



FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C.

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U.S. DEPARTMENT OF COMMERCE
U.S. CENSUS BUREAU
NATIONAL PROCESSING CENTER
JEFFERSONVILLE, INDIANA

RESPONDENT

AND

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 1438, AFL-CIO

CHARGING PARTY

Case No. CH-CA-11-0499

John F. Gallagher, Esq.
For the General Counsel

Adam Chandler, Esq.
For the Respondent

Victoria Martin
For the Charging Party

Before: CHARLES R. CENTER
Chief Administrative Law Judge

DECISION

STATEMENT OF THE CASE

This is an unfair labor practice proceeding under the Federal Service Labor-Management Relations Statute, 5 U.S.C. §§7101-7135 (Statute), and the Rules and Regulations of the Federal Labor Relations Authority (Authority), 5 C.F.R. Part 2423.

On June 24, 2011, the American Federation of Government Employees, Local 1438, AFL-CIO (Charging Party/Union) filed an unfair labor practice charge against the Department of Commerce, U.S. Census Bureau, National Processing Center, Jeffersonville, Indiana (Respondent/Agency). (G.C. Ex. 1(a)). After conducting an investigation, the Regional Director of the Chicago Region of the Authority issued a Complaint against the

Respondent on December 29, 2011, alleging that the Respondent violated §7116(a)(1) and (5) of the Statute by failing and refusing to bargain over the temporary assignment of a bargaining unit employee to work in Bangladesh. (G.C. Ex. 1(b)). In its answer to the complaint, the Respondent admitted some of the factual allegations but denied that it committed the alleged unfair labor practice. (G.C. Ex. 1(d)).

A hearing upon the matter was conducted in Louisville, Kentucky, on March 1, 2012. At the hearing, all parties were represented and afforded an opportunity to be heard, to introduce evidence, and to examine witnesses. The General Counsel and the Respondent filed post hearing briefs, which I have fully considered. Also, the General Counsel filed a Motion to Strike certain references in the Respondent's post-hearing brief and the Respondent filed an Opposition to the General Counsel's motion.

Based on the entire record, including my observation of the witnesses and their demeanor, the undersigned has determined the temporary assignment of a bargaining unit employee to work for six weeks in Bangladesh constituted a change in conditions of employment that was more than *de minimis*, and Respondent failed and refused to bargain over the change. In support of these determinations, I make the following findings of fact, conclusions of law, and recommendations.

FINDINGS OF FACT

The American Federation of Government Employees, AFL-CIO (AFGE), is the exclusive collective bargaining representative of a consolidated unit of employees at the U.S. Census Bureau and is a labor organization within the meaning of §7103(a)(4) of the Statute. (G.C. Ex. 1(b) & (d)). The Union serves as the agent of AFGE for purposes of representing bargaining unit employees at the National Processing Center. (*Id.*). The Respondent is an organization within the U.S. Department of Commerce, which is an agency within the meaning of §7103(a)(3) of the Statute. (G.C. Ex. 1(d)).

The U.S. Census Bureau (Census/Census Bureau) was participating in a project to help the country of Bangladesh with its census operation. (Tr. 34-36). One of the operations the Census Bureau assisted Bangladesh with was "data capture," a process in which forms are scanned and data is extracted for use in compiling census information and reports. (Tr. 33-34). In conjunction with setting up a data capture function in Bangladesh, Census helped establish a scanning operation which was almost identical to that performed by the Data Capture Branch at the National Processing Center. (Tr. 35). When the Bangladesh census project fell considerably behind schedule, Census decided to send additional personnel to Bangladesh to supplement the team that was already there. In conjunction with that decision, Census sent a request to the National Processing Center for an employee who was knowledgeable about scanning and could be sent to Bangladesh to assist in the project. (Tr. 36-37). The needed skills identified in the request were: expertise in the operations, processes, equipment, and technology involved in scanning; and the ability to train people in the scanning function. (Tr. 37-38, 47).

