



FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C. 20424

OALJ 16-43

DEPARTMENT OF THE AIR FORCE
LUKE AIR FORCE BASE, ARIZONA

RESPONDENT

AND

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 1547

CHARGING PARTY

Case No. DE-CA-15-0399

Paige A. Swenson
For the General Counsel

Phillip G. Tidmore
For the Respondent

Harley D. Hembd
For the Charging Party

Before: SUSAN E. JELEN
Administrative Law Judge

DECISION

This case arose under the Federal Service Labor-Management Relations Statute (Statute), 5 U.S.C. §§ 7101-7135 and the revised Rules and Regulations of the Federal Labor Relations Authority (FLRA/Authority), part 2423.

On August 10, 2015, the American Federation of Government Employees, Local 1547 (Union/Local 1547) filed an unfair labor practice (ULP) charge against the Department of the Air Force, Luke Air Force Base, Arizona (Respondent/Luke AFB). (G.C. Ex. 1(a)). After an investigation of the charges, the Regional Director of the Denver Region of the FLRA issued a Complaint and Notice of Hearing on October 30, 2015, alleging that the Respondent violated § 7116(a)(1) and (5) of the Statute by changing the work/rest day schedules for bargaining unit employees in the Water Treatment and Waste Water Treatment Plants,

without completing negotiations with the Union to the extent required by the Statute. (G.C. Ex. 1(b)). The Respondent timely filed an Answer to the Complaint in which it admitted certain factual allegations, but denied that it violated the Statute. (G.C. Ex. 1(c)).

A hearing in this matter was held on January 20, 2016, in Phoenix, Arizona. The parties were afforded a full opportunity to be represented and heard, examine witnesses, introduce relevant evidence, and make oral arguments. The General Counsel and Respondent filed post-hearing briefs that were fully considered.

FINDINGS OF FACT

The Department of the Air Force is an agency under § 7103(a) (3). (G.C. Ex. 1(b)). The American Federation of Government Employees (AFGE) is a labor organization under § 7103(a) (4). The AFGE is the exclusive representative of a unit of employees appropriate for collective bargaining at Luke AFB. (G.C. Exs. 1(b), 1(c)). Local 1547 is an agent of AFGE for the purpose of representing employees at Luke AFB.

The Water Treatment and Waste Water Treatment Plants are located within the Civil Engineering Squadron (CES) and have both civilian and military employees. Both Plants are covered 24 hours a day, seven days a week. There are three shifts: 7:30 a.m. to 3:30 p.m.; 3:30 p.m. to 11:30 p.m.; and 11:30 p.m. to 7:30 a.m. (Tr. 50).

On July 31, 2015,¹ Scott Ogborn, Infrastructure Manager, sent an email to bargaining unit employees in the Water Treatment and Waste Water Treatment Plants informing them there would be changes to the section's work schedules. (G.C. Ex. 3). The memo contained several attachments, including old and new shift schedules for both Plants and a memo from Michael R. Jenks, Deputy Chief of Operations, which stated, in part:

1. Due to manning shortfalls and the inability to cover open shifts within the Water Plant and Wastewater Plant, the work/rest day's schedules will be modified from the existing present schedule to the new attached schedule with work/rest days identified.
2. Effective on 9 Aug. 2015, the Water Plant and Waste [W]ater Plant will begin working the new schedules unless stated otherwise.

(G.C. Ex. 3(a)). This memorandum was also posted on the bulletin board. (Tr. 46-49).

As stated above, both Plants have coverage 24 hours a day, 7 days a week. Employees on the swing shift work 3:30 p.m. to 11:30 p.m. Under the prior schedule, both Noe Garcia (Water Plant) and Malcom Styler (Waste Water Plant) worked a Sunday through Thursday shift, with Friday and Saturday as their designated off days. Both Noe and Styler had worked this shift with these specific days off for a significant period of time – three and a

¹ All dates are in the year 2015, unless otherwise indicated.

half years and twenty-four years. In fact, both men had bid on the swing shift with those specific days off. (Tr. 28, 46). With the new schedule, both Garcia and Styler remained on the second shift, but their days off were changed to Wednesday and Thursday. (G.C. Exs. 3(b), (d); Tr. 31, 49).

