UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C. 20005

MEMORANDUM DATE: November 24, 2004

TO: The Federal Labor Relations Authority

FROM: RICHARD A. PEARSON
Administrative Law Judge

SUBJECT: DEPARTMENT OF THE NAVY
U.S. MARINE CORPS
SOUTHWEST REGION FLEET TRANSPORTATION

Respondent

AND Case No. SF-CA-03-0472

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 1881, AFL-CIO

Charging Party

Pursuant to section 2423.34(b) of the Rules and Regulations, 5 C.F.R. § 2423.34(b), I am hereby transferring the above case to the Authority. Enclosed are copies of my Decision, the service sheet, and the transmittal form sent to the parties. Also enclosed are the stipulation, exhibits and any briefs filed by the parties.

Enclosures

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C. 20005

DEPARTMENT OF THE NAVY U.S. MARINE CORPS SOUTHWEST REGION FLEET TRANSPORTATION Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1881, AFL-CIO Charging Party	Case No. SF-CA-03-0472

NOTICE OF TRANSMITTAL OF DECISION

Pursuant to § 2423.26 of the Authority's Rules and Regulations, the above-entitled case was stipulated to the undersigned Administrative Law Judge. The undersigned herein serves his Decision, a copy of which is attached hereto, on all parties to the proceeding on this date and this case is hereby transferred to the Federal Labor Relations Authority pursuant to 5 C.F.R. § 2423.34(b).

PLEASE BE ADVISED that the filing of exceptions to the attached Decision is governed by 5 C.F.R. §§ 2423.40-41, 2429.12, 2429.21-2429.22, 2429.24-2429.25, and 2429.27.

Any such exceptions must be filed on or before **DECEMBER 27, 2004**, and addressed to:

Federal Labor Relations Authority
Office of Case Control
1400 K Street, NW, 2nd Floor
Washington, DC 20005

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RICHARD A. PEARSON
Administrative Law Judge

Dated: November 24, 2004
Washington, DC

FEDERAL LABOR RELATIONS AUTHORITY

Office of Administrative Law Judges
Washington, D.C.

DEPARTMENT OF THE NAVY U.S. MARINE CORPS SOUTHWEST REGION FLEET TRANSPORTATION Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1881, AFL-CIO Charging Party	Case No. SF-CA-03-0472

Robert Bodnar
For the General Counsel

Dean D. Legacy
Timothy A. Nichols
For the Respondent

Ken Couchman
For the Charging Party

Before: RICHARD A. PEARSON
Administrative Law Judge

DECISION

Statement of the Case

The General Counsel of the Federal Labor Relations Authority (the Authority), by the Regional Director of the San Francisco Regional Office, issued an unfair labor practice complaint on May 6, 2003, alleging that the Respondent violated Section 7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute (the Statute), by terminating the alternative work schedules for employees without bargaining with the Charging Party. The Respondent filed its answer on May 20, 2003, admitting that it implemented the changes alleged but asserting that it did so after completing bargaining with the Charging Party.

A hearing in this matter was scheduled for July 22, 2003. Prior to that date, however, the parties entered into a Stipulation of Facts and filed a joint motion to transfer the case to an administrative law judge for a decision based on the stipulated facts. By their joint motion, the parties

have waived the right to a hearing and to present evidence, except for the Stipulation of Facts and its attached exhibits. The joint motion was granted, and the hearing was canceled. The General Counsel and the Respondent subsequently filed briefs in support of their positions.

Based on the Stipulation of Facts and the exhibits attached thereto, I make the following findings of fact, conclusions of law, and recommendations. The findings of fact represent my summary and organization of the stipulated facts, and the facts established by the exhibits, that are material to the disposition of the allegations of the complaint.[1]

Findings of Fact

The Department of the Navy, U.S. Marine Corps, Southwest Region Fleet Transportation (SWRFT or Respondent), is an agency under 5 U.S.C. § 7103(a)(3). Approximately 150 SWRFT bargaining unit employees are located at five sites: Marine Corps Base Camp Pendleton, Camp Pendleton, California; Mountain Region Warfare Training Center, Bridgeport California; Marine Corps Recruit Depot, San Diego, California; Marine Corps Air Station, Miramar, California; and the Marine Corps Air Ground Combat Center, Twenty-Nine Palms, California. The mission of SWRFT is to provide fleet support, including administration, operations and maintenance for all equipment assigned to each Marine Corps Base where SWRFT employees are located.

