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

U.S. DEPARTMENT OF THE AIR FORCE AIR FORCE MATERIAL COMMAND OGDEN AIR LOGISTICS CENTER HILL AIR FORCE BASE, UTAH Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO, LOCAL 1592 Charging Party	Case No. DE-CA-01-0749

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 her 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 **OCTOBER 15, 2002**, and addressed to:

Office of Case Control
Federal Labor Relations Authority
607 14th Street, NW, Suite 415
Washington, DC 20424

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SUSAN E. JELEN
Administrative Law Judge

Dated: September 13, 2002

Washington, DC

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

MEMORANDUM DATE: September 13, 2002

TO: The Federal Labor Relations Authority

FROM: SUSAN E. JELEN
Administrative Law Judge

SUBJECT: U.S. DEPARTMENT OF THE AIR FORCE
AIR FORCE MATERIAL COMMAND
OGDEN AIR LOGISTICS CENTER
HILL AIR FORCE BASE, UTAH

Respondent

and Case No. DE-CA-01-0749

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, AFL-CIO, LOCAL 1592

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

OALJ 02-58

FEDERAL LABOR RELATIONS AUTHORITY

Office of Administrative Law Judges
WASHINGTON, D.C.

U.S. DEPARTMENT OF THE AIR FORCE AIR FORCE MATERIAL COMMAND OGDEN AIR LOGISTICS CENTER HILL AIR FORCE BASE, UTAH Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO, LOCAL 1592 Charging Party	Case No. DE-CA-01-0749

Cornell Evans, Esq.
For the Respondent

Bruce E. Conant, Esq.
For the General Counsel

Before: SUSAN E. JELEN
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 1592 (Union) against the U.S. Department of the Air Force, Air Force Material Command, Ogden Air Logistics Center, Hill Air Force Base, Utah (Respondent), as well as a Complaint and Notice of Hearing issued by the Regional Director of the Denver Region of the Federal Labor Relations Authority (FLRA). The complaint alleged that the Respondent violated § 7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute, 5 U.S.C. § 7101, *et seq.* (Statute), on or about May 14, 2001, by changing conditions of employment with respect to implementing the use of a "Threat Assessment Team" without affording the Union notice and an opportunity to bargain.

A hearing in this matter was held in Ogden, Utah, on December 19, 2001. The parties were represented and afforded a full opportunity to be heard, adduce relevant evidence, examine and cross-examine witnesses and file post-hearing briefs. Both the General Counsel and the Respondent filed timely briefs.[1]

Based on the entire record, including my observation of the witnesses and their demeanor, I make the following findings of fact, conclusions of law and recommendations.

Statement of the Facts

Background Information

It is undisputed that the American Federation of Government Employees (AFGE) Council 214 is the exclusive representative of a unit that includes employees of the Respondent and that the Union is an agent of Council 214. G.C. Exh. 1(b) and (d). At the times material to the complaint in this case, Kevin Fornelius served as Executive Vice President of the Union. (Tr. 12; 63)

In early February 2001, bargaining unit employee "A" was involved in an incident of alleged domestic violence at his home off base.[2] (Tr. 16, 84) On or about February 20, 2001, "A's" supervisor notified "A" by letter that management had some concerns about him becoming violent on base. (Tr. 15) "A" was placed on administrative leave.[3] (Tr. 16, 84)

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[1] At the conclusion of the General Counsel's case at the hearing, the Respondent filed a motion for summary judgement, which I took under advisement, and in its brief, renewed that motion. The motion is denied. Although there were very few disputes as to facts that emerged from the testimony of the witnesses for both parties, this was not clear until after the testimony of all witnesses. Furthermore, the testimony of those witnesses was necessary to establishing facts regarding the purpose, function and composition of the Threat Assessment Team, which was a central issue in this case. Additionally, I find that disposition of this case was not limited to deciding a question of law.

[2] I have used "A" rather than the employee's name to avoid publicizing his identity.

