UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY OALJ 23-02
Office of Administrative Law Judges
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UNITED STATES NAVY NAVAL STATION GREAT LAKES, ILLINOIS RESPONDENT AND INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL F-37, AFL-CIO CHARGING PARTY	Case No. CH-CA-21-0235

Brittany A. Copper
For the General Counsel

Eric Williams
For the Respondent

Brian Pagliaroni
For the Charging Party

Before: DAVID L. WELCH
Chief Administrative Law Judge

DECISION

STATEMENT OF THE CASE

This is an unfair labor practice proceeding under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the U.S. Code, 5 U.S.C. §§ 7101-7135 (the Statute), and the Regulations of the Federal Labor Relations Authority (the Authority or FLRA), 5 C.F.R. part 2423.

On May 26, 2021, the International Association of Fire Fighters, Local F-37, AFL-CIO (the Union), filed an unfair labor practice charge against the United States Navy, Naval Station, Great Lakes, Illinois (Agency, Respondent, or Naval Station Great Lakes). GC Ex. 1(a). After investigating the charge, the Acting Regional Director of the FLRA's Chicago Region issued a Complaint and Notice of Hearing on May 27, 2022, on behalf of the FLRA's Acting General Counsel (GC). The Complaint alleges that the Agency violated § 7116(a)(1) and (5) of the Statute by taking an apparatus out of service for significant portions of the week without providing the Union an opportunity to negotiate over procedures for implementing the change or appropriate arrangements for employees adversely affected by the change. GC Ex. 1(b). The Respondent filed its Answer to the Complaint on June 21, 2022, denying it violated the Statute. GC Ex. 1(d).

A hearing was held in this matter on August 25, 2022, via the Webex video platform. All parties were represented and afforded an opportunity to be heard, to introduce evidence, and to examine witnesses. The GC and the Respondent filed post-hearing briefs, which have been thoroughly reviewed and fully considered.

Based on the entire record, including my observations of the witnesses and their demeanor, the undersigned makes the following findings of fact, conclusions of law, and recommendations.

FINDINGS OF FACT

The Respondent is an agency within the meaning of § 7103(a)(3) of the Statute. The Union is a labor organization within the meaning of § 7103(a)(4) of the Statute and is the certified exclusive representative of a unit of employees of the Respondent. GC Exs. 1(b), 1(d). The Respondent and the Union are parties to a collective bargaining agreement (CBA) covering the employees of the bargaining unit; the CBA was in effect at all relevant times. Jt. Ex. 7; *see also* Tr. 59, 151.

This case involves the Agency's decision to implement changes affecting bargaining unit employees' overtime hours. We begin with background information.

The Respondent's fire department provides fire and emergency medical services at Naval Station Great Lakes, including the base's basic training center and base housing, as well as a VA hospital. Tr. 28-29, 101-02, 108. The unit employees in this case are line-level firefighters and firefighter paramedics; we'll refer to them all as firefighters. Tr. 102-03, 110. The fire department has two stations: Station 34 is located on base and houses Engine 1911; Station 35, is located off base and includes Quint 1932. Tr. 29, 54.

During the time in question, the regular schedule for firefighters consisted of six 24-hour tours of duty (tours or shifts) every two-week pay period. Firefighters worked alternating days on a "24 on, 24 off" schedule. A firefighter on this schedule might, for example, work Mondays, Wednesdays, and Fridays and be off Tuesdays, Thursdays, and Saturdays, with Sundays as an additional day off. Shifts start and end at 7:30 a.m. (Note that when we say a

firefighter worked Monday, we mean that the firefighter's workday started on Monday and ended 24 hours later on Tuesday.) Tr. 29-30, 42, 79, 97, 113.

Prior to the changes the Agency would implement in April 2021, the fire department's minimum staffing requirement was for there to be sixteen firefighters (including supervisors) on every shift. Tr. 31, 96; GC Ex. 5. When vacancies arose due to regularly scheduled firefighters being off work (because they were out on sick or annual leave, for example), the Respondent would assign other firefighters to work overtime to fill those vacancies, thus ensuring that sixteen firefighters were on duty as required. Tr. 96.

It is common for firefighters to work overtime. Sometimes up to a quarter of the firefighters on a given shift are working on overtime. Tr. 30-31; *see also* GC Ex. 5 at 9, 25, 53, 95.

The Respondent assigns overtime by choosing from a list of volunteers and then, if necessary, from a list of firefighters slated for mandatory overtime, following procedures set forth in the CBA. The lists are based on seniority, with the most junior person at the top of the list to be assigned overtime. Assignments are then made on a rotating basis. Tr. 97, 103-05; at 38. If the list of employees slated for mandatory overtime is exhausted, then the Respondent will require supervisors, including captains or the assigned chief, to work mandatory overtime. Tr. 103, 105.

It is possible for firefighters to anticipate overtime opportunities, at least to some extent. Vacancies requiring overtime will show up on rosters (which firefighters have access to) a day or so ahead of time, and firefighters are offered opportunities for voluntary overtime at morning roll call. Tr. 116.

Prior to the Agency's April 2021 changes, overtime assignments were given in 24-hour shifts. Tr. 30-31, 52-53. Because firefighters were not (and are not) allowed to work more than 72 hours consecutively, a firefighter assigned a 24-hour overtime shift between two 24-hour regular shifts was guaranteed a day off immediately following the 72 hours of work. Tr. 30, 52. This system provided a benefit to firefighters, in that a firefighter could volunteer for a Tuesday overtime shift between regular shifts on Monday and Wednesday and be guaranteed to have Thursday off. *See* Tr. 73. (There was testimony at the hearing indicating there was a written agreement that overtime shifts would be for 24 hours, but no such document was entered into evidence.) Tr. 52-53, 58-59.

In late 2019, the department was facing new budgetary pressures. In response, Kevin Janney, Fire Chief for Navy Region Mid-Atlantic, decided to create a "cross-staffing" plan. The goal of this plan was to reduce overtime staffing. Tr. 101, 110, 149. (While a precise definition was not presented, Brian Pagliaroni, a firefighter and the Union's President, described cross-staffing as a situation where, because of staffing shortages, firefighters are assigned to do "two jobs," such as staffing both an engine and an ambulance.) Tr. 39.

