UNITED STATES OF AMERICA

FEDERAL LABOR RELATIONS AUTHORITY

Office of Administrative Law Judges

WASHINGTON, D.C. 20424-0001

MEMORANDUM DATE: March 26, 2002

TO: The Federal Labor Relations Authority

FROM: PAUL B. LANG
Administrative Law Judge

SUBJECT: DEPARTMENT OF THE AIR FORCE
RANDOLPH AIR FORCE BASE
SAN ANTONIO, TEXAS

Respondent

and Case No. DA-CA-01-0438

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 1840, AFL-CIO

Charging Party

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

Enclosures

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C. 20424-0001

DEPARTMENT OF THE AIR FORCE RANDOLPH AIR FORCE BASE SAN ANTONIO, TEXAS Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1840, AFL-CIO Charging Party	Case No. DA-CA-01-0438

NOTICE OF TRANSMITTAL OF DECISION

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

PLEASE BE ADVISED that the filing of exceptions to the attached Decision is governed by 5 C.F.R. §§ 2423.40-2423.41, 2429.12, 2429.21-2429.22, 2429.24-2429.25, and 2429.27.

Any such exceptions must be filed on or before **APRIL 29, 2002**, and addressed to:

Federal Labor Relations Authority
Office of Case Control
607 14th Street, NW, 4th Floor
Washington, DC 20424-0001

PAUL B. LANG
Administrative Law Judge

Dated: March 26, 2002

Washington, DC

OALJ 02-29

FEDERAL LABOR RELATIONS AUTHORITY

Office of Administrative Law Judges
WASHINGTON, D.C.

DEPARTMENT OF THE AIR FORCE RANDOLPH AIR FORCE BASE SAN ANTONIO, TEXAS Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1840, AFL-CIO Charging Party	Case No. DA-CA-01-0438

Robert Bodnar, Esquire
Stefanie Arthur, Esquire
For the General Counsel

Phillip G. Tidmore, Esquire
For the Respondent

Before: PAUL B. LANG
Administrative Law Judge

DECISION

Statement of the Case

This case arises out of an unfair labor practice charge filed by the American Federation of Government Employees, Local 1840, AFL-CIO ("Union") against the Department of the Air Force, Randolph Air Force Base, San Antonio, Texas ("Respondent"). Pursuant to the charge, the General Counsel issued a complaint which alleged that the Respondent violated §§7116 (a)(1) and (5) of the Federal Service Labor-Management Relations Statute ("Statute") by unilaterally assigning days off to certain of its bargaining unit employees without first informing the Union of its intentions and affording the Union the opportunity to negotiate concerning the procedure for the assignment of the days off.

A hearing was held on January 23, 2002, in San Antonio, Texas. This decision was rendered after consideration of the testimony and demeanor of witnesses as well as post hearing briefs submitted by each of the parties.

Position of the General Counsel

The General Counsel contends that the assignment of specific days off that had been granted to the effected employees as an award for exemplary performance was a change in the normal practice whereby employees request leave which is granted subject to workload requirements. The Respondent committed an unfair labor practice by assigning the days off to about 60 employees in the Lodging Department without consulting the Union and affording it the opportunity to negotiate.

The General Counsel also argues that it is of no consequence that relatively few employees asked to have their days off rescheduled even though they were called individually into the offices of their respective supervisors to determine if they were satisfied with the assigned dates. The fact that most employees did not choose to ask for different days off does not make up for the fact that they had been denied the opportunity to choose their preferred days off and to have conflicts resolved by seniority or by some other negotiated method.

Position of the Respondent

The Respondent maintains that its actions with regard to the scheduling of days off were in accordance with Air Force Manual ("AFM") 34-310 which governs its personnel system for nonappropriated fund ("NAF") employees including those in the Lodging Department. The Union had been given advance notice of the implementation of the manual in June of 1994 but did not request bargaining as to its provisions.

The Respondent emphasizes the fact that the days off in question were not an entitlement such as annual leave and that it was not necessary to follow procedures for requesting and approving leave. By letter dated January 3, 2001 (Respondent's Ex. 2), Brigadier General Peter U. Sutton, Commander of the 12th Flying Training Wing, authorized an award of eight hours of time off to all civilian employees who had contributed to the high score on the recent Operational Readiness Inspection as well as the success of an air show in May of 2000. General Sutton stated that, "I have not designated a specific date on when

this award should be used; however, it should be scheduled and used to the extent possible within 90 calendar days, but not later than one year after the effective date."

