24TH COMBAT SUPPORT GROUP HOWARD AIR FORCE BASE REPUBLIC OF PANAMA Respondent	
and UNLICENSED DIVISION OF DISTRICT NO. 1 - MEBA/NMU Charging Party	Case No. DA-CA-20395

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. § 2423.26(b).

PLEASE BE ADVISED that the filing of exceptions to the attached Decision is governed by 5 C.F.R. §§ 2423.26(c) through 2423.29, 2429.21 through 2429.25 and 2429.27.

Any such exceptions must be filed on or before **AUGUST 28, 1995**, and addressed to:

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

GARVIN LEE OLIVER
Administrative Law Judge

Dated: July 28, 1995
Washington, DC

MEMORANDUM DATE: July 28, 1995

TO: The Federal Labor Relations Authority

FROM: GARVIN LEE OLIVER
Administrative Law Judge

SUBJECT: 24TH COMBAT SUPPORT GROUP
HOWARD AIR FORCE BASE
REPUBLIC OF PANAMA

Respondent

and Case No. DA-CA-20395

UNLICENSED DIVISION OF
DISTRICT NO. 1 - MEBA/NMU

Charging Party

Pursuant to section 2423.26(b) of the Rules and Regulations, 5 C.F.R. § 2423.26(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

24TH COMBAT SUPPORT GROUP HOWARD AIR FORCE BASE REPUBLIC OF PANAMA Respondent	
and UNLICENSED DIVISION OF DISTRICT NO. 1 - MEBA/NMU Charging Party	Case No. DA-CA-20395

James M. Peters
Counsel for the Respondent

Sidney H. Kalban
Counsel for the Charging Party

Joseph T. Merli
Counsel for the General Counsel, FLRA

Before: GARVIN LEE OLIVER
Administrative Law Judge

DECISION

Statement of the Case

The unfair labor practice complaint alleges that Respondent violated section 7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute (the Statute), 5 U.S.C. §§ 7116(a)(1) and (5), when it notified the Charging Party (Union) that it was changing the grievance rights of non-preference eligible excepted service employees and would no longer comply with Articles XXIV and XXV of the collective bargaining agreement with the Union. The complaint alleges that Respondent committed an unfair labor practice by (1) repudiating Articles XXIV and XXV of the collective bargaining agreement, and (2) unilaterally changing conditions of employment without providing the

Union an opportunity to bargain over the substance or the impact and implementation of the change.

Respondent's answer denied any violation of the Statute.

A hearing was held in Panama City, Panama. The Respondent, Union, and the General Counsel were represented by counsel and afforded full opportunity to be heard, adduce relevant evidence, examine and cross-examine witnesses, and file post-hearing briefs. The parties each filed a helpful brief, and the proposed findings have been adopted where found supported by the record as a whole. Based on the entire record,[1] including my observation of the witnesses and their demeanor, I make the following findings of fact, conclusions of law, and recommendations.

Findings of Fact

The Union is the exclusive representative of a unit of employees appropriate for collective bargaining at the Respondent. (G.C. Exh. 1(c) and (f)). Bargaining unit employees are employees of the Department of the Air Force, but are also within the Panama Canal Employment System. (Tr. 83). Included in this unit are employees who are classified under federal personnel law as non-preference eligible excepted service employees, some of whom are citizens of the Republic of Panama and others are U.S. citizens. (Tr. 17, 18).

The Union and Respondent are parties to a collective bargaining agreement which was negotiated in 1983 and was in effect at all relevant times. (Tr. 16; G.C. Exh. 2). The agreement sets forth the negotiated grievance procedure in Article XXIV. It provides that the procedure is the "sole procedure available to unit employees, the Union, and management for resolving complaints or resolving grievances concerning the interpretation or application" of the agreement. The article provides that if the dispute is not resolved in the grievance process, "the Union or Management may refer the matter to arbitration." The arbitration procedure is set out in Article XXV. (G.C. Exh. 2).

Sometime around December 1989 or January 1990 the Union filed a grievance over the removal of Cleovis Madrid, a citizen of the Republic of Panama. Cleovis Madrid was a non-preference eligible excepted service employee working

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[1] Respondent's motion to correct the transcript is granted; the transcript is corrected as set forth therein. Respondent's motion for official notice is granted. The General Counsel's motion to strike is denied.

for Respondent. (Tr. 18). The removal was an adverse action under 5 U.S.C. § 7512. (Res. Exh. 11). The Union grieved the issue of his removal through the negotiated grievance procedure and invoked arbitration after the grievance had been denied at all steps. (Tr. 86-87). The parties selected an arbitrator on February 19, 1991. (C.P. Exh. 1).