On March 9, 2020, Janney drafted a "courtesy notice" regarding the cross-staffing plan. The Respondent emailed the notice to Pagliaroni on March 11, 2020, sending the notice to Pagliaroni's work email address and to the Union's email address on Gmail (Gmail address)

that Pagliaroni used to conduct Union business. GC Ex. 7; see also Resp. Ex. 3 at 1 (a copy of a Union demand to bargain, dated January 6, 2020, with the Gmail address by Pagliaroni's signature). The Gmail address was the Union's designated address for receiving notices from the Agency and had been for at least the past ten years. Pagliaroni himself told management, including Janney, Pagliaroni's fire chief, and at least one human resources specialist, that the Gmail address was the Union's designated address. In cases where someone sent Union-related email to Pagliaroni's work address, Pagliaroni would send a reply-all email asking the sender to resend the message to the Gmail address. Tr. 28-29, 31, 37-38.

In the March 9, 2020 notice, Janney announced that the fire department would be expanding cross-staffing on a "temporary" basis as part of the department's "overtime mitigation strategy," which was made in response to high levels of unscheduled overtime over the previous two summers and was decided upon in light of "severe constraint's [sic] on the department's labor budget." Cross-staffing, Janney continued, would be expanded "for selected [apparatuses]" during "certain 'non-peak' periods" of lower call volume and reduced census counts. More specifically, Janney indicated in an attached document titled "Overtime Reduction Matrix" (overtime matrix) that the Respondent planned to take Engine 1911 out of service from 6:00 p.m. to 7:00 a.m. Tuesday through Friday, Saturday from 4:00 p.m. to 7:00 a.m., and all-day Sunday. (For ease of reading, the March 9, 2020 courtesy notice and the overtime matrix will be referred to collectively as the "March courtesy notice.") Janney communicated in the March courtesy notice that "minimum manning [would] . . . be reduced" to avoid unscheduled overtime. While there would be "temporary personnel reductions," Janney stated that "[n]o adverse impact to any employee [was] anticipated," because there would be no billet reductions and because the change was "only intended to curtail some unscheduled overtime." Janney closed by stating that the plan would take effect on March 28, 2020, and that the Union was free to contact him if it would like to schedule "consultation" over the issue. GC Ex. 2 at 1-2. *See* GC Ex. 2 at 2; Jt. Ex. 2 at 2; Jt. Ex. 3; GC Ex. 4 at 1.

Pagliaroni responded on behalf of the Union with a demand to bargain on March 11, 2020, and an information request on March 18, 2020. Pagliaroni stated in the information request that the March courtesy notice revealed that the Agency's plan to take Engine 1911 out of service would reduce overtime by "cutting manning from 16 to 14" firefighters in at least some circumstances. GC Ex. 3 at 3; GC Ex. 4 at 4. The demand to bargain and the information request both listed the Union's Gmail address by Pagliaroni's signature. GC Exs. 3 & 4.

The Agency did not respond to Pagliaroni's bargaining demand or information request.

Nothing more happened until December 18, 2020, when Janney issued a second "courtesy notice" virtually identical to the March courtesy notice but with a January 8, 2021 implementation date. Like the March courtesy notice, the December 18, 2020 notice came with a copy of the overtime matrix attached. For ease of reading, the December 18, 2020 courtesy notice and the attached overtime matrix will be referred to collectively as the "December courtesy notice." Jt. Ex. 2; GC Ex. 2; Tr. 41-42. Under Article 3, Section 5 of the CBA, the Union must submit its proposals to the Agency "not more than fourteen . . . days from receipt" of the Agency's proposed changes in conditions of employment. Jt. Ex. 7 at 7.

The December courtesy notice was emailed by Human Resources Specialist Sabrina Zaidi to Pagliaroni's work email address, but not to the Union's Gmail address. *See* Jt. Ex. 1; Tr. 38. Pagliaroni did not receive the December 18, 2020 email when it was sent because he was on medical leave and could not access his work email account outside the office. Pagliaroni continued to check the Union's Gmail account while on leave. The fire chief, with whom Pagliaroni communicated regularly, knew that Pagliaroni was out on leave. Tr. 37-38, 57.

On January 14, 2021, Pagliaroni returned to work and saw the December courtesy notice for the first time. Pagliaroni asked Zaidi to send the December courtesy notice to the Union's Gmail address, and Zaidi did so that day. Tr. 35-38, 164-65; Jt. Ex. 1.

On January 20, 2021, Pagliaroni used the Union's Gmail account to send Janney and other management officials a letter containing Union proposals in response to the December courtesy notice. Jt. Exs. 4 & 5; Tr. 42. In the letter, Pagliaroni provided an excerpt of the Union's counterproposal from March 2020 in which the Union asserted that the Respondent's plan to take Engine 1911 out of service during non-peak hours would leave the base unable to meet the standards of the National Fire Protection Association (NFPA), specifically NFPA 1710, creating an unacceptable risk to firefighters. Jt. Ex. 5 at 6-7; Tr. 54-55. The excerpt ended with the Union asserting that past overtime use was due to the Agency's failure to hire sufficient numbers of personnel. Jt. Ex. 5 at 7.

Having presented the Union's March 2020 counterproposal, Pagliaroni stated that had personnel been hired overtime would decrease, eliminating the need for increased cross-staffing. Pagliaroni also stated that there was no need for the Agency to increase cross-staffing in light of scheduling changes mandated by the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, § 1109 (NDAA), which became law on January 1, 2021 and required that the Respondent schedule tours of duty using 48-hour shifts followed by 48 or 72 hours off within 180 days of the NDAA's enactment. Jt. Ex. 5 at 7; Tr. 124. (The Union submitted a demand to bargain over the details of the new schedule on January 6, 2021.) Resp. Ex. 3; Tr. 128-29.

Pagliaroni then presented two Union proposals in response to the Agency's cross-staffing plan. The first proposal (Proposal 1) called for an overtime study. Pagliaroni presented Proposal 1 as follows:

> An evaluation of overtime, beginning after the implementation of the new work schedule [under the NDAA] and ending 120 days later. This evaluation is proposed in an endeavor to discover what effect the new work schedule has on mandatory unscheduled overtime.

Pagliaroni added that the Union "awaits response to its [information request], part of which included a request for overtime statistics from the last two summers." Jt. Ex. 5 at 8; *see also* Tr. 44.

The Union's second proposal (Proposal 2) pertained to staffing levels and was presented as follows:

> Staff our district with the appropriate number of fire suppression personnel to eliminate the overtime issue. The current staffing levels . . . will currently create overtime due to the fact manning does not account for Regular Days Off (RDO) and Annual Leave, nor the proper level of personnel to handle the current call volume of Naval Station Great Lakes.
>
> The Union's Proposal is to hire and staff the department with 58 fire suppression personnel. This figure includes firefighters, FF/Paramedics, and Captains. This represents a hiring factor of 3.625 employees per position on each rig. This alleviates any remaining overtime issues the [department] is having and would prevent overtime from occurring in the future, particularly during the summer months.

Jt. Ex. 5 at 8.