The employees contacted Harley Hembd, the Union President, regarding the changes to their days off. (Tr. 34). On August 5, at 7:21 a.m., Hembd sent an email to Bryan Evans, Civilian Personnel Officer, and George Amaya, Labor Relations Officer, regarding the CES Plant schedules:

I am hearing that CES is changing employees schedules at the [W]aste [W]ater [T]reatment [P]lant and those changes have not been presented to the Union or bargained. Schedule changes are conditions of employment. We need confirmation that status quo is being maintained until proper notice and bargaining has occurred. (G.C. Ex. 2; Tr. 12).

At 10:07 a.m., Hembd sent a second email to Evans and Amaya:

I just found out that this is the waste water and drinking water plants. They are changing the civilians from having weekends off to be working weekends. Employees were told that the changes are to take effect Aug. 9. The management names that have been dropped as being involved are as follows:

Scott Ogborn
 Danny Thomas
 Michael Jenks
 MSGT Timothy Linder

(G.C. Ex. 2; Tr. 12).

At 1:24 p.m., Hembd sent another email to Evans and Amaya, stating that the Jenks memorandum had been sent to employees in both Plants and “[t]o date no notice to the Union and no bargaining. Both a ULP charge and Union grievance will be filed if they follow through on Aug. 9.” (G.C. Ex. 3, 3(a)–(d); Tr. 13).

On August 5, at 1:42 p.m., Hembd sent a final email to Evans and Amaya concerning “Bargain CES Change of tour of duty” as follows:

As stated previously, there has been no notice to the Union on this matter. To be proactive you can consider this as the Union’s demand to bargain. The union’s proposal is status quo and for status quo to be maintained until all negotiations are completed. With other matters pending and since there has been problems with CES in the past the Union also proposes ground rules for the negotiations so there is a mutual understanding on how bargaining will take place. Attached you will find a reduced set of ground rules similar to that used in the past. Between now and any bargaining the Union is anticipating receipt of proper notice on the changes.

Someone apparently doesn't believe schedule changes are a condition of employment. FYI: That last ULP filed over CES summer hours was withdrawn because employees ended up liking the same start time for summer and winter hours. Otherwise[,] the Union would not have withdrawn it. Rest assured that it was not withdrawn due to weakness.

(G.C. Ex. 4; Tr. 15).

On August 5, at 2:46 p.m., Amaya responded to Hembd, stating:

This notice is to acknowledge receipt of subject matter above.

Management has provided appropriate notice to employees of changes in their tours of duty. Further, the fact that Management's decision to change employees' tours of duty is negotiable only at Management's election.

Management does not elect to bargain the tour of duty as it pertains to CES.

(G.C. Ex. 5; Tr. 16, 66).

On Wednesday, August 7, both Garcia and Styler met with Ogborn and Sgt. Decker, Supervisor. Hembd was aware of the meeting and encouraged the employees to do what they could about their schedules. Both Garcia and Styler were unhappy with the loss of their Friday-Saturday days off. They also expressed concern that the relief man, who was military, would have a short turnaround time to cover Thursday's day shift and then Friday's first shift. Ogborn agreed to consider their situation. On August 6, he had both employees sign a memo requesting their scheduled days off change from Wednesday/Thursday to Thursday/Friday, and he agreed to make that change. (G.C. Exs. 6, 7 & 8; Tr. 36, 52-53, 54-55). There is no evidence of any other deviations from the original announcement of July 31.

The tours of duty for the two Plants were implemented August 16, 2015. Neither employee has had Saturday as a day off since August 16. Prior to the change, Garcia used his Saturdays off for "family time" since both children are still in school. (Tr. 30-31). Garcia, his wife, his five year old son and sixteen year old daughter would go to the movies or to the zoo. (Tr. 31). His son also plays tee-ball and his daughter plays competitive volleyball. (Tr. 41). All of their games take place on the weekends, so the only way Garcia can attend is to take annual leave. (*Id.*). Garcia testified that if he took annual leave to attend all of their games on Saturdays and Sundays, then he would not have any leave left for a family vacation during spring break or the summer. (*Id.*). As a result, Garcia has missed most of his children's games. (Tr. 42).