The American Federation of Government Employees (AFGE), a labor organization under 5 U.S.C. § 7103(a)(4), is the exclusive representative of a nationwide unit of employees of the United States Marine Corps (USMC), including SWRFT employees. AFGE and USMC are parties to a collective bargaining agreement (CBA), effective December 20, 2002, which is applicable to employees in the nationwide bargaining unit. AFGE Local 1881 (the Union or the Charging Party) is an agent of AFGE for the purpose of representing SWRFT employees in the area described above, and Ken Couchman is the President of the Union.

Since at least October 1, 2000, when the SWRFT organization was established, all SWRFT employees at Respondent's five sites had been able, at their discretion, to work one of two compressed work schedules. One option is commonly known as a "5/4-9" schedule, under which employees would work eight nine-hour days, plus one eight-hour day

[1] References to the Stipulation of Facts will be cited as "Stip." All exhibits are attached to the Stipulation.

during each two-week pay period. This schedule allowed employees to be off on alternate Fridays or Mondays. The other available option was known as the "4-10" schedule, under which employees would work four ten-hour days per week during each two-week pay period.

On February 18 and again on February 20, 2003,[2] the Respondent, by its Employee-Labor Relations Officer Timothy Nichols, notified Union President Couchman that it proposed to eliminate the existing compressed work schedules (5/4-9 and 4-10) and place all SWRFT employees at all five sites on a fixed schedule of 40 hours per week, comprised of five eight-hour days. Nichols's February 18 letter to the Union (Exhibit 2) stated that "specific hours of work and days off will be assigned to meet the needs of the customers served and the service provided by the employees at the various SWRFT locations", and it advised the Union to "submit your written proposals within twenty (20) days" if it wished to negotiate. After Couchman advised Nichols that he was sending correspondence to the wrong address, Nichols sent another copy of the letter to Couchman by email on February 20.

Couchman replied by email to Nichols that same day: "Local 1881 **does** wish to bargain over the change in working conditions and will await the proposals and a time/date from SWRFT management to meet." (Emphasis in original.) Later in the afternoon of February 20, Couchman sent another email message:

> In response to the agencies [sic] proposals: It is the position of AFGE Local 1881 to retain the existing schedule(s) and policy based on the long standing past practice of compressed, AWS or any other form of FWS, currently in place, for each SWRFT bargaining unit employee at each SWRFT facility.[3]

A few minutes after Couchman sent this message, Nichols thanked him for the quick response and stated: "I will provide you a list of the proposed specific proposed [sic] new schedules for all of the employees early next week and propose some dates to meet to initiate discussion." The parties' various email messages of February 20 are attached to the Stipulation as Exhibits 3 and 4.

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[2] Except as otherwise noted, all dates are 2003.

[3] Unless otherwise noted, I will use the acronym AWS generically to include all types of flexible, alternative or compressed work schedules.

No bargaining sessions were scheduled between February 20 and March 17, when Nichols advised Local 1881 by email that because "[t]he Union submit [sic] no alternative proposals except that the status quo should be maintained. . . . the matter is considered acquiesced in and agreed to." Exhibit 5. On March 26, SWRFT Manager Gary Funk sent an email to his managers and supervisors, directing them to terminate AWS for all SWRFT employees effective for the pay period beginning April 20. While specifying that all employees would work eight-hour shifts, Monday through Friday, Funk delegated to each Site Manager the responsibility of establishing actual beginning work times for each employee. He advised the managers that "Mission is priority, but try to be flexible enough to meet the employee's needs also[,]" by taking into consideration factors such as "car pools, public transportation and staggered reporting times[.]" Exhibit 7. For example, the Fleet Manager at Twenty-Nine Palms implemented this directive by scheduling all his employees to work from 7:00 a.m. to 3:30 p.m., Monday through Friday. Exhibit 8.