Prior to the arbitration, in approximately June or July 1991, Mr. William Van Balzer, the Respondent's Labor Relations Officer, became aware for the first time of two decisions of the Federal Labor Relations Authority, issued May 15, 1990, regarding non-preference eligible excepted service employees. It was common that Mr. Balzer would receive information of this sort long after it had been published. (Tr. 88). Those cases, National Labor Relations Board and National Labor Relations Board Union, 35 FLRA 116 (1990) and Panama Canal Commission and International Association of Firefighters, Local 13, 35 FLRA 1140 (1990), held that non-preference eligible excepted service employees were precluded by law from challenging, through a negotiated grievance procedure, an adverse action set forth in 5 U.S.C. § 7512.[2] Mr. Balzer realized that the cases would have an impact on the bargaining unit, as well as the parties' collective bargaining agreement (Tr. 87-88), including the pending Madrid arbitration (Tr. 91-92).

By letter dated July 12, 1991, Respondent, by Mr. Balzer, advised the Union of the change in the case law and that, because of this change, Respondent would no longer comply with the negotiated grievance and arbitration procedure as it related to non-preference eligible excepted service employees. The Union was also advised that management considered the Madrid grievance closed and would take no further action with respect to the arbitration of that matter.[3] (Tr. 92, 96-97, R. Exh. 1, G.C. Exh. 3).

2
In August 1990 Congress amended that statute to include many non-preference eligible excepted service employees. Pub. L. 101-376, 104 Stat. 461. The amendment, however, excluded non-preference eligible excepted service employees who are aliens or non-citizens of the United States who occupy positions outside the United States. See 5 U.S.C. §§ 5102(c)(11) and 7511(b)(9).

3
In his letter (G.C. Exh. 3), Mr. Balzer mistakenly refers to Articles XXIII and XXIV of the collective bargaining agreement. The relevant provisions are actually found in Articles XXIV and XXV (see G.C. Exh. 2, pp. 35-42; also see Tr. 22, 86, 95).

Although that letter was dated July 12, it was not delivered to the Union until July 26, 1991. It is not uncommon for the Union to receive a letter from management after the date on the letter has passed. (Tr. 19, 20, 47).[4]

On the day he delivered the letter to the Union, Balzer met with Rene Lioeanjie, Union Vice Chairman, Orlando Diaz, Union Representative, and George Grant, Union Organizer and Representative, in Lioeanjie's office and presented the letter. All three Union officers read the letter. (Tr. 23). Upon reading the letter, both Lioeanjie and Diaz made a verbal request to bargain over the impact of the change. They took the position that if the position was legal, there had to be negotiations concerning a substitute procedure. Mr. Diaz also remarked that he was aware of a similar case with the Panama Canal Commission in which an unfair labor practice charge was pending, so Mr. Balzer had better go back and discuss the decision further.[5] (Tr. 23-24, 48-49, 62). Requests to bargain over changes in conditions of employment can be submitted to management either verbally or in writing, there is no set policy or practice requiring one form or the other. (Tr. 25). Balzer responded to the

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Mr. Balzer testified that on July 12, 1991, he brought the letter of that date to the Union's office and gave it to the receptionist, who then signed "Lidia" at the bottom of his copy of the letter to acknowledge receipt. (Tr. 96-98; Res. Exh. 1). I credit the testimony of Rene Lioeanjie, Union Vice Chairman, and Orlando Diaz, Union Representative, that the letter was delivered on July 26, 1991, and that of Lidia Gomez, Union receptionist, who denied that the alleged signature was hers and credibly explained why. (Tr. 118-31; G.C. Exh. 5).

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Mr. Balzer testified that at the July 12 meeting there was no mention - by any of the parties - of any bargaining over the impact and implementation of the change, nor did the Union representatives offer any proposals. According to Mr. Balzer, the Union only requested to proceed further with Mr. Madrid's case. (Tr. 98). I credit the contrary testimony of the three Union representatives regarding the Union's request to bargain. As the Union points out, the Respondent appears to be arguing that because the Union emphasized pursuing the Madrid arbitration, it was not seeking to negotiate on the impact and implementation of the unilateral change. It is logical that the Union would refer repeatedly to Mr. Madrid's situation. It was the only arbitration then pending (Tr. 42) and, as a practical matter, any resolution reached concerning his use of the contractual grievance procedure could be applied to all other similarly-placed unit employees.