Styler is a member of a bird dog hunting club and a fly-fishing club. (Tr. 56). He has been training bird dogs for the past forty-two years and participates with the dogs in field trials and hunting tests around Arizona. (Tr. 56-57.) He testified that these events take place from Friday through Sunday. (Tr. 57). The Arizona Fly Fishing Club events occur in the summer and also take place Friday through Sunday. The only way he can participate in any of these events is to take annual leave. (*Id.*). Styler estimated that since the change, he has

taken six days of annual leave for the weekends. (Tr. 56). As a result of the change, Styler also decided to retire and turned in his paperwork, although by the time of the hearing, he had withdrawn that paperwork. (Tr. 57-58).

Luke AFB and AFGE Local 1547 signed a Labor-Management Agreement on December 3, 1996. The parties agreed to a one year extension. The Labor Master Agreement (LMA) expired in December 2000, and the parties have continued to abide by the terms of the agreement since that time. (Jt. Ex. 1; Tr. 25, 63). The parties are currently in negotiations for a new LMA. (Tr. 18-19).

Article VIII, Section A.1. refers to Hours of Work and states as follows:

1. Established administrative workweeks may be changed as mission requirements dictate. However, Management may make an exception to avoid undue inconvenience to the employee. Supervisors will make every reasonable effort to advise employees in advance of the change. **Changes in tours of duty will be negotiated in accordance with Article VI.** When the first-level supervisor knows sufficiently in advance of a change in the administrative workweek, the change in administrative workweek will be posted in the appropriate work area seven days prior to the change.

(Jt. Ex. 1 at 16) (emphasis added).

Article VI of the LMA entitled Changes in Organization Policy states as follows:

1. When a supervisor or manager desires to establish or change policies which may affect conditions of employment, the Management official will notify the Labor Relations Officer.
2. When a change will affect conditions of employment, Management will notify the Union president. Except in emergencies, pending changes will not be implemented until required negotiations are completed. The parties recognize that negotiations may be required even though the change, as a result of the emergency, has been implemented.
3. Examples of changes in conditions of employment include changes in **hours of duty**, procedures for requesting leave, smoking policy, and other matters.

(Jt. Ex. 1 at 14) (emphasis added).

On April 9, 2015, the Respondent, by Labor Relations Officer Ron Veal, gave notice to the Union that it was striking one sentence regarding tours of duty from Article VIII, Section A.1., (Changes in tours of duty will be negotiated in Accordance with Article VI) and it would no longer abide by that portion of the agreement, considering it a permissive subject of bargaining. (R. Ex. 4; Tr. 64).

Also on April 10, 2015, the Respondent, by George Amaya, Labor Relations Specialist, sent a notice to the Union that it was striking a certain section of Article VI (hours of duty) and would no longer abide by its terms. (R. Ex. 4 & 5; Tr. 64-65).²

POSITIONS OF THE PARTIES

General Counsel

The General Counsel (GC) asserts that the Respondent violated § 7116(a)(1) and (5) of the Statute by failing to bargain with the Union before implementing a new work schedule for employees at the Water Treatment and Waste Water Treatment plants. Prior to the change, both Garcia and Styler worked Sunday through Thursday, with Friday and Saturday off. (Tr. 28, 46). The record shows that Garcia worked that schedule for three and a half years, and Styler for twenty-four years. (*Id.*). As a result of the change, Garcia and Styler are now working Saturday through Wednesday, with Thursday and Friday off. (Tr. 38, 46).