The parties have stipulated that the discontinuation of AWS has had more than *de minimis* adverse impact on the SWRFT employees. Stip. at paragraph 15.

Article 4 of the CBA addresses the subject of mid-term bargaining. Exhibit 6. Section 2 of that article states that "[p]ast practices . . . in operation on the effective date of this agreement will continue . . . However, either party may initiate bargaining to change the employer's regulations, . . . and policy statements that apply to bargaining unit employees . . . ." Section 8 of that article covers local level bargaining, and paragraph 2 provides as follows:

> The other party will normally submit its demand to bargain in writing within 20 days after acknowledgment of the receipt of the proposals of the moving party. If the receiving party does not submit a demand to bargain, or otherwise respond according to this section, the matter shall be considered acquiesced in and agreed to, unless the receiving party can show good cause for not responding. Initial counterproposals shall be submitted not later than seven days prior to commencement of negotiations.

Article 38 of the current CBA is titled Alternative Work Schedules and permits local management and unions to establish flexible or compressed work schedules. Exhibit 9.

Section 2 provides: "Change to any established work schedules, including flexible or compressed schedules, is permitted through negotiation between the activity and the local union." Article 39 of the 1998-2002 CBA contained a similar, but not identical, provision. Exhibit 10. During the negotiations leading to the signing of the current CBA, USMC management proposed language that would have deleted the phrase concerning "negotiation" of AWS changes and would have permitted management to change or suspend AWS "upon notification to the union." Exhibit 11. This proposal did not survive the parties' negotiations, however, and the final contract contained the above-quoted language of Article 38, Section 2.

Discussion and Conclusions

A. Issues and Positions of the Parties

The General Counsel asserts that the Respondent had a duty to bargain with the Union over both the substance and the impact of any change in AWS for bargaining unit employees, and that Respondent violated that duty here. Citing the Federal Employees Flexible and Compressed Work Schedules Act of 1982 (the Work Schedules Act), 5 U.S.C. §§ 6122 *et seq.*, the General Counsel argues that the establishment, modification or termination of any AWS is fully negotiable. It rejects the Respondent's contentions that the Union waived its right to bargain, either by the language of the CBA or by acquiescing to management's proposed termination of AWS. Rather, the General Counsel asserts that both the language and bargaining history of Article 38 of the CBA clearly demonstrate that changes in work schedules must be negotiated. SWRFT management had attempted to eliminate Article 38's bargaining requirement in the 2002 CBA negotiations (Exhibit 11) but ultimately dropped that proposal. Moreover, the General Counsel argues, the Union made a timely demand to bargain as soon as management notified it of the proposed termination of AWS, and it complied fully with its bargaining obligations under Article 4 of the CBA. Therefore, the General Counsel contends that the Respondent's implementation of the change was a violation of both the Statute and the AWS Act. As a remedy, the General Counsel asks that the Respondent be ordered to restore the old AWS system and to make any employees whole by restoring any annual or sick leave they may have had to use because of the termination of their AWS.

The Respondent offers several arguments in defense of its actions and in support of its contention that it did not commit an unfair labor practice. First, citing section 7106 (a)(2)(B) of the Statute, it asserts that management has the

reserved right to assign work, which includes the establishment of work schedules and starting and quitting times; therefore, the Respondent was obligated only to bargain over the impact and implementation (I&I), but not over the substance, of its decision to eliminate AWS.

In regard to its right to assign work, the Respondent concedes that the Work Schedules Act requires an agency seeking to terminate or change AWS to first engage in substantive as well as I&I bargaining. But the Respondent argues that by negotiating Article 38 of the CBA, the Union waived its right to bargain over substantive aspects of AWS. Respondent further argues that it satisfied its bargaining obligations by notifying the Union of its intent to terminate AWS and offering to bargain. Because the Union's only counter-proposal to the notice of proposed change was a demand to retain the existing schedules, this was not a negotiable procedure or appropriate arrangement under section 7106(b)(2) and (3) of the Statute. Therefore, the Respondent was not obligated to bargain further with the Union, and it was free to implement its proposed change, as it did on April 20.