Two days later, President Biden issued Executive Order 14,003, which required agencies to negotiate over the subjects set forth in § 7106(b)(1) of the Statute. Protecting the Federal Workforce, Executive Order No. 14,003, 86 Fed. Reg. 7231 (Jan. 22, 2021). Section 4 of the executive order states: "The head of each agency . . . shall elect to negotiate over the subjects set forth in . . . [§] 7106(b)(1) and shall instruct subordinate officials to do the same." Section 7 of the executive order provides: "This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person."

On January 28, 2021, Janney sent Pagliaroni the Agency's response. With respect to the timeliness of the Union's proposals, Janney noted the December courtesy notice was re-sent to the Union's Gmail address on January 14, 2021, at Pagliaroni's request; that Human Resources received the Union's proposals on January 20, 2021, which was "30 days after the [December courtesy notice] was [initially] sent"; that the Agency had submitted "advance notice of its planned changes" as required by Article 3 of the CBA; and that the Union had 14 days under the CBA to submit negotiable proposals (if appropriate for the situation and if the change had "any negotiable provisions"). Jt. Ex. 6 at 9.

Regarding the issue of safety, Janney stated that the Agency's plan did not violate NFPA 1710, and that NFPA and relevant Navy and Department of Defense policies "encourage and require mutual aid resources," an agreement among neighboring fire departments to help fight each other's fires, "to be planned for and counted in the department's staffing and resource determinations." *Id.*

As for the negotiability of the Union's proposals, Janney stated that Pagliaroni had submitted "no negotiable proposals related to the department's new cross-staffing plan," adding that management intended to retain its rights, including its right to assign work. Accordingly, Janney advised that the Agency would be implementing the planned changes immediately. Changes, though, were not implemented at that time. *Id.*; Tr. 46.

At the hearing, Janney testified that Proposal 1's overtime study was "outside the scope of what we were trying to do," because the overtime study was "secondary to us changing their work schedule." Tr. 120. Janney added that overtime and regular work schedules are separate issues, because "vacancies are what drive overtime, not the work schedule." Tr. 120-21.

Meanwhile, on March 5, 2021, the U.S. Office of Personnel Management issued a memo providing guidance (OPM memo) on implementing Executive Order 14,003. (For reasons that are unclear, the Respondent's human resources officials did not receive the OPM memo until July 7, 2021.) Tr. 170. The OPM memo emphasized that agencies "must commence bargaining in good faith" over 7106(b)(1) subjects, and that a failure by agency managers to engage in bargaining over subjects covered by § 7106(b)(1) of the Statute would be "inconsistent with the President's Directive." Resp. Ex. 5 at 6.

The Agency finally implemented changes on April 11, 2021. That day, at the morning muster, Assistant Chief Greg Devries told firefighters that Engine 1911 would be taken out of service every night from 7:30 p.m. to 7:30 a.m. (the overnight hours), that two of the four Engine 1911 firefighters would be sent home at 7:30 p.m. (thus reducing from sixteen to fourteen the number of firefighters and supervisors on duty), that the remaining two Engine 1911 firefighters who were not sent home would be cross-staffed between Engine 1911 and Ambulance 1943, and that the department, which had assigned overtime for 24-hour shifts, would now be assigned for either 24-hour shifts or 12-hour shifts. Tr. 46-47, 53, 63-64, 70, 72-74, 77; *see also, e.g.*, GC Ex. 5 at 180-81, 267, 413. (It appears that on at least some Sundays, Engine 1911 was in-service during the day.) *Compare* GC Ex. 5 at 250-52, 328-29, 386-88, 424-26 *with id.* at 493-95, 576-78. Union members relayed news of these changes to Pagliaroni. Tr. 46, 53.

On May 26, 2021, the Union filed the ULP charge in this case.

In October 2021, the Agency rescinded the cross-staffing plan, including the 12-hour overtime shifts. Tr. 47, 117; GC Ex. 5 at 650-70.

In January 2022, the Agency and the Union reached an agreement on scheduling under the NDAA, and the Agency moved to a "48 on, 48 off" schedule. Tr. 114, 127, 153; Resp. Ex. 2.

Several issues were presented at the hearing. With respect to notice, Janney acknowledged sending the December courtesy notice to Pagliaroni's work email address but not to his Gmail address "would not have been [his] first choice," but Janney would not concede that this was a mistake, since management had "other corresponden[ce]" with Pagliaroni using his work email address. Tr. 134. In this regard, Leslie Benavente, Director of Labor and Employee Relations, testified that there were "prior instances" in which Pagliaroni "received" labor-relations correspondence at his work email address, and the Respondent introduced a document showing that Lane Cermak, a prior labor relations specialist, sent Pagliaroni a courtesy email regarding the Coronavirus to Pagliaroni's work email address on March 6, 2020, which Pagliaroni read the next day. Tr. 165; Resp. Ex. 4.

In addition, firefighters pointed to a number of negative effects resulting from the Agency's decision to start assigning 12-hour overtime shifts.

First, the change caused firefighters to lose overtime work and, thus, overtime pay. *See* Tr. 47, 66. As Jaemie McDonough, a firefighter and Union steward, testified, firefighters lost money because "we're working 12-hour [overtime] shifts, which would've normally been a 24-hour [overtime] shift." Tr. 66. As for exactly how much overtime firefighters lost, Pagliaroni testified that it was exactly 3,348 hours, equal to 12 times the 279 12-hour overtime shifts performed between the April 2021 change and its rescission in October 2021. Tr. 47; GC Ex. 5 at 177-638; GC Br. at 11 n.5.

Second, firefighters found the move to 12-hour overtime shifts to be inconvenient, if not disruptive, with respect to their schedules concerning work and their commutes. Unlike in the past, where a firefighter assigned overtime would work no more than three days in a row, the advent of 12-hour overtime shifts meant that a firefighter could do overtime and work four days in a row or more. *See* Tr. 65, 86. For example, in May 2021, McDonough worked regular 24-hour shifts for two days, a mandatory 12-hour overtime shift, and then a 24-hour regular shift. GC Ex. 5 at 244-52. Likewise, firefighter Christopher Dowdall worked five days in a row that month, alternating regular 24-hour shifts and mandatory 12-hour overtime shifts. *Id.* at 298-310. Overall, it was not common for firefighters to work more than three days in a row—among the six firefighters who testified, there were at most eleven instances from April to October 2021 where a firefighter worked four or more consecutive days, and in several of those instances, including one firefighter's seven-day work period, this included voluntary overtime—but it did happen. GC Ex. 5 at 218-29, 320-26, 378-88, 610-22; Tr. 72. In any event, firefighters disliked that it was even possible for the Agency to assign them to work "an indefinite amount of days," as Dowdall put it. Tr. 86.