The GC further argues that the new work schedule had more than a de minimis effect on conditions of employment. The GC argues that it was reasonably foreseeable that the change in Garcia and Styler's schedules caused a more than de minimis impact on their daily lives. *See Dep't of the Air Force, Sacramento Air Logistics Ctr., McClellan AFB, Cal.*, 39 FLRA 1357, 1372 (1991) (The Authority has held that when an Agency makes a change, it should also reasonably foresee that its action will disrupt responsibilities and commitments that the employee has made predicated on the previously-scheduled days off.) In this matter, the record evidence shows that the work schedule change directly impacted both employees, primarily with regard to their families and weekend activities. Therefore, the GC argues that the Respondent violated the Statute by refusing to bargain with the Union over the changes in work scheduled in August 2015.³

The GC asserts that Respondent's permissive subject of bargaining argument misses the point. The Respondent argued that any change to a tour of duty falls under § 7106(b) of the Statute, and is therefore a permissive subject of bargaining, requiring bargaining only at the Respondent's election. (Tr. 61-62). Further, Amaya testified that,

² Apparently, the Union has filed four unfair labor practice charges with the Denver Region regarding this conduct; three of the charges have been withdrawn and one is currently pending investigation. (Tr. 74-75).

³ The GC also asserted that the "covered by" defense is not a relevant defense to the allegations of the complaint. Since the Respondent did not raise the covered by defense at the hearing or in its post-hearing brief, I do not find it necessary to address this subject. The Respondent clearly set forth its defense that it was not obligated to bargain this matter since it was a permissive topic and the Respondent had not elected to bargain, noting its striking of two sentences in two provisions of the LMA. (Tr. 65-66).

because in April 2015, Respondent struck the portions of Articles VI and VIII from the parties' agreement, Respondent no longer had a duty to bargain with the Union over any changes to employees' tours of duty. (Tr. 66; G.C. Ex. 5).

The GC rejects this argument, asserting that there is no support for Respondent's argument in the case law; the Authority has never said that § 7106(b)(2) and (3) do not apply to any permissive topic that falls under § 7106(b)(1). In fact, as noted above, the case law states the contrary; even if a matter is encompassed by § 7106(b)(1), an agency still has the obligation to provide notice to the Union when it makes a change in conditions of employment. *U.S. Dep't of Commerce, Patent & Trademark Office*, 53 FLRA 858, 868-69 (1997) (*Commerce*); *Fed. Deposit Ins. Corp., Wash. D.C.*, 48 FLRA 313, 327 (1993) (*FDIC*).

Even assuming that employees' tours of duty are encompassed under § 7106(b)(1) of the Statute, the GC disputes whether or not that fact excuses Respondent from any bargaining obligations under the Statute. The Authority's partial decision and procedural order in *Commerce* concluded, in agreement with the ALJ, that the Respondent violated the Statute by failing to provide the Union with notice of and an opportunity to request bargaining about the impact and implementation of its decision to use term appointments. Specifically, the Authority held that "whether or not the Respondent's decision . . . constituted an exercise of a right under [§] 7106(a) . . . or under [§] 7106(b)(1) . . ." The Respondent's failure to notify the Union of its decision to use term appointments prior to hiring the new examiners violated § 7116(a)(1) and (5) of the Statute. *U.S. Dep't of Commerce, Patent & Trademark Office*, 54 FLRA 360, 364 (1998) (*citing Commerce*, 53 FLRA at 868-69). Similarly, in *FDIC*, 48 FLRA at 327, the Authority found no basis to "deny the Union the right to engage in" impact and implementation bargaining over the Respondent's decision to use term appointments, which the Authority clearly noted falls under § 7106(b)(1) of the Statute.

The GC therefore asserts that the Respondent had an obligation to bargain with the Union in this matter and that it violated § 7116(a)(1) and (5) of the Statute when it refused to do so.

Respondent

The Respondent asserts that it had no obligation to bargain over the work schedule changes for employees in the Water Plant and Waste Water Plant. The Respondent notes that tours of duty are permissive subjects of bargaining, which at one time were bargained at the election of the agency and included in the parties' LMA. However, the parties' LMA expired, and, in April 2015, the Respondent expressly informed that the Union that it was no longer going to follow those permissive subject matter provisions pertaining to tours of duty. After striking those permissive topics, the Respondent's only obligation was to then follow the remaining mandatory subject matters in the LMA regarding a schedule change; that is, providing the seven days' notice required by Article VIII, Section A.1.