B. Analysis

Before implementing a change in conditions of employment that is likely to have more than a *de minimis* affect on bargaining unit employees, an agency is required to provide the exclusive representative with notice of, and an opportunity to bargain over, those aspects of the change that are within the duty to bargain under the Statute. *Social Security Administration, Office of Hearings and Appeals, Charleston, South Carolina,* 59 FLRA 646, 649 (2004). The extent to which an agency is required to bargain over changes in conditions of employment depends upon the nature of the change. In some situations, a union may be entitled to bargain over the substance of the actual decision. *See, e.g., Department of the Navy, Puget Sound Naval Shipyard, Bremerton, Washington*, 35 FLRA 153, 155 (1990). When the decision to change a condition of employment is an exercise of a management right under section 7106(a), the substance of the change is not negotiable, but the agency nonetheless is obligated to bargain over the impact and implementation of the change. *Federal Bureau of Prisons, Federal Correctional Institution, Bastrop, Texas*, 55 FLRA 848, 852 (1999).

In the case at hand, there is no dispute that SWRFT sought to change a condition of employment for its employees represented by the Union by terminating their AWS. The Respondent's notice to the Union dated February 18

(Exhibit 2) stated that it sought "to change the established work schedule" of all employees on AWS. The parties have further stipulated that this change "had more than *de minimis* adverse impact on the SWRFT employees." Stip. at paragraph 15.

The Authority has held that an agency's authority under section 7106(a)(2)(B) of the Statute to assign work includes the authority to determine when work will be performed and the times employees will start and finish work. *American Federation of Government Employees, Local 85 and Veterans Administration Medical Center, Leavenworth, Kansas*, 32 FLRA 210, 216 (1988). Therefore, normally under the Statute, the starting and quitting times of employees are not substantively negotiable.

But by enacting the Work Schedules Act, Congress declared that "the use of alternative work schedules was intended to be fully negotiable, subject only to the provisions of the 1982 Act itself." *American Federation of Government Employees, Local 1934 and Department of the Air Force, 3415 ABG, Lowry AFB, Colorado*, 23 FLRA 872, 873 (1986). When, in *U.S. Environmental Protection Agency, Research Triangle Park, North Carolina*, 43 FLRA 87, 92-93 (1991), an agency objected that such a requirement conflicted with its management rights under the Statute, the Authority held that "the establishment or termination of alternate work schedules is negotiable without regard to management's rights under section 7106 of the Statute." The Authority also rejected the agency's assertion of 5 C.F.R. § 610.121 as a limitation on its duty to bargain, noting that the cited regulation does not apply to AWS. 43 FLRA at 94. In unfair labor practice cases such as *U.S. Department of the Air Force, 416 CSG, Griffiss Air Force Base, Rome, New York*, 38 FLRA 1136 (1990), and *Air Force Accounting and Finance Center, Denver, Colorado*, 42 FLRA 1196 (1991)(AFAFC), the Authority has applied the same principles, holding that agencies cannot modify or terminate AWS without negotiating fully with the employees' union.

While acknowledging that it would normally be required to bargain over both the substantive and procedural aspects of a change in AWS (Stip. at paragraph 16), the Respondent cites two reasons why the Union waived its right to bargain in this case. It argues first that Article 38, Section 2 of the CBA constitutes a waiver of the Union's right to bargain over the substance of an AWS change, and second that by proposing only that the *status quo* be maintained, the Union had not made a negotiable proposal. Both of these arguments are without merit.

The language of Article 38, Section 2 is concise and clear. It provides: "Change of any established work schedules, including flexible or compressed schedules, is permitted through negotiation between the activity and the local union." With this language in mind, it is hard to understand how the Respondent can interpret this as a waiver by the Union of its right to negotiate substantively, and the Respondent's brief sheds no light on its reasoning. After stating that the language in question "can be interpreted in two ways" (i.e., as either a waiver by the Union or a waiver by management), Respondent concludes, without any supporting rationale or case law, that "the contract language can only be interpreted as a waiver by the Union of substantial [substantive?] bargaining over changes to Alternative Work Schedules." Respondent's Brief at 6. On the contrary, precisely the opposite is true. The CBA expressly requires "negotiation between the activity and the local union" for any changes to occur, and that is precisely what the Work Schedules Act requires.