According to the Respondent, a tentative schedule was prepared for the Lodging Department in order to control the effect of the absences on mission impact, *i.e.*, the necessity of having a sufficient number of housekeeping and maintenance employees on duty so as to ensure the availability of rooms for distinguished visitors such as general officers and senior civilian officials including members of Congress and service secretaries.

The Respondent maintains that, in promulgating a tentative schedule of award days off, it was exercising a management right within the meaning of §7106 of the Statute. The schedule was adjusted as requested by employees. Therefore, according to the Respondent, its action had only a *de minimis* impact on working conditions, thus relieving it of the duty to bargain.

Finally, the Respondent argues that the scheduling of the award days off was an isolated incident rather than a past practice which could not be changed without affording the Union notice and the opportunity to negotiate.

Findings of Fact

The parties are in substantial agreement as to the pertinent facts. On January 3, 2001, Brigadier General Peter U. Sutton awarded virtually all civilian employees attached to his command eight hours of time off which would not be charged against leave. General Sutton did not designate the exact dates when the time off was to be used, but indicated that it should be scheduled and used within 90 days if possible and would be forfeited if not used within one year. Those stipulations were in accordance with the criteria set forth in section 7.3.3.3 of AFM 34-310.[1] Section 7.3.6.2 provides that:

> *The employee is responsible for requesting supervisory approval to schedule and use the time off award.* Employee requests to use time off are submitted far enough in advance to permit its use without undue interruption to the work of the activity. (Emphasis supplied.)

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[1] It is not necessary to decide whether General Sutton could validly have imposed restrictions beyond those set forth in AFM 34-310. The fact is that he did not.

Cheryl Johnson, the NAF Human Resources Officer for Randolph Air Force Base, subsequently instructed the flight chiefs as to how the award was to be implemented. Randy Harris was the chief of the Combat Support Flight; he passed the instructions along to Mary Eddy, the Lodging Manager, who, in turn, instructed Sharon Smith, who was in charge of housekeeping, and Ron Wolf, who was in charge of maintenance, to ensure that employees would use their awarded time off without undue impact on the mission.

Ms. Smith and Mr. Wolf thereupon prepared workweek schedules for the next 90 days. The schedules included the award days off which, whenever possible, were scheduled consecutively with each employee's regular two days off. Ms. Smith testified that she told each of her employees that they would be able to change their award days off and that she subsequently made the requested changes for four employees after determining that the changes would not have an adverse mission impact. Mr. Wolf followed a similar procedure and made requested changes for two employees. Certain other employees told Mr. Wolf that they were satisfied.

Approximately 60 employees in the housekeeping and maintenance departments were effected by the tentative prescheduling of the award days off. All of them are members of the bargaining unit represented by the Union. However, at all times pertinent to this case the Union and the Respondent had not completed negotiations for a collective bargaining agreement.

Discussion and Analysis

The Method of Assigning Days Off Was Not a Management Right

The Respondent's contention that the scheduling of the awarded days off was a management right is unpersuasive. The Union has not challenged the proposition that the assignment of days off (whether in the form of earned leave or as an award) must be accomplished so as not to unduly disrupt the cleaning and maintenance of rooms in the lodging facility. The Union merely contends that the Respondent should not have deviated from the procedure used for the granting of annual leave applications or the procedure set forth in AFM 34-310[2] without first having given notice to the Union of the proposed change and afforded it the

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[2] The Respondent's efforts to distinguish between time off awards and earned leave are inconsistent with the close similarity between the procedures.

opportunity to bargain. Even the Respondent does not suggest that the Union is seeking to establish the absolute right of an employee to get the day off of his or her choosing without regard to mission impact. Rather, the Union merely seeks to vindicate its right to bargain over the method by which awarded time off is to be scheduled in the future (it is too late to undo the Respondent's actions with regard to the prior award) and the method by which conflicts will be resolved when an excessive number of employees wish to take time off on the same days.[3]

The Respondent presented extensive testimony at the hearing in support of the self-evident and uncontested proposition that it is necessary to ensure that there are a sufficient number of housekeeping and maintenance employees on duty at all times so that rooms are always available to accommodate distinguished visitors. However, the Respondent has presented neither evidence nor a convincing rationale to show that the effective functioning of the lodging facility would be compromised by allowing employees to express their choices for award days off (subject of course to the requirement of maintaining an adequate level of staffing) rather than having the days off even tentatively assigned by supervisors.