The Respondent asserts that its notice to the Union that it was no longer following the provisions in the LMA related to tours of duty was clear, concise, and consistent with the requirements under the law. *Nat'l Treasury Employees Union*, 59 FLRA 978 (2004) (Once the parties' contract has expired, either party may notify the other party that it will no longer be bound by provisions of the expired contract that would constitute permissive subjects of bargaining.) Further, an agency's right to terminate a permissive subject of bargaining is not contingent on first satisfying a bargaining obligation with respect to substance, impact or implementation. *U.S. Dep't of VA Med. Ctr., Lexington, Ky.*, 54 FLRA 429 (1998). *See also U.S. DHS, U.S. Customs & Border Prot.*, 60 FLRA 496 (2004) (The agency had a right to unilaterally terminate a permissive subject of bargaining).

The Respondent further notes that the Union is not without relief in this matter since it has the opportunity to address this matter in the renegotiation of the expired contract. This would be a more appropriate forum than the current unfair labor practice forum.

The Respondent asserts that the Union and the General Counsel are confusing the issue and erroneously suggesting that there is a bargaining obligation at issue. This matter, however, deals squarely with the agency striking permissive subjects from an expired contract, and therefore there is no bargaining obligation. The Union was well aware that either party has a right to terminate permissive subjects of bargaining in an expired contract and the Union president acknowledged such in his testimony.

The Respondent also argues that it had the absolute right to change the work schedules at issue based on mission requirements. Article VII, Section A.1. of the LMA specifically states that "established administrative workweeks may be changed as mission requirements dictate." The Respondent notes that the changes at the Plants were necessary due to manning shortages and inability to cover open shifts within both facilities, falling squarely within the definition of mission requirements.

Finally, even assuming there was a bargaining obligation, the Respondent argues that the Union had waived its right to bargain. In April 2015, when the Respondent had informed the Union that it would no longer follow the permissive subjects from the expired LMA, the Union did not request to bargain either of the two provisions. (Tr. 72). A Union waiver of bargaining rights is a legitimate defense to a charge of refusal to bargain. Valid waivers can be established by express agreement, bargaining history, or inaction. *Internal Revenue Serv. (Dist., Region, Nat'l Office Unit[s])*, 13 FLRA 366 (1983). A waiver of bargaining rights can be established only by clear and unmistakable count. *Internal Revenue Serv. (Dist., Region, Nat'l Office Units)*, 16 FLRA 904 (1984); *FLRA v. IRS*, 838 F.2d 567 (D.C. Cir. 1988). In this matter, if the Union wanted to bargain this issue and believed it could, it should have raised this issue at that time but it specifically chose not to do so.

ANALYSIS

The essential facts in this case are not disputed. The Respondent did not notify or bargain with the Union before implementing the new work schedule affecting employees at both the Waste Water Treatment plant and the Water Treatment plant. The Union learned about the change through a bargaining unit employee. (Tr. 11). The Respondent did give the employees seven days' notice of the change in the work schedule, in accordance with the last sentence of Article VIII, Section A of the LMA.

Before implementing a change in conditions of employment, an agency must provide the union with notice of the change and an opportunity to bargain over those aspects of the change that are within the statutory duty to bargain. *Pension Benefit Guar. Corp.*, 59 FLRA 48, 50 (2003). Determining whether there has been a change in conditions of employment involves an inquiry into the facts and circumstances regarding the agency's conduct and the employees' conditions of employment. *SSA, Office of Hearings & Appeals, Charleston, S.C.*, 59 FLRA 646, 649 (2004).

The Authority has long held that a "tour of duty" is "the hours of a day (a daily tour of duty) and the days of an administrative workweek (a weekly tour of duty) that constitute an employee's regularly scheduled administrative workweek." *Dep't of the Air Force, Scott AFB., Ill.*, 33 FLRA 532, 541 (1988) (citation omitted). A change in an employee's tour of duty is a change in conditions of employment. Where an agency changes or establishes a tour of duty, it is obligated to notify the exclusive representative of affected employees and negotiate with the exclusive representative over the **procedures** the agency will observe when changing the tour of duty and **appropriate arrangements** for employees adversely affected by the exercise of management's right to change the tour of duty. (*Id.* at 543) (emphasis added).