[3] Fornelius stated that while "A" was on administrative leave, he lost opportunities to earn overtime compensation. (Tr. 16)

At some point in May 2001, Fornelius received a note from Union President Troy Tingley telling him to attend a meeting. (Tr. 14) The note did not provide much information regarding the purpose of the meeting but mentioned "A's" name. (Tr. 14) Fornelius was aware of "A's" recent problems stemming from the domestic incident and had represented him in the past in a disciplinary matter. (Tr. 14-17) As it developed, the meeting was a Threat Assessment Team (TAT) meeting. Prior to being called to the meeting, Fornelius had never heard of the TAT but was given some documents that described it and its functions. (Tr. 13, G.C. Exh. 2, 3 and 4)

The TAT is not a standing committee but is a group made up of varying individuals that is activated on an as needed basis to deal with instances of violent, aggressive, threatening or bizarre behavior. (G.C. Exhs. 2 and 3) The TAT is responsible for assessing the seriousness of any risk or potential risk posed by the behavior and developing options to address or respond to the risk. (G.C. Exhs. 2 and 3) Put another way, the thrust of TAT meetings is to develop a consensus on whether the behavior poses a threat and recommendations on how to respond. (Tr. 75) A TAT can consist of relevant supervisors and other managers; the Employee Assistance Program (EAP) coordinator; and representatives of the Staff Judge Advocate Office, employee relations office, occupational medical services, security police and chaplain's office. (G.C. Exhs. 2 and 3) The EAP coordinator usually serves as the coordinator of the TAT. (G.C. Exhs. 2 and 3) One of the documents given Fornelius stated that "if desired," a Union representative may be included on a TAT. (G.C. Exh. 3)

According to the undisputed testimony of Donald Holman, the Chief of the Labor Employee Sections at the Respondent, TAT's or functionally equivalent groups have been meeting as long as he's "been in business," i.e, since 1989-90. (Tr. 72) Holman estimated that he attended two or three such meetings per year. (Tr. 74)

Both Fornelius and Holman attended the TAT meeting in May 2001. (Tr. 18-19) According to Fornelius' unrebutted testimony, the other attendees at the meeting were: Dr. Lauren Lewis, an employee in Occupational Medical Services; Connie Haney, the EAP coordinator; Elise Kidd, an employee relations specialist; Julie Winder, an employee relations liaison; Norma Opheikens, "A's" first-line supervisor; Budd Heslop, a Division chief who is "A's" third line supervisor; Lt. Col. Castillo, a deputy division chief; Gerald Berterni, a branch chief; Col. Zahner, who was from the family

services division of mental health[4]; a sergeant from the security police whose name Fornelius did not know; and someone from the Office of Special Investigations whose name Fornelius did not know. (Tr. 18-22)

Fornelius provided the following account of the meeting. Holman, the only other witness at the hearing, "generally agreed" with Fornelius's description of what occurred at the meeting. (Tr. 88) The meeting began with Dr. Lewis relating that there had been a domestic violence incident off-base that involved "A," weapons, and children. (Tr. 23) Lewis stated that he was concerned that "A" might bring violence into the workplace. (Tr. 23) Lewis told the group that he recommended that "A" see Haney to obtain some stress management courses or alcohol rehabilitation treatment through her office. (Tr. 23) Lewis reported that he had directed "A" to obtain a psychological evaluation from his personal medical practitioner and gave "A" four or five questions that "A" was supposed to take to his practitioner and have answered. (Tr. 30-31) Dr. Zahner informed the group that psychological evaluations could be very expensive, costing anywhere between $1,500 and $2,500. (Tr. 31) Fornelius opined that "A" couldn't afford to pay for the psychological evaluation. (Tr. 30) Heslop commented that "A" had been on administrative leave for approximately 500 hours; he was tired of paying "A" to sit at home and do no work; and he would pay for "A's" psychological evaluation. (Tr. 31)

Haney confirmed that "A" had met with her but described him as extremely uncooperative. (Tr. 23-24) Specifically, Haney referred to "A's" action of refusing to sign some forms or talk to her on advice of his attorney. (Tr. 24) Kidd reported to the group that "A" had been arrested on February 9 and the police report of his arrest showed discrepancies between the statements made by "A" and other individuals. (Tr. 24-25) Kidd opined that "A" must be a liar. Kidd read the police report to the group but did not pass out copies. (Tr. 25) Kidd mentioned that once when "A" was on TDY (temporary duty), he had been accused of some off-duty violent conduct that resulted in a proposed suspension, which had been "resolved" through a third-party decision. (Tr. 25) In response to Kidd's comments, Fornelius told the group that he thought it was improper to raise the information about the proposed suspension because an arbitrator had found there was no just cause for the suspension and the suspension was to have been expunged from "A's" records. (Tr. 25)

