded implementation of the restructuring of the New York Regional Office be abated until the Union had an opportunity to negotiate on the issue; and demanded implementation of the transfers from the New York District Office be abated until the Union had an opportunity to negotiate on that issue. Respondent's replies on the two matters differed. As to the restructuring, Respondent took the position that the Union failed to follow the procedure to be utilized in negotiating on this matter as set forth in Article Four, Section 4 of the parties' collective bargaining agreement. That provision essentially requires the collective bargaining representative to indicate its desire to negotiate within the specified time period (no less than 15 calendar days) and to set forth its specific negotiating proposals. Respondent concluded that since Puleo's letter of May 13 had not set forth specific bargaining proposals, the Union had essentially waived its right to bargain on the restructuring.

With regard to the transfers from the New York District Office, the Union requested to negotiate on the matter on April 8 and April 11, 1992. On both of those occasions Respondent replied that the Union had no right concerning this subject, which response, I conclude, constituted a refusal to negotiate. When Puleo again requested to negotiate on the transfers in writing on May 13, at a time when he represented both Local 3134 and the Council, Respondent, treating the transfers as distinct from the restructuring, again refused to bargain referring, inter alia, to Article Thirty Three, Sections 5 and 6 of the negotiated agreement. Those sections, Respondent essentially argues, indicate the Agency's only notification obligation when making a reassignment (transfer herein) is to notify the employee involved, and since there is no contractual obligation to notify the Union, there is no obligation to bargain. However, since I have found and concluded that the transfer of employees from the New York District Office was part of the Forbes restructuring plan, the transfers are not to be considered under Article Thirty Three, Sections 5 and 6, but under the terms of Article Four, Sections 3 and 4 where Respondent had the obligation to notify the Union of the change and proceed to negotiations within the procedures set forth in that Article. As Respondent clearly rejected any bargaining obligation with regard to these transfers, I conclude Respondent thereby violated Section 7116(a)(1) and (5) of the Statute.

Respondent refused to bargain with the Union on the restructuring of the New York Regional Office based upon its view that the procedure to be followed in negotiating on the subject was covered by the parties' negotiated agreement and after notice of the change was provided, the Union failed to follow those procedures thereby eliminating any further bargaining obligation on the part of Respondent. I conclude that the procedures governing the parties' bargaining obligation concerning the restructuring were indeed covered by Article Four, Sections 3 and 4; that Respondent complied with those procedures in providing the Union with notice of the change; and the Union's failure to make specific negotiating proposals pursuant to the requirements of the collective bargaining agreement extinguished any further right of the Union to negotiate on the matter.

When this case was litigated before me, the state of Authority law at that time regarding an employer's obligation to bargain with a union and a defense that the matter was "covered by" the terms of a collective bargaining agreement was that a contract provision did not supersede the bargaining obligations imposed by the Statute when an employer wished to change a condition of employment unless the matter was "specifically addressed in the negotiated agreement" or the union "clearly and unmistakably" waived its right to bargain about the matter. 375th Combat Support Group, Scott Air Force Base, Illinois, 45 FLRA 557, 570 (1992) and cases cited therein.

Since briefs were filed herein, the Authority has modified its approach when considering whether matters in dispute are "covered by" or "contained in" an agreement so as to obviate any requirement for further bargaining on this subject. In U.S. Department of Health and Human Services, Social Security Administration, Baltimore, Maryland, 47 FLRA 1004 (1993) (SSA), the Authority, inter alia, reviewed various prior decisions dealing with this subject. It rejected its prior holding in Internal Revenue Service, 29 FLRA 162 (1987), where it held, at 167, that in determining whether a matter is covered by an agreement, "the determinative factor is whether the particular subject matter of the proposal . . . is the same." The Authority went on in SSA, at 1018-1019, to set forth the "framework" it would use to determine whether a contract provision covers a matter in dispute, as follows:

> Initially, we will determine whether the matter is expressly contained in the collective bargaining agreement. In this examination, we will not require an exact congruence of language, but will find the requisite similarity if a reasonable reader would conclude that the provision settles the matter in dispute. (Citation omitted).
>
> If the provision does not expressly encompass the matter, we will next determine whether the subject is "inseparably bound up with and . . . thus [is] plainly an aspect of . . . a subject expressly covered by the contract." (Citations omitted). In this regard, we will determine whether the subject matter of the proposal is so commonly considered to be an aspect of the matter set forth in the provision that the negotiations are presumed to have foreclosed further bargaining over the matter, regardless of whether

it is expressly articulated in the provision. If so, we will conclude that the subject matter is covered by the contract provision.