Firefighters, especially those with hour-long commutes, preferred the old system, where they'd travel home in the morning and then have a day off, to the new system, where they'd work a 12-hour overtime shift, commute home in the evening, and then possibly commute back to work early in the morning. Tr. 65, 72, 81. According to Dowdall, these tight turnarounds were more than inconvenient. Rather, they "[did] not allow [firefighters] the proper rest and recovery for the next day." Tr. 85.

Firefighters, also disliked the fact that 12-hour overtime shifts increased the number of trips to and from work. Tr. 68. For McDonough, one of the firefighters with an hour-long commute, these extra trips "add[ed] to the wear and tear on [his] vehicle" and required "extra gas money." Tr. 68.

Another firefighter, Austin Ulas, found the 12-hour overtime shifts resulted in his having to wait longer to schedule a train home. Tr. 91.

Third, because an overtime assignment no longer guaranteed a day off (and because firefighters could not reliably obtain a 24-hour overtime shift and guaranteed day off through volunteering for overtime), the Agency's change negatively affected firefighters' homelives. Tr. 66, 73-74, 80-81.

Most notably, firefighters disliked how 12-hour overtime shifts impacted their ability to spend time with their families. Tr. 75, 81-82. "By the time I got home, my kids are already in bed, my wife is going to bed, so I wouldn't get to see them at all," McDonough stated. "And then the next morning I'd be waking up and leaving to get back to work before my kids and my wife even woke up." Tr. 65. True, under the old system firefighters would be away from their families for three days straight, but at least they'd then have a day off to take kids to school, have dinner with family, run errands, and generally "function as a family member," said Chad Homberg, a firefighter and Union Vice President. Tr. 82. Similarly, firefighter Christopher Dowdall asserted that 12-hour overtime shifts caused him to miss "countless games, practices, activities" of his three children. Tr. 87.

Relatedly, the loss of the guaranteed day off resulted in making scheduling family time activities more difficult. As McDonough explained, "once those twelves came into play, it made it so that [my wife] didn't know when I was going to [be] off," which made it more difficult for McDonough's wife to schedule her own work. Tr. 66. Justin Scaife, a firefighter and Union steward, similarly testified that his family "didn't plan anything" because "I didn't know if I was going to be home for it." Tr. 75.

Ulas claimed that now "you can't really plan for your days off," and complained that 12-hour overtime shifts affected his ability to attend White Sox baseball games that were part of his season ticket package. "I would get hit on overtime," he said, "and I couldn't give the tickets away, sell the tickets in time, so I'd lose . . . money on baseball." Tr. 92.

Likewise, Dowdall disliked that there was no longer a guaranteed day off to "schedule doctor appointments, and school appointment[s], anything else that may need to be done." Tr. 87.

Fourth, firefighters asserted that cross-staffing, with Engine 1911 out of service and staffing reduced from sixteen to fourteen firefighters from the overnight hours, 7:30 p.m. to 7:30 a.m., had a negative impact on firefighters' safety. With Station 34's Engine 1911 out of service, calls that would have gone to Station 34 instead went to Station 35 and its Quint 1932. Tr. 29, 71. Scaife estimated that after 7:30 p.m. calls to Quint 1932 increased "at least by a few calls," resulting in firefighters assigned to Quint 1932 doing more work and getting less sleep. Tr. 64, 72.

According to Dowdall, when Engine 1911 was out of service, staffing went from "eight people for operations . . . [to] four people who would then be expected to do the work of multiple men." Tr. 85.

Relatedly, firefighters asserted that decreased staffing levels put the department even further below NFPA staffing standards. Tr. 78-79; *see also* Tr. 64.

Janney countered that low staffing in the department was not a problem because mutual aid agreements under which neighboring fire departments provided additional staffing and equipment ensured that the Respondent's staffing requirements would be met. Tr. 132-33; *see also* Jt. Ex. 6. He added that the Navy had not adopted NFPA 1710, and that the fire department performs its own risk analysis to determine the necessary level of staffing. Tr. 132.

POSITIONS OF THE PARTIES

General Counsel

The GC argues that the Respondent's decision to take Engine 1911 out of service overnight and to reduce overtime shifts from 24 hours to 12 hours changed firefighters' conditions of employment, as the changes affected firefighters' safety, overtime pay, and scheduled days off. *Id.* at 12-13 (citing *Library of Congress v. FLRA*, 699 F.2d 1280, 1286 (D.C. Cir. 1983)).

The GC further asserts that these changes had greater than de minimis effects on firefighters' conditions of employment, as the changes caused firefighters to lose overtime pay, put firefighters' safety at risk, and created scheduling disruptions that adversely impacted firefighters' homelives. *Id.* at 13. In particular, the GC contends that employees lost over 3,000 overtime hours of pay, and that this had greater than de minimis effects notwithstanding the fact that the overtime was not guaranteed. *Id.* at 14 (citing *SSA*, 64 FLRA 199, 203-05 (2009); *U.S. Dep't of VA, Med. Ctr., Leavenworth, Kan.*, 60 FLRA 315, 318 (2004)). The GC adds that the changes reduced staff and equipment available for fighting fires and reduced firefighters' rest time during and between shifts. *Id.* at 13-14 (citing *U.S. EPA, Wash., D.C.*, 38 FLRA 1328, 1330-31 (1991)). With respect to the effects on firefighters' homelives, the GC submits that the Authority has previously found that a consideration of such a change's effects can include effects that occur outside of the workplace. *Id.* at 14 (citing *VA Med. Ctr., Phx., Ariz.*, 47 FLRA 419, 423-24 (1993)).

The GC argues that the Union did not waive its bargaining rights, and that the Respondent never gave the Union adequate advanced notice of the changes. *See id.* at 15-16 (citing *U.S. Army Corps of Eng'rs, Memphis Dist. Memphis, Tenn*., 53 FLRA 79, 82 (1997). In this regard, the GC contends the Respondent was obligated to send the December courtesy notice in a timely manner to the Union's Gmail address. *Id.* at 16-17. The GC also argues that the December courtesy notice was deficient because it: was off by over two months as to when the changes would be implemented; incorrectly identified the hours Engine 1911 would be out of service; did not reveal that overtime shifts would be changed to 12 hours; and inaccurately characterized the scope of the change as involving "temporary" reductions intended to curtail "some" overtime during non-peak call volumes when in fact the change involved "a daily practice for six straight months regardless of call volume." *Id.* at 16. The December courtesy notice was also deficient, the GC alleges, because it incorrectly claimed that the changes would have no impact on employees and contained no offer to bargain. *Id.* at 15-16.