At the time of the request, the Scanning Unit within the Data Capture Branch at the National Processing Center consisted of approximately 20 employees: two were supervisory personnel; two were GS-6 employees; one was a GS-5 employee who was the lead clerk, or Lead Statistical Clerk, over the scanning operation; and the remainder were GS-4 scanner operators, or Statistical Clerks. (Tr. 46; G.C. Exs. 3 & 4). On receiving the request, Carol Stubblefield, the Supervisory Operations Specialist for the Scanning Unit, determined that the only employees who met the skill and experience requirements identified in the request were herself; Mary Reynolds, the Supervisory Clerk for the Scanning Unit; and Wendy Goebel, the GS-5 Lead Statistical Clerk. (Tr. 14, 47-48). Because neither Stubblefield nor Reynolds could travel, Goebel's name, which as a consequence of a marriage subsequently became Miniard, was provided in response to the request and she was sent to Bangladesh. (Tr. 38, 47-48).

As Lead Statistical Clerk in the Scanning Unit, Miniard was responsible for distributing work, keeping the work flowing, keeping the equipment going, and ensuring that work was done correctly. (Tr. 48). Miniard, along with Reynolds, bore responsibility for training the staff of the Scanning Unit. (*Id.*).

On or about June 23, 2011, Victoria Martin, who was the Union President, learned from another employee that Miniard was going to leave the following Sunday for the assignment in Bangladesh. (Tr. 13). Upon hearing this, Martin sent an e-mail addressed to Crystal Boyett, who was the Data Capture Branch Chief, in which she objected to the fact that the Union was not given notice and an opportunity to bargain over what Martin characterized as a change in working conditions. (G.C. Ex. 2). In her e-mail, which she cc'd a number of other management personnel, Martin requested a meeting to discuss the matter in an attempt to resolve the issue before she filed an Unfair Labor Practice (ULP) charge. (*Id.*). Although Martin asserted no one in management responded "directly" to her e-mail; Martin also stated that on June 24, 2011, one of the individuals cc'd on her e-mail, Angela Feldman-Harkins, who was the Assistant Division Chief for Processing and is a manager within the Data Capture Branch, called her to discuss the e-mail. (Tr. 16, 57). According to Martin, Feldman-Harkins told her the Bangladesh assignment was an assignment of work and "they" would not bargain about the matter. (Tr. 16).

Miniard traveled to Bangladesh and spent six weeks there. (Tr. 16-17). While in Bangladesh, Miniard stayed in a Westin hotel and was provided transportation between the hotel and the worksite. (Tr. 40). Interpreters and advice on where to go for meals were also made available to the team from the Census Bureau that was working in Bangladesh. (Tr. 40-41). While in Bangladesh, Miniard performed the same functions she performed in the Scanning Unit at the National Processing Center - - that is, she oversaw the scanning operation and provided training and expertise to the individuals doing the scanning work. (Tr. 38). Among other things, Miniard engaged in trouble-shooting the scanners, advised the vendors if there was an issue with a particular scanner; and taught the Bangladeshi employees how to use the scanners and perform the scanning process. (Tr. 38-39). The physical layout of the scanning operation in Bangladesh was very similar to that at the National Processing Center and the equipment used was the same. (Tr. 39). While in

Bangladesh, Miniard worked a 40-hour workweek and was compensated for any overtime worked. (Tr. 40). Unlike the circumstances at the National Processing Center, some of the members of the working group with whom Miniard was dealing with in Bangladesh were not proficient in English and she had to communicate through interpreters. (Tr. 41).