As stated in *AFGE HUD Council of Locals 222, Local 2910 and U.S. Dept. of Housing and Urban Development*, 54 FLRA 171 (1998):

> . . . a finding that a proposal does not affect management's rights under section 7106(a) results, in the absence of other valid claims that the proposals conflicts with other law and regulation, in a finding that the proposal is within the duty to bargain and an order to bargain (*Id.* at 177).

In view of the fact that the method of scheduling award time off does not, and could not foreseeably, interfere with management rights, it falls within the Respondent's duty to bargain.

The Effect of the Method of Scheduling Was Not *De Minimis*

Even if the method of scheduling were to be considered as being within the scope of management rights, the Respondent would still have been obligated to bargain over

[3] Presumably there is already an agreed upon method by which such conflicts are resolved with regard to applications for regular accrued leave.

its impact and implementation pursuant to §7106(b)(2) of the Statute. The effect of the method of scheduling on bargaining unit employees, while not drastic, was above the *de minimis* level. This conclusion is not negated by the fact that most of the effected employees were at least satisfied with their scheduled days off and that all requested changes were made. It is not unreasonable to assume that at least some employees, when presented with even a tentative schedule, would be reluctant to "rock the boat" by requesting changes which would require extra effort by their supervisors and which might impact on the schedules of their coworkers. Thus, there is a demonstrable difference between the mere acceptance of an assigned day off and the opportunity to express a choice.

After careful consideration of the evidence and post hearing briefs, I have concluded that the Respondent violated §§7116(a)(1) and (5) of the Statute by implementing a change in the customary method of scheduling days off without having afforded the Union the opportunity to negotiate. Accordingly, I recommend that the Authority issue the following order:

ORDER

IT IS HEREBY ORDERED that, pursuant to §2423.41(c) of the Rules and Regulations of the Federal Labor Relations Authority and §7118(a)(7) of the Federal Service Labor-Management Relations Statute ("Statute"), the Department of the Air Force, Randolph Air Force Base, San Antonio, Texas:

1. Cease and desist from:

(a) Changing conditions of employment for nonappropriated fund employees ("employees") in the collective bargaining unit by scheduling awarded time off without such scheduling having first been requested by the effected employees and without providing the American Federation of Government Employees, Local 1840, AFL-CIO ("Union") with prior notice of such proposed changes and the opportunity to negotiate concerning the changes.

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

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

(a) Notify the Union of any proposed changes in the procedures for allowing employees to utilize time off awards.

(b) Post at all facilities where employees are located at Randolph Air Force Base 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 Base Commander and posted and maintained for 60 consecutive days thereafter in conspicuous places, including all bulletin boards and other places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that such Notices are not altered, defaced or covered by other material.

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

Issued, Washington, DC, March 26, 2002.

_____
PAUL B. LANG
Administrative Law Judge

NOTICE TO ALL NONAPPROPRIATED

FUND EMPLOYEES IN THE

COLLECTIVE BARGAINING UNIT

POSTED BY ORDER OF THE

FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the Department of the Air Force, Randolph Air Force Base, San Antonio, Texas, has violated the Federal Service Labor-Management Relations Statute and has ordered us to post and abide by this Notice.

We hereby notify all nonappropriated fund employees in the bargaining unit that:

WE WILL NOT change conditions of employment for nonappropriated fund employees ("employees") in the collective bargaining unit by scheduling awarded time off without such scheduling having first been requested by the effected employees and without providing the American Federation of Government Employees, Local 1840, AFL-CIO ("Union") with prior notice of such proposed changes and the opportunity to negotiate concerning the changes.

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

WE WILL notify the Union of any proposed changes in the procedures for allowing employees to utilize time off awards.

(Respondent/Activity)

Date: By:
(Signature) (Title)

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

If employees have any questions concerning this Notice or compliance with any of its provisions, they may communicate directly with the Regional Director for the Federal Labor Relations Authority, San Francisco Regional Office, whose address is: 901 Market Street, Suite 220, San Francisco, CA 94103-1791, and whose telephone number is: 415-356-5000.

CERTIFICATE OF SERVICE

I hereby certify that copies of this DECISION issued by PAUL B. LANG, Administrative Law Judge, in Case No. DA-CA-01-0438, were sent to the following parties in the manner indicated:

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

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Dated: March 26, 2002

Washington, DC