We recognize that in some cases it will be difficult to determine whether the matter sought to be bargained is, in fact, in aspect of matters already negotiated. For example, if the parties have negotiated procedures and appropriate arrangements to be operative when management decides to detail employees . . . it may not be self-evident that the contract provisions were intended to apply if management institutes a wholly new detail program, or decides during the term of the contract to detail employees who previously had never been subject to being detailed. To determine whether such matters are covered by an agreement, we will examine whether, based on the circumstances of the case, the parties reasonably should have contemplated that the agreement would foreclose further bargaining in such instances. In this examination, we will, where possible or pertinent, examine all record evidence. (Citation omitted). If the subject matter in dispute is only tangentially related to the provisions of the agreement and, on examination, we conclude that it was not a subject that should have been contemplated as within the intended scope of the provisions, we will not find that it is covered by that provision. In such circumstances, there will be an obligation to bargain.

The Authority subsequently applied the SSA test in U.S. Department of the Navy, Marine Corps Logistics Base, Barstow, California, 48 FLRA No. 10 (1993) and Social Security Administration, Douglas Branch Office, Douglas, Arizona, 48 FLRA No. 33 (1993).

Accordingly, applying the SSA test herein with regard to the Forbes restructuring plan, when considered apart from the New York District Office transfers, I conclude the matter was covered by the parties' agreement and I therefore conclude the Union was obligated to follow the procedures set forth in Article Four of the parties' collective bargaining agreement. The Union having failed to make negotiating proposals within the 15 days as required, I conclude Respondent was free to implement the restructuring without further negotiations with the Union.

Counsel for the General Counsel argues that the implementation of the Forbes restructuring plan began when the reassignment notices were issued to New York District Office employees on April 22, 1992 since the reassignments were part of the restructuring. Thus, counsel reasons, Respondent unilaterally implemented the Forbes restructuring plan prior to the time it sent the Council notice of the Plan on May 1. I reject this contention. Respondent violated the Statute by clearly refusing to bargain about the New York District Office transfer aspect of the Plan and proper notice to the Council concerning the transfers was never an issue of this

case until this technical legal argument was made by counsel in the brief. Indeed, the Union's unfair labor practice charge filed September 15, 1992 raising the issue of New York District Office reassignments alleged that Respondent acted "without affording AFGE Local 3134 notice and/or an opportunity to negotiate." The Council did not file the charge nor was it mentioned in the charge. Nor does the Complaint suggest lack of notice to the Council of the District Office transfers was an issue herein. I do not feel it appropriate in these circumstances to find a "notice" violation for the purpose of assessing Respondent's conduct regarding its actions when dealing with the substantially larger aspect of the Regional restructuring.

Counsel for the General Counsel also contends that Respondent violated the Statute by not providing the Union with more time to present proposals for negotiations. Thus counsel notes although Article Four, Section 3 of the parties' negotiated agreement allows the Union a minimum of 15 days after the Agency's notification of a change to request bargaining, the Article also requires that the final date for reply "shall be reasonable so as to allow the Union adequate time to prepare a request for negotiations." Counsel urges that 15 days response time was not adequate to prepare for negotiations in this case given the extent of the restructuring and suggests Respondent violated the Statute by not affording the Union additional time to submit negotiating proposals. I reject this contention. Local 3134 officers originally received notice of the New York Regional Office restructuring on April 6, 1992, complete information of the action being given to the Union on April 14.(11) True, Local 3134 was not given authority from the Council to negotiate until the Council received notice of the change on May 5. However, that does not negate the actual knowledge of the facts of the change possessed by Puleo at all times since at least April 14. Thus Puleo had complete knowledge of the reconstruction for approximately five weeks before change. In these circumstances, even if the "reasonable" notice provision of Article Four, Section 3 should control herein, I find and conclude the Union had reasonable notice of the change and the Union failed to timely file an appropriate response.