At the hearing, Martin expressed the view that in addition to Miniard, the GS-4 Statistical Clerks were qualified for the assignment to Bangladesh. (Tr. 23). Although Martin asserted the GS-4 Statistical Clerks perform the same work and have the same knowledge as the GS-5 Lead Statistical Clerk, the record shows that in significant respect this is not the case. A comparison of the performance plans for the GS-4 and GS-5 positions shows that although the two positions have similar requirements insofar as duties and skills in the area of technical activities and production involved in the scanning process, they are not identical in all respects. For example, both the GS-4 and GS-5 have a critical element for "Data Capture Quality." In describing the "Results of Major Activities" for that critical element, the performance plan for the GS-4 specifies: "Scanning processes . . . are performed with minimum errors to ensure a quality product" while the performance plan for the GS-5 specifies: "Performing scanning processes . . . at a level of quality on assigned tasks to ensure the best work possible." (G.C. Exs. 3 & 4). Additionally, the GS-5 lead position has responsibilities for assisting the supervisor and providing training to the Statistical Clerks that are not included in the requirements expected of the GS-4's. (*Id.*). In particular, the Performance Plan for the GS-5 contains a critical element for "Utility Responsibilities and Administrative Duties," which is defined as providing "efficient backup and/or assistance to the unit's supervisor." (G.C. Ex. 3). The following "Results of Major Activities" are specified under that critical element:

- Performs multiple duties in the supervisor's absence.
- Assist in the training of Statistical Clerk's [sic] on detailed scanning/machine instructions.
- Aid supervisor in the verification of employee's production performance/error rate reports and attendance/timekeeping activities.
- Aid supervisor in the verification of employee's Jars sheets.
- Keep supervisor aware of obstacles affecting workflow.

(*Id.*). The performance plan for the GS-4's contains no similar requirements. (G.C. Ex. 4). Martin's own testimony effectively acknowledged that the GS-5 has duties and responsibilities that are different from those of the GS-4's. Specifically, in testifying about the impact of the assignment to Bangladesh on the GS-4's, Martin expressed concern about the single lead clerk for the unit who provided assistance and advice to the GS-4's being absent for a six week period and also that the GS-4's might be called on to perform higher-graded duties during Miniard's absence without compensation or recognition. (Tr. 27).

With respect to comparability in training skills and experience, Martin testified it "has happened" that the GS-4 statistical clerks helped train new statistical clerks and in one instance assisted in training 200 employees who were loaned from other branches to help complete a rush project of scanning the fingerprint cards of every field representative hired for the 2010 census. (Tr. 22). Stubblefield acknowledged that GS-4's may show others how

they perform tasks but asserted such activity did not constitute training because it does not involve providing detailed explanation of how the work is done. (Tr. 54-55). I find although the GS-4 employees may on occasion have engaged in activity that could fairly be characterized as helping others to learn how to use the scanning equipment, the record does not establish that training activity is a regular duty for them as it is for Miniard or that the GS-4's have the same qualitative and quantitative experience in training others on the scanning equipment or process as Miniard.

Although Martin testified she was concerned that bargaining unit employees would have to pick up Miniard's duties while she was on assignment in Bangladesh, Martin provided nothing to support a finding that this actually happened.

With respect to whether Miniard's assignment to Bangladesh constituted a change in conditions of employment, Feldman-Harkins testified that employees of the Statistical Methods and Quality Assurance Branch were sent on temporary duty assignments to Pennsylvania, Michigan and Missouri. (Tr. 57-58). Annette Kendle, Chief of the Employee Relations section within the Human Resources Branch of the National Processing Center, testified that employees assigned to the National Processing Center were subject to temporary duty assignments at locations within the United States without identifying which particular group(s) of employees within the National Processing Center to which her statement applied. (Tr. 61-62). Martin acknowledged the Union was aware that employees in the "Quality Assurance Branch" engaged in work-related travel, but stated that other than them bargaining unit employees didn't "normally" travel. (Tr. 17). In view of Martin's earlier testimony that travel was generally limited to the "Quality Assurance Branch" and Feldman-Harkins' earlier testimony identifying that same Branch as experiencing travel, I find it significant that Respondent did not attempt to elicit specifics from Kendle that might establish a wider pattern of domestic travel by employees of the National Processing Center. I find there is no evidence in the record that employees of the Scanning Unit were sent on temporary duty assignments to domestic locations or that this occurred to any degree with respect to employees in other than the Statistical Methods and Quality Assurance Branch. The only previous overseas assignment identified in the record was one that occurred in 2009 when an employee of the Data Capture Branch was sent to Kenya for a period stretching from October into December. (Tr. 58). Martin who was Union president at the time of the Kenya assignment stated she was unaware of it before it was raised in conjunction with the controversy over the Bangladesh assignment. (Tr. 17). There is no evidence in the record that the Union had any knowledge of the Kenya assignment. Kendle testified that prior to the Bangladesh assignment, the Union had never requested to bargain about temporary duty assignments during her tenure as Chief of the Employee Relations section, which began in 2004. (Tr. 62.)