An agency is not required to bargain over the impact and implementation of a change unless that change will have a more than de minimis effect. *U.S. Dep't of the Air Force, AFMC, Space & Missile Sys. Ctr., Detachment 12, Kirtland AFB, N.M.*, 64 FLRA 166, 173 (2009) (citing *U.S. Penitentiary, Leavenworth, Kan.*, 55 FLRA 704, 715 (1999)). In assessing whether the effect of a change 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." *U.S. Dep't of the Treasury, IRS, Wage & Inv. Div.*, 66 FLRA 235, 240 (2011). Most recently, in *AFGE, Nat'l Council 118*, the Authority noted that the focus on the need to assess reasonably foreseeable effects accords with one of the Statute's fundamental principles that "[t]he duty to bargain in good faith under the Statute 'requires that a party meet its obligations to negotiate prior to making changes in established conditions of employment.'" 69 FLRA 183, 190 (2016) (footnote omitted). Additionally, the Authority has explicitly held that an ALJ erred by focusing primarily on the actual effects of the change, while "neglect[ing] to adequately consider the change's reasonably foreseeable effects." *U.S. DHS, U.S. CBP, El Paso, Tex.*, 67 FLRA 46, 49 (2012).

The GC noted that, in two previous cases, the Authority addressed issues similar to the ones raised in this ULP. In *VA Med. Ctr., Prescott, Ariz.*, 46 FLRA 471 (1992), the Authority held that the agency violated § 7116(a)(1) and (5) of the Statute when it unilaterally changed two employees' days off and noted that it was reasonably foreseeable, at the time the agency made the change, that doing so would have an effect that required bargaining with the Union. (*Id.* at 476).

Then, in *VA Med. Ctr., Phoenix, Ariz.*, 47 FLRA 419 (1993), the Authority held that the agency violated § 7116(a)(1) and (5) of the Statute when it unilaterally changed one employee's duty hours because, at the time the VA made the change, it was reasonably foreseeable that it could affect the employee's outside activities and his ability to satisfy prior commitments. (*Id.* at 423).

The Respondent argues that it had no obligation to bargain because "tours of duty" was a permissive subject of bargaining and earlier in 2015, it had given notice to the Union that certain words were being deleted from Articles in the LMA and the Respondent no longer had any duty to bargain. I agree with the Respondent that it has every right to terminate permissive topics of bargaining contained in a collective bargaining agreement after the agreement has expired. The Authority has expressly stated this in *Dep't of HHS, SSA*, 44 FLRA 870 (1992). Under existing law, terms and conditions of employment that concern mandatory subjects of bargaining, and that are embodied in a collective bargaining agreement, continue in effect following the expiration of the agreement. *See Adjutant Gen., State of Ohio, Ohio Air Nat'l Guard, Worthington, Ohio*, 21 FLRA 1062, 1070 (1986). However, upon the expiration of the agreement, either party may elect no longer to be bound by provisions of the agreement concerning permissive subjects of bargaining, but instead may refuse to negotiate with regard to such subjects. (*Id.*).

However, the Respondent fails to understand that the termination of a permissive subject of bargaining in a collective bargaining agreement does not relieve an agency from bargaining when it subsequently makes changes to conditions of employment of bargaining unit employees that have more than a de minimis impact on those bargaining unit employees. In such a case, as stated above, the agency would be obligated to give the Union notice and an opportunity to bargain regarding the impact and implementation of such a change. And, in this matter, the Respondent failed to give the Union notice of the change and subsequently refused to bargain as requested by the Union.⁴

⁴ I reject the Respondent's argument that the Union waived its right to bargain over the work schedule changes in September 2015. As stated by the Respondent, a waiver of bargaining rights can only be established by clear and unmistakable conduct. The Union's failure to request to bargain over the April 2015 notice that the agency would no longer follow permissive subjects in the expired LMA, in no way amounts to a waiver of its right to bargain over subsequent changes to tours of duty.