Because the meaning of the CBA language is so clear, it is unnecessary to look to the parties' bargaining history; but if I did, it would only bolster the Union's interpretation. The language proposed by management in the 2002 negotiations would have permitted it to "suspend any AWS" by merely notifying the Union (Exhibit 11). If this language had become part of the final CBA, the Union would indeed have waived its bargaining rights; but by ultimately signing off on the previously-quoted language in Exhibit 9, the Respondent accepted a continuing duty to bargain over changes in AWS.

Similarly, the Respondent's argument that the Union's "*status quo*" proposal was not negotiable must fail. Respondent offers no case law to support this claim, likely because the case law directly refutes it. The claim appears to be premised on the Respondent's previously expressed assertion that the Union was entitled only to bargain over the impact and implementation of the decision to terminate AWS, but even on this premise the Respondent is wrong. In *AFAFC,* a case which also involved the unilateral implementation of AWS, the union requested that the agency bargain over the proposed changes and delay implementation until bargaining was completed. The Authority rejected the agency's contention that the union had made no bargaining proposals, stating:

> Proposals that require an agency to maintain the *status quo* pending the completion of the bargaining process are negotiable as procedures under section 7106(b)(2) of the Statute. *See, for*

> *example, National Federation of Federal Employees, Local 1214 and Department of the Army, Health Services Command, Moncrief Army Community Hospital, Fort Jackson, South Carolina*, 40 FLRA 1181, 1203 (1991).

42 FLRA at 1207.[4] Even more to the point is *U.S. Department of the Air Force, 832d Combat Support Group, Luke Air Force Base, Arizona*, 36 FLRA 289 (1990), where the agency was required to bargain over the substance of its decision to implement a no-smoking policy, and where the union's request not to implement the policy was found to be "a fully negotiable substantive proposal." 36 FLRA at 299. Thus it is clear that regardless of whether the Respondent's duty to bargain here extended to the decision itself or only to I&I, the Union's proposal to maintain the existing work schedules was fully negotiable. There was no waiver of any of the Union's rights, and the Respondent had no justification for refusing to bargain.

Having found that the Respondent was required to bargain over both the substance and the effects of its proposal to terminate AWS, I must now determine whether the Respondent fulfilled that obligation. The Stipulation itself (paragraph 11) indicates that the Union and SWRFT never actually met to discuss the issue, and that no bargaining actually occurred. After the Union indicated on February 20 that it wished to bargain and stated its position that all existing schedules should be maintained, a month went by without any action, until Nichols advised Couchman on March 17 that because the Union had failed to submit counter-proposals, management's original proposal would be implemented. Exhibit 5. The Respondent's argument here is really just another way of making its already-rejected waiver argument: management was following the contractual procedures for changing work schedules, while the Union was ignoring those procedures. But again, the Respondent has turned the facts on their head.

It should first be noted here that while SWRFT notified the Union on February 18 that it intended to eliminate AWS for all employees, it left out some important information. Exhibit 2 did not advise the Union when the change would go into effect, and more importantly it didn't specify which employees would be working which hours. The notice stated that all employees would work a fixed schedule of five eight-hour days per week, but it further stated that "[t]he

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[4] For reasons that are not applicable in the case at bar, the AWS changes in the *AFAFC* case were not substantively negotiable, but were negotiable concerning I&I.

specific hours of work and the days off will be assigned to meet the needs of the customers served and the service provided . . . ." In order for the Union to properly negotiate on behalf of its members, the Union would need to know this information. Indeed, when Couchman emailed Nichols on February 20 that the Union wished to bargain, Nichols immediately responded that he would provide the Union "a list of the proposed specific proposed [sic] new schedules for all of the employees early next week and propose some dates to meet to initiate discussion." Exhibits 3 and 4.