In her annual performance appraisal for the year in which her assignment to Bangladesh occurred, Miniard was rated level 5, which is the highest of the ratings available. (G.C. Ex. 3). Miniard's work while on assignment in Bangladesh was cited in a highly complimentary manner in the narrative accompanying the rating but it was by no means the only thing about her performance that was highly praised. (*Id.*). Nor is there any basis for finding it was the determinative factor for the rating she received. The record establishes that

Miniard had received the same level of rating the previous year and was viewed by Stubblefield as a consistently excellent employee. (Tr. 50). Miniard also received performance awards for both years. (Tr. 53). There is no evidence that Miniard received any special recognition in the form of an award as a result of her Bangladesh assignment; that is, the only award she received was the annual performance award and she would have received that even without the Bangladesh assignment. (Tr. 50, 53-54). Moreover, there is no evidence of any other type of recognition that Miniard received for her work in Bangladesh.

DISCUSSION

Position of the Parties

General Counsel

The General Counsel alleges that Respondent violated section 7116(a)(1) and (5) of the Statute when it implemented the Bangladesh assignment without affording the Charging Party notice and an opportunity to bargain. The General Counsel contends assigning Miniard to work overseas in Bangladesh constituted a change in conditions of employment that was more than *de minimis*. The General Counsel asserts employees of the Scanning Unit were never required to travel as part of their duties but worked exclusively at the National Processing Center facility in Jeffersonville, Indiana. As to the contention that the change was more than *de minimis*, the General Counsel maintains that the GS-4 Scanning Clerks were denied an opportunity to apply for the Bangladesh assignment, which could have enhanced their potential for awards and promotion. The General Counsel also argues that Miniard's absence had an effect on the working conditions of other employees in the Scanning Unit because they may have been deprived of needed guidance or required to perform Miniard's work during her absence. The General Counsel claims that although Miniard's work duties may not have changed while she was in Bangladesh, they were being done in a different work environment and the assignment to Bangladesh presented a number of concerns about Miniard's health and safety, travel to Bangladesh, daily commute, living arrangements, and ability to communicate with her friends and family.

The General Counsel asserts there was no past practice of sending bargaining unit employees on temporary duty assignments to foreign countries and there was no evidence the Union was informed or aware of the single instance cited during the hearing, i.e., the assignment to Kenya. Thus, the General Counsel argues, that single instance did not amount to a past practice. Additionally, the General Counsel contends that although the employees of the Statistical Methods and Quality Assurance Branch have travelled to other locations within the United States as a normal part of their job, the employees of the Data Capture Branch have not been expected to travel as part of their job.

As remedy, the General Counsel seeks a prospective bargaining order and the posting of a notice to employees signed by the Chief of the National Processing Center.

Respondent

The Respondent denies it violated the Statute as alleged. Although the Respondent acknowledges Miniard was assigned to work in Bangladesh for six weeks, it contends it had no obligation to bargain about the matter because the assignment did not have more than a *de minimis* impact on conditions of employment and the Union had permitted previous instances in which bargaining unit employees were sent on temporary duty assignments to locations both inside and outside the United States to go unchallenged.

More specifically with respect to the matter of *de minimis*, the Respondent argues the evidence offered by the General Counsel about the impact of the assignment on the conditions of employment in the bargaining unit consisted only of expressions of speculative concerns and failed to show a more than *de minimis* effect. The Respondent contends that, in fact, there was no evidence the assignment had any actual impact on either Miniard or other bargaining unit employees. The Respondent maintains Miniard gained no advantage over other employees as a consequence of the assignment, performed the same duties as she did at the National Processing Center in the same work environment during the assignment; and received neither an award nor special recognition for the assignment. Additionally, the Respondent asserts there is no evidence that during Miniard's absence the GS-4 employees in the Scanning Unit were unable to obtain the assistance that Miniard normally provided them from the Scanning Unit supervisory personnel or that the GS-4's actually performed additional work. The Respondent rejects a concern expressed during the hearing by Martin about Ms. Miniard's safety while in Bangladesh as not founded on any evidence that Bangladesh was in fact less safe than Jeffersonville, Indiana.

