

Office of Administrative Law Judges

WASHINGTON, D.C.

DEPARTMENT OF TRANSPORTATION

FEDERAL AVIATION ADMINISTRATION

MIAMI ATC TOWER, MIAMI, FLORIDA

Respondent

and

Case No. AT-CA-00762

NATIONAL AIR TRAFFIC CONTROLLERS ASSOCIATION, LOCAL MIA

Charging Party

Tameka A. West, Esquire For the General Counsel Before: Eli Nash, Jr. Administrative Law Judge

DECISION ON MOTION FOR SUMMARY JUDGMENT

On November 30, 2000 the Regional Director for the Dallas Region of the Federal Labor Relations Authority (FLRA), issued a Complaint and Notice of Hearing which was duly served by certified mail upon the named Respondent. The Complaint alleged that Respondent violated section 7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute (the Statute), 5 U.S.C. § 7116(a)(1) and (5), by implementing changes in the manner in which bargaining unit employees were allowed to swap work shifts without providing the National Air Traffic Controllers Association, Local MIA (the Union), an opportunity to negotiate over the change to the extent required by the Statute. A hearing was scheduled for February 12, 2001.

The Complaint specifically advised the Respondent that an answer must be filed "no later than October 23, 2000" and that a failure to file an answer or respond to any allegation of this complaint will constitute an admission. See 5 C.F.R. § 2423.20(b). Respondent did not file an answer, either in person or by mail, within the required period or at any time thereafter.

No answer was received from the Respondent. Accordingly, Respondent has admitted all of the allegations of the Complaint. *Department of Veterans Affairs Medical Center, Asheville, North Carolina*, 51 FLRA 1572, 1594 (1996).

Since Respondent failed to answer the instant Complaint, Counsel for the General Counsel filed a Motion for Summary Judgment on January 12, 2001. Respondent also failed to file any response to the General Counsel's Motion for Summary Judgment within the 5 day time period provided for in the Regulations. See 5 C.F.R. § 2423.27(b).

Findings of Fact

The undisputed facts in this case are as follows:

1. The Department of Transportation, Federal Aviation Administration, Miami ATC Tower, Miami Florida, is an agency within the meaning of 5 U.S.C. § 7103(a)(3) of the Statute. Scott Turner and William Kribble were supervisors and/or management officials under section 7103(a)(10) and (11).
2. The National Air Traffic Controllers Association (NATCA), Local MIA, is the exclusive representative of bargaining unit employees appropriate for collective bargaining at the Respondent.
3. On or about June 9, 2000 the Respondent, by Scott Turner, issued a memorandum to all Traffic Management Coordinators (TMC), stating his desire to keep the shifts staffed with an equal number of employees.
4. On or about June 10, 2000, a TMC's request for a shift change was denied as a result of Turner's memorandum dated June 9, 2000 to all TMCs.
5. During the week of June 12, 2000, NATCA President Andrew Cantwell and Vice-President Brad Burdette, met with William Kribble and requested to negotiate any changes affecting the TMC's, including the denial of a request for a shift change.
6. On or about June 26, 2000, NATCA submitted a written request to negotiate the June 9, 2000 memorandum to all TMCs and the denial of a request for a shift change which occurred on June 10, 2000.
7. On or about June 30, 2000 the Respondent, by Kribble, stated words to the effect that the Respondent would not negotiate until a collective bargaining agreement was in effect.
8. Subsequently, the Respondent implemented the changes described above without providing NATCA an opportunity to negotiate the above-mentioned changes to the extent required by the Statute.

Conclusions

Section 2423.20(b) of the Authority's Rules and Regulations, 5 C.F.R. § 2423.20(b), provides in pertinent part:

(b) *Answer.* Within 20 days after the date of service of the complaint, . . . the Respondent shall file and serve, . . . an answer Absent a showing of good cause to the contrary, failure to file an answer or respond to any allegation shall constitute an admission.