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[4] It was Fornelius' understanding that Col. Zahner was a psychiatrist. (Tr. 21, 29-30)

During the meeting, Holman mentioned that if "A" could be medically disqualified from his position, he could be placed on enforced leave and asked Dr. Lewis where the "SF-78" was.[5] (Tr. 26-27) Norma Opheikens reported that subsequent to his arrest, "A" called her at home and threatened her. (Tr. 27) When Fornelius questioned her on this point, Opheikens clarified that "A" was not threatening her with bodily harm but was threatening to take administrative action if she refused to give him copies of his records. (Tr. 27-28) Opheikens also stated that "A's" co-workers felt threatened but when pressed by Fornelius conceded that "A" had not made specific threats of physical harm but insisted that his co-workers felt intimidated by "A". (Tr. 28) Heslop interjected that "A" had been threatening his co-workers and that management had not collected statements from them because it was concerned that the Union might obtain them and inform "A" of the identities of the employees which might lead to "A" retaliating against them. (Tr. 28)

The sergeant from the Security Police commented that it appeared that the group had significant concerns about "A" being violent in the workplace and asked why they had not taken action to officially bar him from the base. (Tr. 29) Opheikens and Heslop responded that they felt that unofficially barring him from the base was adequate. (Tr. 29) Col. Zahner commented that he didn't understand why proceedings to bar "A" hadn't been instituted. (Tr. 29)

Fornelius's impression was that two recommendations emerged from the meeting: (1) bar "A" from the base and (2) medically disqualify "A" from his position. (Tr. 54) Fornelius conceded that although he perceived that decisions were made at the meeting, no action was actually taken at the meeting. (Tr. 55) At the hearing, Holman stated that action on any recommendations made by the TAT would be taken by others, usually the relevant supervisor. (Tr. 76) Holman stated that where a medical disqualification is involved, the medical personnel would be responsible for taking action; or where debarment from base is involved, the security forces personnel would initiate action and the base commander would take the action. (Tr. 76) Holman acknowledged that it is usually bargaining unit employees whose behavior is the focus of the TAT meetings. (Tr. 91) Holman further stated that in most cases the TAT will either

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[5] The SF-78 was described as a form that the Air Force uses which states the medical requirements for positions. (Tr. 26)

decide on some action that should be taken or may recommend continuing some action that has already begun. (Tr. 91-92)

Subsequent to the TAT meeting, "A" was incarcerated and placed in a work release program. (Tr. 32, 86) At that point, the Respondent put him in a non-pay status. (Tr. 32, 87) According to Holman, this occurred because "A" was not free to undergo a psychological evaluation when he was incarcerated and the Respondent didn't want him at work when it was uncertain of his condition. (Tr. 86) Eventually, "A" underwent a psychological evaluation that the Air Force paid for and in November 2001, upon receipt of the evaluation, Lewis informed "A" that he was recommending that "A" be returned to the full duties of his position. (Tr. 33-34) At the time of the hearing in this case, however, "A" had not been returned to work. (Tr. 34)

In a memo dated May 17, 2001, the Union submitted bargaining proposals regarding the use of threat assessment teams. (G.C. Exh. 5) In that memo, the Union advised the Respondent that the development and implementation of such teams had recently come to its attention. (G.C. Exh. 5) There was no response to the Union's request to bargain. (Tr. 44, 95) There is no evidence that the Union knew of the existence of TAT prior to Fornelius being invited to attend the May 2001 meeting concerning the "A" situation.

Discussion

Positions of the Parties

General Counsel

Counsel for the General Counsel contends that Respondent violated section 7116(a)(1) and (5) by implementing the use of TAT's to address threats of workplace violence posed by bargaining unit employees without providing the Union notice and an opportunity to bargain.