It is unnecessary to reach the negotiability of the Union's proposals, the GC submits, because the Respondent failed to give the Union adequate notice of the change or an opportunity to bargain prior to their implementation. *Id.* at 17. If the negotiability of the Union's proposals is considered, the GC argues that Proposal 1, the Union's overtime study proposal, is a negotiable procedure under § 7106(b)(2) of the Statute. *Id.* at 17-18 (citing *U.S.*

Dep't of HUD, 58 FLRA 33, 34 (2002); *AFGE, Loc. 1923*, 44 FLRA 1405, 1437 (1992)). Proposal 1 is also clearly related to the changes, the GC contends, because Proposal 1 pertains to overtime, and the change was implemented in order to reduce overtime. *Id.* at 18. That the proposed study would not begin until after the 48-hour work schedules took effect under the NDAA speaks only to the timing of the study, the GC argues, not its relevance or negotiability. The GC adds that Proposal 1 does not condition implementation of the change on bargaining 48-hour work schedules, and does not require a delay in taking Engine 1911 out of service. *Id.*

As for Proposal 2, the Union's proposal to staff the department with 58 fire suppression personnel, the GC suggests that the proposal concerns the numbers and types of employees assigned to a work unit and is therefore negotiable at the election of the Agency under § 7106(b)(1) of the Statute. The GC adds that under Executive Order 14,003, agencies are "required to elect to negotiate" over § 7106(b)(1) matters, and that the Respondent was obligated to do so the moment when the executive order became effective on January 22, 2021. *Id.* at 19.

On the issue of remedy, the GC proposes a status quo ante remedy that would rescind cross-staffing. The GC also seeks backpay for lost overtime. *Id.* at 19 -21 (citing; *SSA*, 64 FLRA at 205; *U.S. Customs Serv., Sw. Region, El Paso, Tex.*, 44 FLRA 1128, 1129 (1992); *Fed. Corr. Inst.*, 8 FLRA 604, 606 (1982) (*FCI*)).

Respondent

The Respondent asserts that "[u]pon receiving the [December courtesy notice], the Union failed to submit timely proposals" as required under the CBA. Resp. Br. at 5. The Respondent adds that the Union "subsequently requested that the Agency resend the notification" to the Union's Gmail address, that the Agency did so on January 14, 2021, and that Pagliaroni submitted the Union's proposals on January 20, 2021. *Id.* The Respondent argues, or at least suggests, that the Union thus waived its rights to bargain over the changes. *Id.* at 9. In support of this argument, the Respondent noted an historical document indicating that Lane Cermak, a prior LER specialist, sent Pagliaroni a courtesy email regarding the Coronavirus on March 6, 2020, which Pagliaroni read the following day. *Id.* at 6-7. Relatedly, the Respondent submits that the Union was "properly noticed" regarding cross-staffing. *Id.* at 6.

In addition, the Respondent contends that the Union's proposals were beyond the scope of the noticed change. *Id.* at 10. The Respondent also argues that Proposal 1 conditioned the study on the implementation of the 48-hour work schedule under the NDAA. *Id.* at 11-13 (citing *FLRA v. U.S. DOJ*, 994 F.2d 868 (D.C. Cir. 1993)). With respect to Proposal 2, the Respondent submits that the proposal is bargainable only at the election of the Agency. *Id.* As for Executive Order 14,003, the Respondent contends that it could not implement the order without the OPM memo, which it did not receive until July 7, 2021. *Id.* at 14-15.

Finally, the Respondent denies the GC's claim that it was required to meet the NFPA staffing standards. *Id.* at 17.

ANALYSIS AND CONCLUSIONS

Prior to implementing a change in conditions of employment, an agency is required to provide the exclusive representative with notice of the change 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. *GSA*, 70 FLRA 14, 15 (2016). *see also AFGE v. FLRA*, 25 F.4th 1, 12 (D.C. Cir. 2022) (vacating Authority's policy statement, issued in *U.S. Dep't of Educ.*, 71 FLRA 968 (2020), in which the Authority abandoned the de minimis standard in favor of a substantial-impact standard). Where, as here, such a change constitutes the exercise of a management right under § 7106 of the Statute, the agency is nevertheless obligated to notify the exclusive representative and negotiate over the impact and implementation of the change. *GSA*, 70 FLRA at 15. If an agency has an obligation to bargain, then it can satisfy that obligation by reaching agreement with the union, or bargaining in good faith to impasse over negotiable proposals submitted by the union. *Pension Benefit Guar. Corp.*, 59 FLRA 48, 50 (2003).

The Agency Changed Conditions of Employment

When considering whether there was a change in conditions of employment, we conduct an inquiry into the facts and circumstances regarding the agency's conduct and the employees' conditions of employment. *SSA, Off. of Hearings & Appeals, Charleston, S.C.*, 59 FLRA 646, 649 (2004), *pet. for review denied sub nom Ass'n of Admin. Law Judges v. FLRA*, 397 F.3d 957 (D.C. Cir. 2005). Recently, the Authority has stated that it asks two questions to determine whether there was a change to a condition of employment: (1) whether there was an actual, agency-initiated change to a personnel policy, practice, or matter, and (2) whether the change affected working conditions. *U.S. DHS, U.S. CBP, El Paso, Tex.*, 72 FLRA 7, 9 (2021). Working conditions are "the circumstances or state of affairs attendant to one's performance of a job" and may include matters concerning overtime assignments. *See id.* at 10 & n.36.

It is clear, and also undisputed, that the Agency changed firefighters' conditions of employment. When the Agency implemented the cross-staffing plan in April 2021, it brought into effect the Agency's "overtime mitigation strategy," a response to budgetary pressures that was intended to reduce, and did reduce, the number of overtime hours firefighters worked and the amount of overtime pay firefighters received. The Agency accomplished this goal by changing specific policies and practices. The Agency determined that it would reduce its minimum staffing requirements during the overnight hours, 7:30 p.m. to 7:30 a.m., from sixteen to fourteen firefighters and supervisors, and that it would accomplish this by taking Engine 1911 out of service and sending two of its assigned firefighters home while cross-staffing the remaining two firefighters to Ambulance 1943. In addition, the Agency migrated from a practice of assigning firefighters 24-hour overtime shifts to assigning them either 24-hour overtime shifts or 12-hour overtime shifts.