In this case, Respondent has not filed an answer as required by the Regulations. Furthermore, Respondent filed no response to the Motion for Summary Judgment. Accordingly, there are no disputed factual or legal issues in this case.

Matters involving employees' requests to switch from one shift to another are negotiable. See, *National Treasury Employees Union*, 14 FLRA 243, 252-53 (1984). Case law is clear that where an agency wants to implement a change in conditions of employment⁽¹⁾, it must provide the union with notice and the opportunity to bargain over those aspects of the change that are within the duty to bargain. *U.S. Army Corps of Engineers, Memphis District, Memphis, Tennessee*, 53 FLRA 79, 81 (1997). In light of the foregoing, it can only be concluded that Respondent implemented the changes described above without providing the Union with an opportunity to negotiate over the impact and implementation of the changes as required by the Statute. Accordingly, it is found that the Respondent violated section 7116(a)(1) and (5) of the Statute, as alleged.

Additionally, Counsel for the General Counsel proposed a recommended remedy requiring Respondent to return to the *status quo ante* to the extent required by the Statute and the posting of an appropriate Notice to All Employees signed by the Air Traffic Manager. In the circumstances of this case, it is found that the proposed remedy effectuates the purposes and policies of the Statute.

Accordingly, it is recommended that the Authority grant the General Counsel's Motion for Summary Judgment, and issue the following Order:

ORDER

Pursuant to section 2423.41(c) of the Authority's Rules and Regulations and section 7118 of the Federal Service Labor-Management Relations Statute, it is hereby ordered that the Department of Transportation, Federal Aviation Administration,

Miami ATC Tower, Miami, Florida, shall:

- Cease and desist from:

(a) Denying employees' requests to change/swap shifts with fellow employees represented by the National Air Traffic Controllers Association, Local MIA, the exclusive representative of bargaining unit employees, without completing negotiations with the Union over the availability of shift swapping to the extent required by the Federal Service Labor-Management Relations Statute.

(b) In any like or related manner, interfering with, restraining, or coercing its employees in the exercise of their rights assured by the Federal Service Labor-Management Relations Statute.

- Take the following affirmative action in order to

effectuate the purposes and policies of the Federal Service Labor-Management Relations Statute:

(a) Upon request, from the National Air Traffic Controllers Association, Local MIA, return to the past practice of granting employees' requests to swap shifts.

(b) Post at the Department of Transportation, Federal Aviation Administration, Miami ATC Tower, Miami, Florida, where bargaining unit employees represented by the National Air Traffic Controllers Association, Local MIA are located, 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 Air Traffic Manager, Miami ATC Tower, Miami, Florida, 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.

(c) Pursuant to section 2423.41(e) of the Authority's Rules and Regulations, notify the Regional Director, Dallas Regional Office, Federal Labor Relations Authority, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

Issued, Washington, DC, January 26, 2001.

ELI NASH, JR.

Administrative Law Judge

NOTICE TO ALL EMPLOYEES

POSTED BY ORDER OF THE

FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the Department of Transportation, Federal Aviation Administration, Miami ATC Tower, Miami, Florida, violated the Federal Service Labor-Management Relations Statute, and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT deny employees' requests to swap shifts with fellow employees represented by the National Air Traffic Controllers Association, Local MIA, the exclusive representative of bargaining unit employees, without completing negotiations with the Union over the availability of shift swapping to the extent required by the Federal Service Labor-Management Relations Statute.

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

WE WILL, upon request, from the National Air Traffic Controllers Association, Local MIA, return to the past practice of granting employees' requests to swap shifts.

(Respondent/Activity)

Dated: _____ By: _____

(Signature) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

If employees have any questions concerning this Notice or compliance with any of its provisions, they may communicate directly with the Regional Director, Atlanta Regional Office, Federal Labor Relations Authority, whose address is: 285 Peachtree Center Avenue, Suite 701, Atlanta, GA 30303, and whose telephone number is: (404) 331-5300.

1. It is admitted that the condition of employment at issue here was developed through a past practice between the parties.