Lastly, counsel for the General Counsel contends that while the Union did not submit specific language for a written agreement, as required by Article 4, Section 4 of the negotiated agreement, it nevertheless did submit a negotiable proposal when, on May 13, 1992, Union President Puleo demanded Respondent "cease and desist any action to implement (the Plan) until the Union has had a full and fair opportunity to negotiate and bargain on this issue to the fullest extent." Counsel for the General Counsel cites as support for this contention United States Customs Service, Washington, D.C., 25 FLRA 248, 253 (1987), where the Authority held that a proposal to delay implementation pending a study was negotiable. I find that case to be clearly distinguishable inasmuch as in that case the union's proposal to withhold implementation of a new program for six months while the union carried out a study was a definite, formal proposal of delay for a specific time and was one of four specific negotiating proposals made to the agency. In the case herein, the "demand" to withhold implementation was neither in the form of a negotiating proposal nor was it accompanied by a specific limitation as how long implementation would be delayed, nor was it part of a package of negotiating proposals.(12)

As to the allegation concerning Respondent engaging in formal discussions with unit employees, I conclude that the meetings with unit employees conducted by Assistant Regional Administrators Coffee, Marrero and Kosci were "formal" within the meaning of the Statute. Section 7114(a)(2)(A) of the Statute provides:

"(2) An exclusive representative of an appropriate unit in an agency shall be given the opportunity to

be represented at-

"(A) any formal discussion between one or more representatives of the agency and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment . . .

The Authority has held that in determining whether a discussion or meeting is "formal" within the meaning of the Statute, it would consider the totality of a number of factors it deems to be relevant including, among others: (1) whether the individual who held the discussion is merely a first-level supervisor or is higher in the management hierarchy; (2) whether any other management representatives attended; (3) where the individual meeting took place; (4) how long the meeting lasted; (5) how the meeting was called; (6) whether a formal agenda was established for the meeting; (7) whether the employee's attendance was mandatory; and (8) the manner in which the meeting was conducted. See U.S. Department of Labor, Office of the Assistant Secretary for Administration and Management, 32 FLRA 465, 470 (1988).

I have evaluated the facts and circumstances of the employee meetings conducted by managers Coffee, Marrero and Kosci, supra, against the factors set forth by the Authority, above, and I conclude the meetings constituted "formal" discussions within the meaning of section 7114(a)(2)(A) of the Statute and I reject Respondent's claim that such meetings were of de minimis significance.

Accordingly, in view of the entire foregoing and based upon the entire record herein[(13)], I conclude Respondent violated section 7116(a)(1) and (5) of Statute by its refusal to negotiate with the Union concerning the impact and implementation of the transfer of various New York District Office employees to the Buffalo District, and Respondent, by its failure to provide the exclusive representative with notice and an opportunity to attend the meetings found herein to be "formal" within the meaning of the Statute, also violated section 7116(a)(1) and (8) of the Statute.

As to a remedy, I conclude a status quo ante remedy is required for the violation found herein. In determining whether such a remedy is appropriate in a case involving a violation of the duty to bargain over impact and implementation, the Authority, in Federal Correctional Institution, 8 FLRA 604 (1982), stated that it would balance the nature and circumstances of the particular violation against the degree of disruption in government operations caused by a status quo ante remedy and it would consider, among other things:

(1) whether, and when, notice was given to the union by the agency concerning the action or change decided upon; (2) whether, and when, the union requested bargaining on the procedures to be observed by the agency in implementing such action or change and/or concerning appropriate arrangements for employees adversely affected by such action or change; (3) the willfulness of the agency's conduct in failing to discharge its bargaining obligations under the Statute; (4) the nature and extent of the impact experienced by adversely affected employees; and (5) whether, and to

what degree, a status quoante remedy would disrupt or impair the efficiency and effectiveness of the agency's operations.