Preliminarily, the General Counsel notes that the Respondent has not asserted timeliness as a defense to the complaint in this case. In this regard, the General Counsel argues that although it was revealed at the hearing that the Respondent may have used TAT's for many years, the Union did not learn of them and had no way of knowing about them until May 2001. The General Counsel argues that in the event that Respondent does raise a claim that the complaint is untimely and that claim is entertained, it should be rejected. The General Counsel contends that the complaint is timely under section 7118(a)(4)(B)(i) because the Respondent's failure to

provide the Union with advance notice when the TAT was first established prevented the Union from filing the charge underlying the complaint in this case in a timely manner. In support of this contention, the General Counsel relies on *Air Force Accounting and Finance Center, Lowry Air Force Base, Denver, Colorado*, 42 FLRA 1226, 1238 (1991) (*Lowry Air Force Base*).

The General Counsel argues the Respondent had a statutory obligation to provide the Union with notice and an opportunity to bargain prior to implementing the TAT. The General Counsel contends that under the test articulated in *Antilles Consolidated Education Association and Antilles Consolidated School System*, 22 FLRA 235, 236 (1986) (*Antilles*), the TAT constituted a condition of employment for bargaining unit employees. In support of this contention, the General Counsel asserts that the work of the TAT almost always involves bargaining unit employees, almost always results in some action that is adverse to the employee involved, and can relate to highly significant aspects of the employment relationship.

The General Counsel asserts that the establishment of the TAT had more than a *de minimis* effect on bargaining unit employees. The General Counsel contends that this is demonstrated by the relationship between the TAT and actions contemplated and taken with respect to "A" along with the manner in which the TAT's proceedings were conducted. With respect to the former, the General Counsel points to the TAT's consensus that "A" should continue to be barred from the base and be medically disqualified from his position and to the fact that "A" had not been allowed to return to work by the time of the proceedings in this case. With respect to the latter, the General Counsel asserts that "A" did not attend the proceedings and was denied the opportunity for any input regarding the information that the TAT relied on in developing its consensus.

The General Counsel argues that although managers have the right to meet and decide what to do concerning potential disciplinary and security problems, they are obligated to negotiate over procedures and appropriate arrangements relating to the exercise of those rights. The General Counsel asserts that the proposals submitted by the Union with its demand to bargain were not meant to be all-inclusive and that they illustrate the types of issues relating to TAT that the Union sought to address and which fall into the area of procedures and appropriate arrangements. The General Counsel further argues that allowing the Union to negotiate regarding the TAT would not

mean the Union would be allowed to negotiate concerning all intra-management meeting where disciplinary or other action against bargaining unit employees is being considered. The General Counsel asserts that in the case of TAT, negotiations are warranted because of its extraordinary nature and relationship to serious and immediate action against employees.

As remedy, the General Counsel requests a cease and desist order that prohibits the Respondent from holding any TAT meetings until bargaining concerning procedures and appropriate arrangements is completed. The General Counsel also requests posting of a notice.

Respondent

At the hearing in this case, the Respondent amended its response to the complaint to admit the allegation that it implemented use of a TAT on or about May 14, 2001, and did so without providing the Union with notice and an opportunity to bargain. The Respondent contends, however, that it had no statutory obligation to bargain over the TAT or equivalent meetings. The Respondent asserts that the label "Threat Assessment Team" is merely the latest name applied to *ad hoc* management gatherings that have occurred for a number of years at which employee threat situations are discussed and recommendations are developed. The Respondent argues that the subject discussed by the TAT at the May 2001 meeting, an employee threat situation, involved internal security, which is a management right under section 7106 of the Statute. The Respondent contends that it has no obligation to bargain regarding the TAT or equivalent management meetings at which discussions and recommendations regarding such right take place. The Respondent asserts that the Union retains all legal and contractual remedies to seek redress for any actions that may emanate from such management meetings.

The Respondent also contends that the TAT was no different from a multitude of other "management-only" meetings at which matters that may affect bargaining unit employees are discussed that occur daily and which the Union has never claimed a right to attend or bargain over.

Analysis

This case concerns the use of a group referred to as the Threat Assessment Team to discuss and deliberate over the course of action that management should take with respect to an employee who was involved in a domestic violence incident while off duty. The evidence establishes

that the purpose of the particular TAT meeting that is the focus of the complaint in this case was to develop a consensus on whether "A" presented a threat to the work place and determine what actions could or should be taken. There is no evidence that the TAT itself took any actions or was empowered to implement actions that it determined were advisable.[6] Rather, the evidence taken as a whole shows that the TAT functions more in an advisory capacity.