The Respondent argues that under section 7106(a) of the Statute, management has the right to determine the qualifications for assignments and which employee(s) possess(es) the qualifications. The Respondent asserts that consistent with this right, management determined that Miniard was the only bargaining employee qualified for the work assignment in Bangladesh and having made that determination was under no obligation to accede to the Charging Party's view that other employees were equally qualified with Miniard and negotiate over the assignment.

The Respondent contends that in view of the Charging Party's failure for a period of at least six years to request bargaining over similar temporary duty assignments and acquiescence in the Respondent's practice of making such assignments, it had no obligation to bargain over the Bangladesh assignment.

CONCLUSIONS OF LAW

Preliminary Matter - - the General Counsel's Motion to Strike

The General Counsel filed a motion to strike "the references to Respondent's Exhibit 1" from the Respondent's post-hearing brief. The General Counsel contends that although the Respondent submitted that exhibit to be marked, he failed to offer it for admission into the record and section 2429.5 of the Authority's Regulations bars the Respondent from referring to it.

In its opposition to the General Counsel's motion to strike, the Respondent requests that the motion be denied. The Respondent contends section 2429.5 is not applicable to proceedings before an Administrative Law Judge. Additionally, the Respondent claims the document marked as Respondent's Exhibit 1 was presented at the hearing and discussed with witnesses under oath who were subject to cross-examination.

Although Respondent's Exhibit 1 was marked for identification and witnesses were questioned either directly on it or on its subject matter, a motion to enter Exhibit 1 into the record was not made by the Respondent at the hearing. Thus, I have not considered the document itself in reaching this decision. I have however, considered the witness testimony that pertains to the exhibit and the General Counsel's motion to strike references to Exhibit 1 in the Respondent's post hearing brief is partially granted in part, as to those portions of the brief containing more detail than the testimony offered at hearing. Any language providing such detail is hereby stricken. As discussed below, changes in conditions of employment that impact a single bargaining unit employee are not *de minimis* when the changes are significant for that single employee. Since the primary purpose of Exhibit 1 was to demonstrate the singular qualifications of the employee impacted by the change implemented in this case, the Respondent's inability to reference additional details that further established such singularity does not impact the ultimate outcome of the case. Having demonstrated through testimony and other documentary evidence that the bargaining unit employee in question was uniquely qualified for the overseas detail to which she was assigned, the changes to conditions of employment imposed upon that bargaining unit employee without giving her exclusive representative notice and an opportunity to bargain were significant enough to constitute more than a *de minimis* change. Thus, striking the additional details about her unique qualifications drawn from Exhibit 1 as set forth in the Respondent's brief is appropriate given Counsel's failure to move the exhibit into the record.

Respondent Failed to Give the Union Notice and an Opportunity to Bargain

It is well established that prior to implementing a change in the conditions of employment of bargaining unit employees, generally an agency is required to provide the exclusive representative of those employees with notice and an opportunity to bargain over those aspects of the change that are within the duty to bargain, if the change will have more than a *de minimis* effect on conditions of employment. *U.S. Dep't of the Air Force, AFMC, Space Missile Sys. Ctr., Detachment 12, Kirtland AFB, N.M.*, 64 FLRA 166, 173 (2009).

In this case, the Respondent does not dispute that it did not provide the Union notice and an opportunity to bargain over the decision to assign Miniard to Bangladesh for a six week tour of duty. The Respondent contends it had no obligation to provide notice and an opportunity to bargain. As one defense, the Respondent asserts the temporary assignment had no more than a *de minimis* effect on conditions of employment of bargaining unit employees.