CONCLUSION

Based on the above, I find that the Respondent violated § 7116(a)(1) and (5) of the Statute by failing to notify or bargain with the Union before implementing the new work schedule affecting bargaining unit employees at both the Waste Water Treatment plant and the Water Treatment plant. *See U.S. Dep't of the Air Force, 832nd Combat Support Group, Luke AFB, Ariz.*, 36 FLRA 289, 300-01 (1990).

REMEDY

In *Fed. Corr. Inst.*, 8 FLRA 604 (1982) (*FCI*), the Authority set forth factors to be considered in each case to determine whether a status quo ante remedy is warranted for a refusal or failure to bargain over the impact and implementation of an exercise of management's rights under the Statute. Under the *FCI* criteria, the Authority considers, among other things: (1) whether, and when, notice was given to the union by the agency; (2) whether, and when, the union requested bargaining; (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 quo ante remedy would disrupt or impair the efficiency and effectiveness of the agency's operations. (*Id.* at 606). Here, all of the factors weigh in favor of granting status quo ante relief. The Respondent failed to give the Union notice that it was changing the tours of duty of bargaining unit employees. (G.C Ex. 2; Tr. 11). Upon learning of the changes from impacted bargaining unit employees, the Union immediately requested to bargain. (G.C. Ex. 4; Tr. 15). The Union was not given an opportunity to bargain prior to the implementation of the changes, and, continuing to date, the Agency has refused to bargain concerning the impact and implementation of the changes. (G.C. Ex. 5). As noted above, the impact of the changes had a greater than de minimis impact on bargaining unit employees. Finally, the Agency does not allege that a status quo ante remedy would place a burden on the efficiency and effectiveness of the Respondent's operations. Under these circumstances, a status quo ante remedy is appropriate and is so ordered.

Accordingly, I recommend that the Authority adopt the following order:

ORDER

Pursuant to § 2423.41(c) of the Rules and Regulations of the Authority and § 7118 of the Federal Service Labor-Management Relations Statute (Statute), the Department of the Air Force, Luke Air Force Base, Arizona, shall:

1. Cease and desist from:

(a) Failing to notify and bargain with the American Federation of Government Employees, Local 1547 (Union) before implementing a new work schedule/tour of duty for bargaining unit employees in the Waste Water Treatment Plant and Water Treatment Plant.

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

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

(a) Rescind its decision to implement the new work schedule for the Waste Water Treatment Plant and Water Treatment Plant employees and return to the status quo ante as it existed before August 2015.


(b) If the Respondent decides to re-implement the August 2015 work schedule, notify the Union and fulfill its bargaining obligations as required by the Statute.

(c) Post at its facilities where bargaining unit employees represented by the Union 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 Commander, Luke Air Force Base, Arizona, and shall be posted and maintained for sixty (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) In addition to physical posting of the paper Notices, Notices shall be distributed electronically, on the same day, such as by email, posting on an intranet or an internet site, or other electronic means if such is customarily used to communicate with bargaining unit employees.

(e) Pursuant to § 2423.41(e) of the Rules and Regulations of the Authority, notify the Regional Director, Denver Region, in writing, within thirty (30) days from the date of this Order, as to what steps have been taken to comply.

Issued, Washington, D.C., September 16, 2016



SUSAN E. JELEN
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 Air Force, Luke Air Force Base, Arizona, 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 fail to notify and bargain with the American Federation of Government Employees, Local 1574 (Union) before implementing a new work schedule/tour of duty for bargaining unit employees.

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 rescind our decision to implement the August 2015 work schedule/tour of duty for bargaining unit employees at the Waste Water Treatment Plant and the Water Treatment Plan, and return to the status quo ante.

WE WILL notify the Union and fulfill our bargaining obligations under the Statute if we decide to implement work schedule/tour of duty changes for bargaining unit employees.

(Agency/Respondent)

Dated: _____

By: _____
(Signature) (Title)

This Notice must remain posted for sixty (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, Denver Regional Office, Federal Labor Relations Authority, whose address is: 1244 Speer Boulevard, Suite 446, Denver, CO 80204, and whose telephone number is: (303) 844-5224.