As the evidence establishes that similar meetings had occurred in the past, the argument could be made that what occurred on or about May 14, 2001, did not constitute a change in practice. It is, however, uncontested that the Union was neither informed of their existence nor aware of the earlier meetings. Thus, it appears that the Union acted in a timely manner with respect to filing an unfair labor practice charge once it learned of the practice of using such a group to meet and discuss management action with respect to possible threats. *See Lowry Air Force Base*, 42 FLRA at 1238.

The Respondent's assertion that it had no duty to bargain concerning the operation of the TAT simply because it involved the exercise of a management right misses the mark. Respondent's assertion appears to ignore the fact that even assuming that the TAT and like operations involved the exercise of management rights, a bargaining obligation would likely exist. That is, there would still be an obligation to provide notice and an opportunity to bargain over procedures and appropriate arrangements under section 7106(b)(2) and (3) relating to such meetings prior to any change in conditions of employment that had an effect on employees that was more than *de minimis*. *See, e.g., 92 Bomb Wing, Fairchild Air Force Base, Spokane, Washington*, 50 FLRA 701, 704 (1995). Prior to reaching the question of

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[6] The evidence shows that some of the individuals participating on the TAT could have a role in taking actions recommended by the TAT. This role, however, would be in their normal employment capacity rather than in their capacity as a participant on the TAT. For example, one of the medical professionals who participated played a role in their capacity as a medical professional with respect to the subsequent psychological evaluation of "A." Additionally, "A's" supervisors who participated on the TAT could have played a role in their supervisory capacity in taking various actions that flowed from TAT recommendations. What is significant is that the TAT as a body was only involved in evaluating the situation and identifying action(s) that could be carried out as an appropriate response by others than the TAT *qua* TAT.

management rights, however, the issue of whether the use of the TAT constituted a condition of employment within the meaning of section 7103(a)(14) must be addressed. If it does not constitute a condition of employment, there is no obligation to bargain. *See, e.g., Antilles*, 22 FLRA at 236.

The Authority has generally dealt with the issues relating to internal management discussions and deliberations on the basis of management rights and has not addressed the extent to which such discussions and deliberations constitute conditions of employment. *See, e.g., American Federation of Government Employees, Local 1923 and U.S. Department of Health and Human Services, Health Care Financing Administration, Baltimore, Maryland*, 44 FLRA 1405, 1442 (1992) and cases cited therein. In early decisions, the Authority appears to suggest that the negotiability of proposals that insure union input into final agency decisions might depend on whether they preserve the integrity of the process whereby management reaches the decision. *See National Federation of Federal Employees, Local 1431 and Veterans Administration Medical Center, East Orange, New Jersey*, 9 FLRA 998, 1003 n.9 (1982). *See also Maritime/Metal Trades Council and Panama Canal Commission*, 26 FLRA 140, 149 (1987) (in finding a proposal requiring union participation on bodies charged with considering the cost of living allowance, the Authority noted the absence of any assertion that the bodies would encompass "purely intramanagement meetings held for such purposes as formulating management position, strategies, etc."). The Authority did not, however, address the question of whether intramanagement meetings held for such purposes as formulating management positions, strategies, etc., constituted conditions of employment.

In one decision in a negotiability case, the issue of conditions of employment was addressed in conjunction with a proposal relating to the deliberative process leading to the exercise of management rights. One of the proposals considered in that case, *American Federation of Government Employees, AFL-CIO, Local 1738 and Veterans Administration Medical Center, Salisbury, North Carolina*, 27 FLRA 52, 52-54 (1987), provided that the union would be informed if the agency established an investigatory or fact-finding committee affecting bargaining unit employees and that the agency would consider appointing an employee to the committee who was nominated by the union. The agency involved in the case argued that the proposal did not concern conditions of employment of bargaining unit employees. The Authority rejected this argument, stating only that "since this proposal expressly applies only to matters affecting bargaining unit employees it [concerned]

conditions of employment of such employees." *Id.* at 53. This statement is cryptic and its meaning with respect to the extent to which management's internal deliberative process constitutes a condition of employment is unclear.[7] I do not read this summary statement as definitive on the question of whether management's deliberative process by which it formulates strategies, positions, and course(s) of action that it will take vis-a-vis matters affecting bargaining unit employees necessarily constitutes a condition of employment of those employees.