In assessing whether the effect of a decision on conditions of employment is more than *de minimis*, the Authority looks to the nature and extent of either the effect, or the reasonably foreseeable effect, of the change on bargaining unit employees' conditions of employment. *E.g., U.S. Dep't of the Treasury, IRS*, 56 FLRA 906, 913 (2000). In supporting

the claim that the Bangladesh assignment had more than a *de minimis* effect on bargaining unit employees, the General Counsel relies on alleged effects on the GS-4 Scanning Clerks as well as Miniard. The record, however, does not bear out the General Counsel's contention that the GS-4 Scanning Clerks were disadvantaged by the selection of Miniard and her six week absence while in Bangladesh. With respect to the General Counsel's suggestion that the GS-4 employees were denied an opportunity to compete for the assignment and any potential benefits that went with it, the record shows the Respondent determined Miniard was more qualified for the assignment than the GS-4's and that the assignment in Bangladesh involved duties that reflected those of Miniard rather than the GS-4's. Thus, the evidence does not support a finding that the GS-4's were equally qualified with Miniard for the assignment. It is well established that management's rights to assign work and assign employees under section 7106(a) of the Statute both reserve to management the right to determine the qualifications and skills needed for a position or duties and to judge which employees meet those qualifications and skills. *See, e.g., NAGE, Local R1-109, 53 FLRA 403, 409-10 (1997)*. Where two or more employees are determined by management to be equally qualified, procedures for determining which among the equally qualified employees should be assigned to the position or duties are negotiable. *See, e.g., U.S. Dep't of the Navy, Supervisor of Shipbuilding, Conversion & Repair, Gulf Coast, Pascagoula, Miss., 62 FLRA 328, 330 (2007)*. In view of the Respondent's determination regarding the qualifications and skills needed for the Bangladesh assignment as well as of the GS-4's relative to those of Miniard, there is no basis for finding that the GS-4's would have been contenders for the Bangladesh assignment or that they lost out on an opportunity for the assignment to an employee of equivalent qualifications and skills.

The General Counsel also suggests that during Miniard's absence the GS-4's were: (1) deprived of her guidance; and (2) placed at risk of having to perform her duties. There is no evidence, however, to show that anything like this actually happened or in view of the fact that two supervisory personnel remained behind in Jeffersonville it was reasonably foreseeable that it would happen.

Although there is no evidence that Miniard's assignment had more than a *de minimis* effect on the GS-4's, the same cannot be said of the impact on Miniard. Despite the Respondent's efforts to replicate the workplace layout and equipment found in the Scanning Unit at the operation in Bangladesh, it is undeniable that Bangladesh does not have living standards and conditions that are comparable to those in the United States and it would have been impossible to replicate those in that location. A product of the assignment to Bangladesh was the need for Miniard to engage in overseas travel and remain for a six week period in a country with laws, customs, practices, and standard of living different from the United States. She was also distant from her home post of duty as well as things such as family, friends, established health care providers, etc. Additionally, Miniard had to adapt to working with Bangladeshi employees whose language she did not speak and she had to use interpreters to communicate with them. The extent to which Miniard herself viewed these matters as positive or negative is not known, but it can fairly be said that working with others through interpreters in Bangladesh is not the same as reporting for duty in Jeffersonville, Indiana, and I find that the cumulative effects of such changes were significant enough to

constitute more than *de minimis* changes to conditions of employment. Furthermore, the number of employees affected by a change is not dispositive of whether a change is *de minimis* and changes that impact a single employee can exceed the *de minimis* standard. See *United States Dep't of the Air Force, 913th Air Wing, Willow Grove Air Reserve Station, Willow Grove, Pa.*, 57 FLRA 852, 857 (2002); *Veterans Affairs Med. Ctr., Phoenix, Ariz.*, 47 FLRA 419, 424 (1993); *DHHS, Soc. Sec. Admin.*, 24 FLRA 403 (1986).