I have evaluated Respondent's conduct against the criteria set forth above, noting particularly the substantial impact experienced by those employees compelled to choose transferring to upper New York State from the New York City area, or ceasing employment with Respondent. As to any disruption or impairment in the efficiency and effectiveness of the Agency's operations, the record herein contains little evidence bearing on that subject.(14) However, the record does disclose that, at the time of the hearing, employment vacancies existed in both the New York District Office and the Buffalo District Office. In any event, considering all the circumstances herein I conclude a status quo ante remedy regarding the transfer of employees from the New York District Office to the Buffalo District, including backpay and the offer of reinstatement to any individual whose employment terminated because of a required transfer, is warranted and it so shall be ordered.(15)

The situation herein could be viewed as a refusal to bargain going to the entire restructuring since the transfers to the Buffalo District were found to be part of the restructuring. It might therefore be argued that a bargaining remedy requiring negotiation on the entire Regional restructuring should be ordered. While the transfers were part of the restructuring plan, it nevertheless was a discrete, severable part of a much larger reorganization and, as such, I do not conclude that the entire restructuring should be found to have violated the Statute. However, even if I concluded that the refusal to bargain on transfers tainted the entire restructuring plan, I would nevertheless find that the appropriate remedy for the impact and implementation violation found herein should leave the remaining restructuring unaffected based on the particular circumstances of this case, including the disruption which would obviously be caused to the efficiency and effectiveness of the Agency's operations. Id.

Accordingly, it is hereby recommended that the Authority issue 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 U.S. Small Business Administration, New York, New York, shall:

1. Cease and desist from:

(a) Unilaterally implementing a Regional reorgani-zation involving the transfer of employees from the New York District Office to the Buffalo District of the New York Region without first notifying the American Federation of Government Employees, Local 3134, the designated agent of the exclusive collective bargaining representative of unit employees (herein referred to as the Union) and affording it the opportunity to negotiate on procedures which management officials will use in implementing the transfers and appropriate arrangements for employees adversely affected by the change.

(b) Refusing to negotiate with the Union concerning the impact and implementation of any Regional reorganization involving the transfer of unit employees from the New York District Office to the Buffalo District of the New York Region.

(c) Conducting formal discussions with employees represented by the Union concerning any grievance or any personnel policy or practice or other general condition of employment without affording the Union prior notice and an opportunity to be represented at the formal discussion.

(d) In any like or related manner interfering with, restraining, or coercing their employees in the exercise of their 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) Upon request of the Union, rescind the transfer of unit employees from the New York District Office to the Buffalo District of the New York Region and offer reemployment and restoration to them to their places and positions of employment in the New York District Office in which they served at the time they were given notices of reassignment on April 22, 1992.

(b) Upon request of the Union make whole, in accordance with the Back Pay Act, 5 U.S.C. § 5596, any bargain unit employee ordered to be transferred from the New York District Office to the Buffalo District for any loss of pay or benefits suffered as a result of the transfer order, including those adversely affected employees who terminated their employment with the Agency rather than transfer to the Buffalo District.

(c) Notify the Union of any proposed transfer of employees from the New York District Office to the Buffalo District and, upon request, negotiate in good faith with the Union concerning the impact and implementation of the proposed change.

(d) Post at all Small Business Administration, New York Region facilities 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 Regional Administrator, and shall be posted and maintained for 60 consecutive days thereafter in conspicuous places, including all bulletin boards and other places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that such Notices are not altered, defaced, or covered by any other material.

(e) Pursuant to 5 C.F.R. § 2423.30, notify the Regional Director, Boston Region, Federal Labor Relations Authority, 99 Summer Street, Suite 1500, Boston, MA 02110-1200, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

Issued, Washington, DC, February 3, 1994

SALVATORE J. ARRIGO

Administrative Law Judge

NOTICE TO ALL EMPLOYEES

AS ORDERED BY THE FEDERAL LABOR RELATIONS AUTHORITY

AND TO EFFECTUATE THE POLICIES OF THE

FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS STATUTE

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT unilaterally implement a Regional reorganization involving the transfer of employees from the New York District Office to the Buffalo District of the New York Region without first notifying the American Federation of Government Employees, Local 3134, the designated agent of the exclusive collective bargaining representative of unit employees (herein referred to as the Union) and affording it the opportunity to negotiate on procedures which management officials will use in implementing the transfers and appropriate arrangements for employees adversely affected by the change.