In the absence of any Authority precedent that is precisely on point, I will rely on the analytical framework for determining whether the matter constitutes a condition of employment. Conditions of employment is defined in section 7103(a)(14) of the Statute as "personnel policies, practices, and matters, whether established by rule, regulation, or otherwise, affecting working conditions."[8] In resolving the question of whether a matter concerns conditions of employment, a two-prong test, which was set forth in *Antilles*, is applied. Under the first prong of the test, the question considered is whether the matter pertains to bargaining unit employees. Under the second prong, the question considered is whether the record establishes that there is a direct connection between the matter and the work situation or employment relationship of bargaining unit employees. *See also United States Department of Health and Human Services, Public Health Service, Indian Health Service, Quentin N. Burdick Memorial Health Care Facility, Belcourt, North Dakota*, 57 FLRA No. 190 (57 FLRA 903, 904, 906) (2002).

Applying the first prong of the *Antilles* test, I find that while the subject matter the TAT was addressing clearly pertained to a bargaining unit employee, the question of whether viewed strictly as a process, the TAT itself pertains to bargaining unit employees is not so clear. Insofar as this case is concerned, the TAT was a process for discussing and deliberating over the course of action management should take in response to a bargaining unit

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[7] The remainder of the Authority's discussion was confined to the portion of the proposal that addressed the appointment of a union-nominated employee to the committee. Thus, it is difficult to tell whether this particular statement concerned that same portion of the proposal or the entire proposal.

[8] That section provides certain exceptions to the definition that I do not set out here because they are not relevant to this case.

employee's involvement in a domestic violence incident. I find that the process by which management formulates positions, strategies or actions on matters pertaining to bargaining unit employees does have a relationship to bargaining unit employees, albeit an indirect one and, thus, in the broad sense, satisfies the first prong of the *Antilles* test.[9]

Turning to the second prong, I find that while there may be a direct connection between the subject matter that the TAT deals with and the work situation of unit employees, there is not a direct connection between the latter and the TAT *as a process*. Rather, the connection is an indirect one. The TAT is a vehicle used by management to assist it in making decisions on what actions it should take with respect to an employment-related matter. It is clear that the decisions once made and executed are likely to have a direct effect on bargaining unit employees in their work situation or employment relationship. I do not find, however, that because the end product has a direct connection to the work situation or employment relationship of bargaining unit employees, the means used to develop that end product necessarily has a direct connection. In this case, the evidence shows that the TAT did not authorize or carry out the actions that it recommended. Rather, its role was limited to discussion and deliberation over whether a situation existed that needed action and what action was appropriate. The TAT was at least one step removed from the decision on and implementation of action and, consequently, its effect on the work relationship of bargaining unit employees was indirect.

I do not find the fact that the Union was invited to participate on the TAT changed the essential nature of the group as an advisory body tasked with making recommendations

[9] Clearly, in view of its role as an internal management process, it is likely that some aspects of the TAT as a process would involve directly determining conditions of employment of non-bargaining unit employees and be subject to the analysis that the Authority adopted in response to the court's decision in *United States Department of the Navy, Naval Aviation Depot, Cherry Point, North Carolina v. FLRA*, 952 F.2d 1434 (D.C. Cir. 1992). *See, e.g. American Federation of Government Employees, Local 32 and U.S. Office of Personnel Management, Washington, D.C.*, 51 FLRA 491, 505-08 (1995), *aff'd*, 110 F.3d 810 (D.C. Cir. 1997). I do not find, however, that all aspects of the TAT necessarily would entail directly determinating conditions of employment of non-bargaining unit employees. Consequently, I do not apply the *Cherry Point* analytical framework here.

to management concerning strategies, positions, and actions that it should adopt or take with regard to employee "A's" situation. Also, the Union's participation on the TAT did not change the relationship between the TAT and conditions of employment of bargaining unit employees.

I conclude that the Respondent's action did not violate section 7116(a)(1) and (5) as alleged. I therefore recommend dismissal of the complaint in this case.

It is therefore recommended that the Authority adopt the following order:

ORDER

It is ordered that the complaint be, and hereby, is dismissed.

Issued, Washington, DC, September 13, 2002.

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SUSAN E. JELEN
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of this **DECISION** issued by SUSAN E. JELEN, Administrative Law Judge, in Case No. DE-CA-01-0749 were sent to the following parties:

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