Thus, the Respondent violated the Statute when it failed to provide the exclusive representative with notice and an opportunity to bargain over changes that would require a bargaining unit employee from its facility in Jeffersonville, Indiana, to report for duty in Bangladesh for a period of six weeks. It should also be noted that it does not matter if employee desired such an assignment. In fact, discussing such a change with a particular bargaining unit employee without the involvement of the exclusive representative gives rise to a potential allegation of improper bypass. So narrowing the field of eligible candidates to one and then discussing the matter only with that employee does not satisfy the Respondent's obligation to provide the exclusive representative notice and an opportunity to bargain when making a change to conditions of employment for bargaining unit employees.

Turning to the Respondent's defense that the Union never sought bargaining over similar temporary duty assignments that occurred in the past, I find there were material differences between the assignment to Bangladesh and those cited by the Respondent. First, those assignments did not involve employees in the Scanning Unit but were largely confined to the employees assigned to the Statistical Methods and Quality Assurance Branch. Second, those assignments were with the exception of a single instance - - the assignment to Kenya -- limited to domestic locations. Thus, overseas travel and dealing with differences in languages, culture, and living conditions and standards were not involved in all but one case. Insofar as the Kenya case, which is the only one that is particularly similar to the Bangladesh case in that it involved an overseas location and an employee of the Data Capture Branch, it was until the Bangladesh assignment a single, isolated instance and there is no evidence the Charging Party even knew about it.

The standard for determining the existence of a past practice is whether a practice was consistently exercised for an extended period of time with the other party's knowledge and express or implied consent. *E.g., U.S. Dep't of Labor, OASAM, Dallas, Tex.*, 65 FLRA 677, 679 (2011). In view of the isolated nature of the Kenya assignment and the absence of any evidence the Union knew about it, that assignment does not provide a basis for finding the Union acquiesced in the practice of sending bargaining unit employees on temporary assignments overseas.

In summary, I find the temporary assignment of Miniard to Bangladesh constituted a change in conditions of employment that had a more than *de minimis* effect on conditions of employment of bargaining unit employees. I further find that Respondent had an obligation to provide the Charging Party with notice and an opportunity to bargain concerning this change but that it failed to do so.

CONCLUSION AND RECOMMENDATION

I find that the Respondent violated §7116 (a)(1) and (5) of the Statute and recommend the Authority adopt the following Order:

ORDER

Pursuant to §2423.41(c) of the Authority's Rules and Regulations and §7118 of the Federal Service Labor-Management Relations Statute (Statute), it is hereby ordered that the U.S. Department of Commerce, U.S. Census Bureau, National Processing Center, Jeffersonville, Indiana, shall:

1. Cease and desist from:

(a) Unilaterally assigning bargaining unit employees to work overseas, without first notifying the American Federation of Government Employees, Local 1438, AFL-CIO (Union), and providing it an opportunity to bargain to the extent required by the Statute.

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

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

(a) Upon the Union's request, negotiate to the extent required by the Statute, the assignment of bargaining unit employees to temporary duty locations outside of the continental United States.

(b) Post at the National Processing Center where bargaining unit employees 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 Chief of the National Processing Center, 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 §2423.41(e) of the Authority's Rules and Regulations, notify the Regional Director, Chicago Region, Federal Labor Relations Authority, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply.

Issued, Washington, D.C., June 15, 2012.

CHARLES R. CENTER
Chief 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 U.S. Department of Commerce, U.S. Census Bureau, National Processing Center, Jeffersonville, Indiana, violated the Federal Service Labor-Management Relations Statute (Statute), and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT unilaterally assign bargaining unit employees to work at a location outside of the continental United States, without first notifying the American Federation of Government Employees, Local 1438, AFL-CIO (Union), and providing it an opportunity to bargain to the extent required by the Statute.

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

WE WILL, upon request, negotiate with the Union to the extent required by the Statute, the assignment of bargaining unit employees to temporary duty locations outside of the continental United States.

(Agency/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, Chicago Regional Office, Federal Labor Relations Authority, whose address is: 55 West Monroe Street, Suite 1150, Chicago, IL 60603, and whose telephone number is: (312) 886-3465.