At this point, it is useful to look at the contractual language governing local-level bargaining, found at Article 4, Section 8 of the CBA. Once the party seeking to change a working condition or practice has notified the other party of its proposed change, paragraph 2 of Section 8 requires "the other party" to "submit its demand to bargain in writing within 20 days after acknowledgment of the receipt of the proposals of the moving party." Exhibit 6. The other party will be deemed to have agreed to the change if it "does not submit a demand to bargain, or otherwise respond according to this section". *Id.* Finally, the CBA provision states that "[i]nitial counterproposals shall be submitted not later than seven days prior to commencement of negotiations." *Id.*

With this language in mind, it is clear that the Union did all that could be expected of it to pursue negotiations, while SWRFT management dropped the ball at several points along the way. First, the Union notified the Respondent in writing on February 20 (the same day it received the notice of proposed change) that it "does wish to bargain over the change" (Exhibit 3, email sent 1:03 p.m.). This fulfilled the Union's obligation to submit a demand to bargain, and directly refutes the Respondent's argument (Respondent's Brief at 7) that "[a]t no time did the Union tender a Demand to Bargain pursuant to Article 4, Section 8(2) of the contract." The Union could not have made a more clear demand to bargain. The Union then followed up the same day with another email, proposing the continuation of the existing AWS schedules for all employees. Exhibit 4. Nichols seemed to recognize that the Union had fulfilled its responsibility, as he immediately thanked Couchman for his speedy response and undertook to provide the Union with specific information about employee schedules and to propose some dates for bargaining. *Id.*

Pursuant to the CBA, the Union had twenty days to submit its demand to bargain, but it did so within one day. Further, the Union was not required to submit its initial

counter-proposal until seven days prior to the start of bargaining. Since no bargaining session was ever scheduled, the Union had no deadline for submitting its counter-proposal, but it did so anyway on February 20. As I have already explained, a proposal to maintain the *status quo* is a fully negotiable proposal. SWRFT management then ceased communicating with the Union on the issue for nearly a month, until it unilaterally (and wrongly) declared that the Union had "acquiesced in and agreed to" the termination of AWS. Exhibit 5.

Based on these facts, the Respondent had no lawful grounds for terminating bargaining with the Union before the process had even begun. The Respondent's actions totally ignored the requirements of the Work Schedules Act as well as clear case law from the Authority, and its subsequent attempts to justify those actions contradict the facts of this case and the clear language of the CBA. I conclude that the Respondent violated section 7116(a)(1) and (5) of the Statute by unilaterally changing the work schedules of its employees on April 20, 2003.

To remedy the Respondent's unfair labor practice, the General Counsel requests that, in addition to ordering the Respondent to negotiate over proposed changes to AWS, I order that the *status quo ante* be restored. This would, in the General Counsel's view, involve the reinstatement of the employee work schedules prior to April 20, 2003, as well as making employees whole by restoring any annual or sick leave they had to use because their AWS was eliminated. The Respondent did not comment, or offer evidence, on an appropriate remedy, except to oppose any relief and to request the dismissal of the complaint.

When an agency changes a condition of employment without fulfilling its obligation to bargain over the substance of the change, the Authority has held that a *status quo ante* remedy is appropriate, in the absence of special circumstances rendering such relief improper. *General Services Administration, National Capital Region, Federal Protective Service Division, Washington, D.C.*, 50 FLRA 728, 737 (1995). The Respondent has not identified any special circumstances weighing against restoring the *status quo*, and no such circumstances are apparent from a review of the record.[5] I thus agree that it is appropriate here to restore the situation at SWRFT as closely as

[5] While I recognize that this case involves a military agency during wartime, there is no evidence whatever that the reinstatement of the prior work schedules would interfere with the performance of SWRFT's mission.

possible to the situation which existed prior to the termination of the employees' AWS.