These changes to policies and practices clearly affected firefighters' working conditions. Before cross-staffing, firefighters generally worked no more than three days in a row. After cross-staffing, firefighters could be assigned to work, and did work, four or more days in a row. With cross-staffing, two firefighters were assigned every night to do "two jobs" cross-staffing Engine 1911 and Ambulance 1943. Cross-staffing reduced the opportunities

firefighters had to get a guaranteed day off following an overtime assignment, and cut in half the length of overtime shifts many firefighters performed. The 12-hour overtime shifts also altered the times when firefighters on overtime shifts finished work. *Cf. U.S. Dep't of VA, Med. Ctr., Sheridan, Wyo.*, 59 FLRA 93, 95 (2003) (Concurring Opinion of Chairman Cabaniss) (citing an employee's work starting and stopping times as an example of working conditions). By reducing staffing during the overnight hours, cross-staffing also resulted in firefighters receiving more calls and getting less sleep during the overnight portion of their shifts. This, along with reduced staffing, raised sincere concerns about firefighters' safety and thus their working conditions. *See Libr. of Cong.*, 699 F.2d at 1286; *U.S. EPA, Wash., D.C.*, 38 FLRA at 1330-31.

For all of these reasons, the undersigned finds that the Agency's cross-staffing plan changed firefighters' conditions of employment.

The Changes Were Greater than De Minimis

In applying the de minimis doctrine, 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. In determining whether the reasonably foreseeable effects of a change are greater than de minimis, the Authority addresses what a respondent knew, or should have known, at the time of the change. *U.S. Dep't of the Air Force, Air Force Materiel Command, Space & Missile Sys. Ctr., Detachment 12, Kirtland AFB, N.M.*, 64 FLRA 166, 173 (2009).

It is again clear—and again undisputed—that the effects, and reasonably foreseeable effects, of the Agency's cross-staffing plan had greater than de minimis effects on firefighters' conditions of employment. It was entirely predictable—indeed, it was the Agency's plan—that cross-staffing would reduce firefighters' overtime work and overtime pay. And the record reflects that cross-staffing did in fact result in such impacts upon firefighters. Specifically, cross-staffing resulted in many firefighters no longer working 24-hour overtime shifts and having their overtime work (and pay) cut by half, at least in the many instances where firefighters worked only one overtime shift in a week. Compound that over the roughly six months when cross-staffing was in effect, and a substantial loss of overtime work and overtime pay is apparent, and carried out as intended. Such a change is clearly greater than de minimis. Indeed, it would surely meet the higher substantial-impact standard if it still applied. *See U.S. Dep't of VA, Med. Ctr., Leavenworth, Kan.*, 60 FLRA at 318 (changes in conditions of employment that adversely affect an employee's ability to earn overtime and differential pay is more than de minimis); *U.S. Dep't of Educ.*, 71 FLRA at 970 n.29 (suggesting that reduced compensation would constitute a substantial impact). And, as the GC correctly notes, cross-staffing had greater than de minimis effects with respect to overtime notwithstanding the fact that overtime was not guaranteed. *U.S. Dep't of VA, Med. Ctr., Leavenworth, Kan.*, 60 FLRA at 318.

Cross-staffing had several other greater-than de minimis effects, all of which were readily foreseeable. Before cross-staffing, a firefighter assigned overtime would generally work no more than three days in a row. But once the Agency implemented cross-staffing and started assigning 12-hour overtime shifts, it was possible for the Agency to assign firefighters

to work four or more days in a row. While many firefighters continued in the old pattern of working no more than three days in a row, the number of times firefighters worked four days in a row during the six months of cross-staffing was not insignificant: during that time, there were up to eleven instances when firefighters worked four or more days in a row, and that is just from a sample of the firefighters who testified.

The changes also had greater than de minimis effects on firefighters' lives outside the workplace, which is pertinent. *See VA Med. Ctr., Phx., Ariz.*, 47 FLRA at 423-24. As the firefighters' testimony revealed, the 12-hour shifts implemented as part of the Agency's cross-staffing plan reduced the amount of time firefighters spent with their families. With cross-staffing, it was more likely that a firefighter would miss quality time with the firefighter's children and spouse, as they would arrive home relatively late after a 12-hour overtime shift and might have to leave early the next day to return to work. Such short turnaround times negatively impacted firefighters' rest and recovery, especially those with longer commutes. In addition, 12-hour overtime shifts increased the number of trips to and from work, adding to employees' commuting expenses.

It is less clear that the Respondent knew or should have known that cross-staffing would raise safety concerns that had greater than de minimis effects. While firefighters were able to establish that the changes had at least some effect on safety—a "few" more calls during the overnight hours, less rest and recovering during shifts and between shifts—the testimony from the firefighters was not sufficiently detailed to establish that the safety-related effects were truly greater than de minimis. Moreover, while firefighters complained about staffing levels generally and the department's lack of compliance with NFPA 1710 in particular, there is no indication that staffing was so low, or would be so low, that a safety requirement governing the Agency's practices would be violated. Further, the existence of mutual aid agreements, where neighboring fire departments supplement the Agency's staffing and equipment as needed, strongly suggests that any shortfall in the department's staffing or equipment would not diminish firefighters' safety.

Notwithstanding the question of whether the safety related concerns were greater than de minimis, it is clear that there were greater than de minimis effects overall.

The Union Did Not Waive Its Right to Bargain over the Changes

Adequate notice of a proposed change in conditions of employment triggers the exclusive representative's responsibility to request bargaining over the change. *U.S. Penitentiary, Leavenworth, Kan.*, 55 FLRA 704, 715 (1999). Where the agency has provided adequate notice, a union may waive its right to bargain over a proposed change, either explicitly or implicitly through inaction. In this regard, the agency may implement the proposed changes if, among other things, the union fails to request bargaining within a reasonable period after being notified of the proposed changes, fails to submit any bargaining proposals (or any negotiable proposals) within a contractual or other agreed-upon time limit, or fails to bargain. *AFGE, Loc. 3974*, 67 FLRA 306, 309 (2014). Where an agency asserts a waiver of bargaining rights as a defense, it bears the burden of establishing that the union received adequate notice of the change. *U.S. Penitentiary, Leavenworth, Kan.*, 55 FLRA at 715. Additionally, an agency fails to provide adequate notice if it does not notify the representative designated by the Union. *U.S. Dep't of the Air Force, 913th Air Wing, Willow Grove Air Rsrv. Station, Pa.,* 57 FLRA 852, 855 (2002).

The Respondent argues, or at least suggests, that the Union waived its right to bargain over the changes, stating that "[u]pon receiving" the December courtesy notice the Union failed to submit proposals within the time required under the CBA.

The Respondent's argument is based on the erroneous premise that the Union received the December courtesy notice on December 18, 2020. While Zaidi *sent* the December courtesy notice that day, Pagliaroni did not receive it then, since he was on medical leave and did not have access to his work email. Because there was no receipt by the Union of the December courtesy notice on December 18, 2020, the contractual period for the Union to submit proposals to the Agency did not commence on that date. *See* Jt. Ex. 7 at 7.