WE WILL NOT refuse to negotiate with the Union concerning the impact and implementation of any Regional reorganization involving the transfer of unit employees from the New York District Office to the Buffalo District of the New York Region.

WE WILL NOT conduct formal discussions with employees represented by the Union concerning any grievance or any personnel policy or practice or other general condition of employment without affording the Union prior notice and an opportunity to be represented at the formal discussion.

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

WE WILL, upon request of the Union, rescind the transfer of unit employees from the New York District Office to the Buffalo District of the New York Region and offer reemployment and restoration to them to their places and positions of employment in the New York District Office in which they served at the time they were given notices of reassignment on April 22, 1992.

WE WILL, upon request of the Union make whole, in accordance with the Back Pay Act, 5 U.S.C. § 5596, any bargain unit employee ordered to be transferred from the New York District Office to the Buffalo District for any loss of pay or benefits suffered as a result of the transfer order, including those adversely affected employees who terminated their employment with the Agency rather than transfer to the Buffalo District.

WE WILL notify the Union of any proposed Regional reorganization involving the transfer of employees from the New York District Office to the Buffalo District and, upon request, negotiate in good faith with the Union concerning the impact and implementation of the proposed change.

_____

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 its provisions, they may communicate directly with the Regional Director, Boston Region, Federal Labor Relations Authority, whose address is: 99 Summer Street, Suite 1500, Boston, MA 02110-1200 and whose telephone number is: (617) 424-5730.

Dated: February 3, 1994

Washington, DC

1. Counsel for the General Counsel's unopposed motion to correct the transcript is hereby granted and counsel for the General Counsel's motion to file a supplemental brief, which counsel for Respondent opposes, is hereby denied. Counsel for Respondent's unopposed submission of certain corrections in his brief is hereby received.

2. Since at least early 1991 the Buffalo District Office had been requesting that the Regional Office authorize additional staffing for the District Office.

3. The difference in proposed staffing levels reflected in the summary and roster was not pursued at the hearing.

4. The Council of Locals had been put into trusteeship by AFGE and the trusteeship was in the process of being removed.

5. The Union developed a questionnaire concerning the reorganization and distributed it to employees around April 17-20. By May only about eight employees had returned the questionnaire.

6. The meetings conducted by Assistant Administrators Coffee, Marrero and Kosci were held without providing the Union with notice and an opportunity to be present at any of them.

7. Eight of the 10 employees in this section were transferred to the Newark, N.J. District Office.

8. Although 10 positions were transferred, it appears from documents in the record that 9 unit employees were affected by the action.

9. The September 20 date is obviously meant to be "May 20".

10. The record contains no persuasive evidence that the New York District Office was considered to be overstaffed at any time.

11. Since I have found Respondent violated the Statute by refusing to bargain with the Union concerning the New York District Office transfers, I need not discuss the question of adequate time being given to negotiate on that matter.

12. With regard to the Union's intent, I note there was no unfair labor practice charge in this case alleging a refusal to bargain on a negotiable proposal.

13. I find no merit to various other related arguments of violation raised by counsel for the General Counsel, including that concerning Respondent's failure to notify the Buffalo District local union of the change. I note that the Complaint does not allege such conduct to be a violation of the Statute and neither the specific local union nor any acknowledged agent filed an unfair labor practice charge protesting such claimed lack of notice.

14. Respondent, in its brief, requests "an opportunity to supplement the record with information specifically addressing the burden on the Respondent, and the extent and the form corrective action should take . . ." if a status quo ante remedy is ordered. The proper and appropriate time and place to submit evidence bearing on such matters, if available, is when the matter is litigated originally. I deem it an abuse of the processes of the Authority to reopen this record after decision for the purpose of litigating remedy.

15. Counsel for the General Counsel requests that the statusquo ante remedy include restoration of "lost dues to the Union". No case is cited nor theory offered to support the inclusion of such an unusual remedy nor does the record support a finding that the Union "lost dues" when employees failed to transfer to the Buffalo District. Therefore, the request for this remedy is denied.