Certainly, it is appropriate here to order the Respondent to cease and desist from enforcing its order terminating alternative work schedules for bargaining unit employees; to reinstate, upon the Union's request, the alternative work schedules in existence prior to April 20, 2003; and to bargain with the Union, at the Union's request, with respect to any proposed changes in employee alternative work schedules. The matter of making employees whole for any annual or sick leave they used because AWS was eliminated, is more complicated, but I agree with the General Counsel that it is an appropriate part of a make-whole remedy in this case. Employees who had been working 5/4-9 or 4-10 schedules were suddenly forced to work on days that they had regularly been off work; the elimination of their regular days off is likely to have caused some employees to use sick leave or annual leave on days they otherwise would have been off work. There is, therefore a causal nexus between the Respondent's unfair labor practice and the loss of leave, as required for such orders under the Back Pay Act, 5 U.S.C. § 5596. *National Gallery of Art, Washington, D.C. and American Federation of Government Employees, Local 1831*, 48 FLRA 841, 847-48 (1993); *U.S. Department of Health and Human Services, Social Security Administration, Baltimore, Maryland*, 37 FLRA 278, 289 (1990). The actual determination of which leave hours should be restored can be made in the compliance stage.

Based on the above findings and conclusions, I conclude that the Respondent violated section 7116(a)(1) and (5) of the Statute, and I recommend that the Authority 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 (the Statute), it is hereby ordered that the Department of the Navy, U.S. Marine Corps, Southwest Region Fleet Transportation (SWRFT) shall:

1. Cease and desist from:

(a) Terminating the 5/4-9 and 4-10 work schedules of employees in the bargaining unit represented by the American Federation of Government Employees, Local 1881, AFL-CIO (the Union), without first completing bargaining to the extent required by law with respect to any proposed changes in such schedules.

(b) In any like or related manner, interfering with, restraining, or coercing employees in the exercise of the rights assured them by the Statute.

2. Take the following affirmative action in order to effectuate the purposes and policies of the Statute:

(a) Upon request, reestablish the 5/4-9 and 4-10 work schedules for all SWRFT employees as they existed prior to April 20, 2003, and negotiate with the Union concerning any proposed changes in such schedules.

(b) Make all bargaining unit employees whole by restoring any annual or sick leave which they took for time during which they would have been off work if their 5/4-9 or 4-10 work schedule had not been terminated.

(c) Post at its 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 Commanding Officer 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.

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

Issued, Washington, DC, November 24, 2004

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RICHARD A. PEARSON
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 the Navy, U.S. Marine Corps, Southwest Region Fleet Transportation (SWRFT), violated the Federal Service Labor-Management Relations Statute (the Statute), and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT terminate the 5/4-9 and 4-10 work schedules of employees in the bargaining unit represented by the American Federation of Government Employees, Local 1881, AFL-CIO (the Union), without first completing bargaining to the extent required by law with respect to any proposed changes in such schedules.

WE WILL NOT, in any like or related manner, interfere with, restrain, or coerce our employees in the exercise of the rights assured them by the Statute.

WE WILL, upon request, reestablish the 5/4-9 and 4-10 work schedules for all SWRFT employees as they existed prior to April 20, 2003, and negotiate with the Union concerning any proposed changes in such schedules.

WE WILL make all bargaining unit employees whole by restoring any annual or sick leave which they took for time during which they would have been off work if their 5/4-9 or 4-10 work schedule had not been terminated

_____
(Respondent/Activity)

Date: _____ 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, Federal Labor Relations Authority, San Francisco Regional Office, whose address is: 901 Market Street, Suite 220, San Francisco, CA 94103-1791, and whose telephone number is: 415-356-5002.

CERTIFICATE OF SERVICE

I hereby certify that copies of this DECISION, issued by RICHARD A. PEARSON, Administrative Law Judge, in Case No. SF-CA-03-0472, were sent to the following parties:

_____

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CERTIFIED MAIL AND RETURN RECEIPT **CERTIFIED NOS:**

Robert Bodnar, Esquire **7000 1670 0000 1175 4700**
Federal Labor Relations Authority
901 Market Street, Suite 220
San Francisco, CA 94103-1791

Dean Legacy **7000 1670 0000 1175 4717**
Labor Relations Specialist
Commandant of the Marine Corps
Headquarters, U.S. Marine Corps (MPO-37)
3280 Russell Road
Quantico, VA 22134

Ken Couchman, President **7000 1670 0000 1175 4724**
AFGE, Local 1881, AFL-CIO
P.O. Box 45304
San Diego, CA 92145-2000

REGULAR MAIL:

President
AFGE
80 F Street, NW
Washington, DC 20001

Dated: November 24, 2004

Washington, DC