Moreover, nothing justifies the Respondent's actions in this regard. First, the Respondent knew or should have known that Pagliaroni was on medical leave and thus had no access to his work email while on leave. Second, the Respondent knew or should have known that it was supposed to send notices to the Union's Gmail address, which had been the Union's designated email address for at least ten years. In addition, the Respondent regularly sent Pagliaroni correspondence to the Gmail address, Pagliaroni used the Gmail address when discussing labor relations matters with the Respondent, the Gmail address was listed next to Pagliaroni's signature in letters he sent to the Respondent, and Pagliaroni made a point of asking that Union-related messages be re-sent to the Gmail address in instances where they were sent to his work email address. Further, that there was one time, on March 6, 2020, when the Respondent improperly sent Pagliaroni a labor-relations email to his work email address (there is no documentary evidence of this happening any other time prior to December 18, 2020) does not change the fact that the Respondent was supposed to send such correspondence to the Union's Gmail address.

Because the Union did not receive the December courtesy notice on December 18, 2020, and because there was no good reason to expect that it would have or should have received the notice on that date, there is no basis for the Respondent's claim that the Union

had fourteen days from December 18, 2020 to submit its proposals. Rather, the clock for submitting proposals started on January 14, 2021, when Pagliaroni returned to work, accessed his work email, and saw the December courtesy notice for the first time. As such, and as Pagliaroni submitted the Union's proposals on January 20, 2021, well before the contractual period for doing so had expired, there is no basis for finding the Union waived its bargaining rights.

The Respondent Violated the Statute

i. The Respondent Failed to Provide the Union Adequate Notice of the Changes

The GC contends that a violation can be found based on the Respondent's failure to provide the Union adequate notice of the changes.

As noted above, an agency must provide the exclusive representative notice of changes to conditions of employment prior to implementing those changes. *See GSA*, 70 FLRA at 15. For notice to be adequate, it must be sufficiently specific and definitive to provide the exclusive representative with a reasonable opportunity to request bargaining. For example, the notice must apprise the exclusive representative of the scope and nature of the proposed change, the certainty of the change, and the planned timing of the change. Notice must be sufficient to inform the exclusive representative of what will be "lost" if it does not request bargaining. *U.S. DOD, Def. Commissary Agency, Peterson AFB, Colo. Springs, Colo.*, 61 FLRA 688, 692 (2006). An agency violates the Statute if it changes conditions of employment without first providing adequate notice of the change. *See U.S. Army Corps of Eng'rs, Memphis Dist., Memphis, Tenn.*, 53 FLRA at 80, 84 & n.3. A union does not waive its right to bargain over a change when the change is announced as a fait accompli. *U.S. DHS, U.S. CBP*, 64 FLRA 916, 921 (2010).

While a close question, the undersigned ultimately agrees with the GC's position. It is true that the December courtesy notice conveyed a significant amount of information to the Union. The notice accurately advised Pagliaroni that cross-staffing would increase; that the minimum staffing requirement would be reduced; that overtime would be reduced; that overtime would be reduced via cross-staffing and a reduced minimum staffing requirement; that cross-staffing would be applied at certain apparatuses; that cross-staffing would happen during non-peak periods of lower call volume and reduced census counts (i.e., during the overnight hours); and that Engine 1911 would be taken out of service every night (though the actual practice differed slightly, as out-of-service hour start times shifted, and Engine 1911 generally remained in-service during the day on Sundays). Moreover, Pagliaroni was aware that reduced staffing meant going from sixteen firefighters to fourteen firefighters. Additionally, the Respondent adequately provided a planned implementation date.

However, the Respondent failed to state the change that mattered most: the reduction in the length of numerous overtime shifts from 24 hours to 12 hours, which sharply reduced firefighters' overtime pay and disrupted firefighters' schedules and homelives. By omitting this key detail, the Respondent failed to adequately inform the Union of what would be "lost" if the changes were implemented. *See U.S. DOD, Def. Commissary Agency, Peterson AFB, Colo. Springs, Colo.*, 61 FLRA at 692; *see also U.S. DHS, U.S. CBP, El Paso, Tex.*, 65 FLRA

422, 424-25 (2011) (agency failed to specify whether it merely eliminated the authority of first-line supervisors to grant birthday leave, or whether it wholly eliminated employees' entitlement to such leave). Further, the Respondent misleadingly downplayed the changes as being merely "temporary," as if they were to last only six weeks rather than approximately six months. Moreover, the Respondent inaccurately and inexplicably claimed that firefighters would suffer no adverse impacts as a result of the changes.

Based on the foregoing, the undersigned concludes that the Respondent failed to give the Union adequate notice of the changes at issue in this case, in violation of the Statute.

ii. The Respondent Was Obligated to Bargain over Proposal 1

Even if the Respondent had provided adequate notice of the changes it imposed, the Respondent still violated the Statute by refusing to bargain over Proposal 1, the proposal calling on the Agency to conduct an overtime study.

During impact and implementation bargaining, an agency is obligated to bargain only over the proposals that are reasonably related to the proposed change in conditions of employment. An agency is not required to bargain over proposals that go beyond the scope of a proposed change or over a matter that is conditioned on an agency bargaining over proposals that are outside the scope of an agency's impact-and-implementation bargaining obligation. *GSA*, 70 FLRA at 15-16.

The Respondent claims that Proposal 1 was beyond the scope of the change, and that it conditioned the study on the implementation of the 48-hour work schedule under the NDAA. Resp. Br. at 11-13. Contrary to the Respondent, Proposal 1 was reasonably related to the changes at issue in this case: The Agency made significant changes with respect to overtime, and Proposal 1 asks the Agency to conduct a study regarding overtime. *See U.S. Dep't of the Treasury, Customs Serv., Wash., D.C.*, 38 FLRA 770, 783 (1990) ("Put simply, the [r]espondent's proposed changes in the rotation schedule and the [u]nion's proposals were all related to the operation of the rotation schedule."); *cf. FLRA v. DOJ*, 994 F.2d at 869, 872 (proposal to use space that was vacated in a relocation for a union office when no such office existed before had nothing to do with the relocation). That the study sought to assess whether overtime would be affected under the regular schedule to be implemented under the NDAA does not alter the proposal's relevance to overtime, since overtime is affected by vacancies rather than by the particular regular schedule in effect. Moreover, it was possible that the Respondent's overtime-related changes could have remained in effect after the new regular schedule under the NDAA was implemented. Additionally, nothing in Proposal 1 required the Agency to delay implementation of the new regular schedule or any other Agency action. *See GSA*, 70 FLRA at 16.

As for its negotiability, because Proposal 1 merely required the Agency to conduct a study, the proposal was a negotiable procedure under § 7106(b)(2) of the Statute. *AFGE, Loc. 1923*, 44 FLRA at 1438 (proposals that require management to make studies and prepare reports concerning matters that affect conditions of employment constitute negotiable procedures within the meaning of § 7106(b)(2)).

Because Proposal 1 was reasonably related to the change and was negotiable, the

Respondent was obligated to bargain about it before implementing the changes. By failing to do so, the Respondent violated § 7116(a)(1) and (5) of the Statute.

Given this finding, it is unnecessary to determine whether the Respondent was also obligated to bargain over Proposal 2, but we will address that issue for the sake of completeness. With respect to scope, the proposal concerns staffing levels and is thus reasonably related to the matters in this case, specifically, overtime that arose as a result of staffing vacancies. The undersigned is not convinced, however, that the Respondent was obligated to bargain over this proposal. The GC contends that Proposal 2 concerns a permissive matter covered by § 7106(b)(1) of the Statute and argues that agencies are required to elect to negotiate over such subjects under Executive Order 14,003. However, while Executive Order 14,003 directs agencies to elect to bargain over such matters, the order does not itself constitute an election to bargain, a conclusion buttressed by the fact that the order is not enforceable at law by any party against the United States or its departments or agencies. *See NAGE v. FLRA*, 179 F.3d 946, 951 (D.C. Cir. 1999) (finding a similarly worded executive order, Executive Order 12,871, did not constitute an election to bargain over permissive subjects). Thus, even assuming Proposal 2 is encompassed by § 7106(b)(1), it involved a permissive matter that was negotiable only at the election of the Agency, and the Agency did not elect to bargain over the proposal. In addition, the fact that Proposal 2 concerns both bargaining unit employees and Captains, which the record indicates is a supervisory position, is another basis for finding that Proposal 2 is negotiable only at the election of the Agency. *See AFGE, Loc. 1012 v. FLRA*, 841 F.2d 1165, 1166 (D.C. Cir. 1988) ("[I]t is well established that 'a proposal concerning the filling of supervisory positions, including temporary appointments, is negotiable only at the election of the agency.'" (quoting *NLRB Union, Loc. 21*, 15 FLRA 798, 798 (1984))).

The Remedy

Having found the Respondent violated § 7116(a)(1) and (5) of the Statute, the undersigned now considers the GC's request for a return to the status quo and backpay.

When an agency has failed to bargain over the impact and implementation of a decision that is within its section § 7106(a) rights, the appropriateness of a status quo ante remedy is evaluated by using the considerations set forth in *FCI*. As the Authority explained in *FCI*, this requires, "on a case-by-case basis, carefully balancing the nature and circumstances of the particular violation against the degree of disruption in government operations that would be caused by such a remedy." 8 FLRA at 606.

The undersigned finds that the GC's request for a status quo ante remedy rescinding cross-staffing is inappropriate, since the Respondent already rescinded the cross-staffing plan, including the practice of assigning 12-hour overtime shifts, in October 2021. Accordingly, the GC's request for status quo ante relief is denied.

In agreement with the GC, the undersigned finds a backpay remedy to be warranted. Backpay is authorized under the Back Pay Act when an appropriate authority determines that: (1) an aggrieved employee was affected by an unjustified or unwarranted personnel action; and (2) the personnel action has resulted in the withdrawal or reduction of the employee's pay,

allowances, or differentials. *U.S. Dep't of HHS*, 54 FLRA 1210, 1218-19 (1998). Here, the Respondent's unlawfully implemented cross-staffing plan reduced firefighters' overtime pay by reducing their overtime shifts from 24 hours to 12 hours. *See, e.g.*, *U.S. Customs Serv., Sw. Region, El Paso, Tex.*, 44 FLRA at 1129-30. Accordingly, an award of backpay is consistent with the requirements of the Back Pay Act. 5 U.S.C. § 5596.

Conclusion

The undersigned finds that the Respondent violated § 7116(a)(1) and (5) of the Statute and recommends that 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 (the Statute), the United States Navy, Naval Station, Great Lakes, Illinois, shall:

1. Cease and desist from:

   (a) Changing employees' conditions of employment without first providing the International Association of Fire Fighters, Local F-37, AFL-CIO (the Union) with notice and an opportunity to bargain to the extent required by law.

   (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) Make whole any employees adversely affected by the change in overtime shifts by paying them backpay, with interest, for all pay that they lost as a result of the change.

   (b) Provide the Union with notice and an opportunity to bargain over removing fire apparatuses from service and changing employees' overtime shifts to the extent required by the Statute.

   (c) Post copies of the attached Notice at the Naval Station, Great Lakes, Illinois fire department. The Notices will be displayed on forms to be furnished by the Federal Labor Relations Authority, signed by the Commanding Officer, and then immediately posted in conspicuous places, including bulletin boards and all other places where notices to employees are customarily posted. The Notices shall remain posted for 60 consecutive days, and Respondent shall take reasonable steps to ensure that the Notices are not altered, defaced, or covered by any other material.

(d) Email copies of the attached Notice to all bargaining unit employees represented by the Union. The message of the email transmitted with the Notice will state in its entirety: "The Federal Labor Relations Authority has found that the United States Navy, Naval Station, Great Lakes, Illinois violated the Federal Service Labor-Management Relations Statute, and has ordered us to post and abide by the attached notice."

(e) Pursuant to § 2423.41(e) of the Authority's Rules and Regulations, notify the Regional Director of the Chicago Regional Office of the Federal Labor Relations Authority in writing, within 30 days from the date this Order becomes final if no exceptions are filed, as to what steps have been taken to comply.

Issued, Washington, D.C., December 13, 2022

_____

DAVID L. WELCH
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 United States Navy, Naval Station, Great Lakes, Illinois violated the Federal Service Labor-Management Relations Statute (the Statute) and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY EMPLOYEES THAT:

WE WILL NOT change employees' conditions of employment without first providing the International Association of Fire Fighters, Local F-37, AFL-CIO (the Union) with notice and the opportunity to bargain to the extent required by law.

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 make whole any employees adversely affected by the change in overtime shifts by paying them backpay, with interest, for all pay that they lost as a result of the change.

WE WILL provide the Union with notice and an opportunity to bargain over removing fire apparatuses from service and changing employees' overtime shifts to the extent required by the Statute.

_____
(Agency)

By: _____ Dated: _____
(Signature) (Title)

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

If employees have any questions concerning this Notice or compliance with its provisions, they may communicate directly with the Regional Director, Chicago Regional Office, Federal Labor Relations Authority, 224 S. Michigan Ave., Suite 445, Chicago, Illinois 60604, and whose telephone number is (312) 886-3465.