Union's request to bargain by stating that he could not grant their request because "that's the law." He did agree to return to his office, check with his legal officer, and then get back to Lioeanjie in a few days. (Tr. 24, 49, 62). Balzer then left the Union office. At that point the Union faxed a copy of Balzer's letter to the Union's Counsel, Sidney Kalban, for his advice and guidance. (G.C. Exh. 5).

Balzer spoke with Lioeanjie by telephone on July 31, 1991. Balzer stated that management's position remained unchanged and it considered the matter closed. (Tr. 25, 49, 99; Res. Exh. 4). By letter to Mr. Balzer dated August 2, 1991, Mr. Lioeanjie referenced their telephone conversation of July 31, 1991, regarding the July 12, 1991 letter, and Mr. Balzer's statement that management would not go through with Mr. Madrid's case on the advice of counsel. Mr. Lioeanjie informed Mr. Balzer that the Union intended to file an unfair labor practice charge. (Res. Exh. 4). The charge was ultimately filed on January 21, 1992. (G.C. Exh. 1(a)).

The change had an adverse impact on non-preference eligible excepted service employees in the bargaining unit inasmuch as they could no longer grieve adverse actions or performance based actions through Articles XXIV and XXV of the contract regardless of citizenship. (Tr. 27-28; G.C. Exh. 3).

By letter dated September 6, 1991, Respondent advised Arbitrator Samuel J. Nicholas, Jr., in response to his letter of July 23, 1991, that the Madrid case was closed and Respondent "will not entertain an arbitration at this location unless directed by the Federal Labor Relations Authority." (G.C. Exh. 4).

Provisions of the Collective Bargaining Agreement Dealing With Consultation and Negotiation

The parties' collective bargaining agreement was negotiated in 1983 and was in effect at all relevant times in this case. (Tr. 16; G.C. Exh. 2). Article II - Provisions of Law and Regulations - and Article III - Matters Appropriate for Consultation and Negotiation - provide, in relevant part, as follows:

ARTICLE II

PROVISIONS OF LAW AND REGULATIONS

Section 1. It is agreed and understood by the Employer and the Union that in the administra-

tion of all matters covered by this Agreement, officials and employees are governed by existing and future laws and regulations of appropriate authorities, including policies set forth in the Federal Personnel Manual, as applicable, and published agency policies and regulations. The fact that the Union agrees to published agency policies and regulations in existence at the time the agreement is approved, does not preclude the Union from meeting and conferring, upon request, on any agency policy and regulation, nor is the Union constrained from challenging any published agency policy, regulation, or interpretation thereof through lawful channels.

ARTICLE III

MATTERS APPROPRIATE FOR CONSULTATION AND NEGOTIATION

Section 1. Matters appropriate for consultation and negotiation between the parties are all personnel policies, practices, programs, procedures related to working conditions and/or other matters affecting general working conditions affecting bargaining unit employees which are within the discretion of the Employer.

Section 2. The Employer recognizes that the Union has the right to meet and confer on changes to personnel policies, practices, or procedures which impact upon the working conditions of bargaining unit employees. The right to meet and confer will be governed by the provisions of Title 5, United States Code, Chapter 71, the Federal Service Labor-Management Relations Statute. However, such obligation does not include matters with respect to the mission of the Air Force, its budget, its organization, the number of employees, and the number, types and grades of positions or employees assigned to an organizational unit, work project or tour of duty, the technology of performing its work, or its internal security practices.

. . . .

> Section 4. Disputes arising from the failure of the parties to comply with the provisions of this article shall be processed utilizing the negotiated Grievance Procedure.

The Respondent maintains a file relating to the history of the negotiation of the contract in 1983. This file consists of tabbed sections which its custodian, Ms. Debbie Brooks (the Respondent's current labor relations officer), testified appeared to correspond to discrete portions of the negotiation process. (Tr. 64-78).

Ms. Brooks testified that the documents under Tab 1 of the file appeared to be the Union's initial contract proposals. The documents under the tab were topped with a cover letter signed by Mr. Meyer Bernstein, the Union's Chief Negotiator. (Tr. 68-70; Res. Exh. 6). Regarding Section 4 of Article III, the Union's proposal provided that "[s]hould the Union and Management be unable to reach agreement, the Union may file a grievance on the proposed change." The documents under Tab 2 appeared to be Management's response to the Union's proposal. (Tr. 70-71; Res. Exh. 7). That response specifically omitted the entirety of the Union's proposed Section 4 and proposed that disputes should be processed utilizing unfair labor practice procedures.

Ms. Brooks testified that the documents under Tab 3 of the file appeared to be the ground rules for the negotiation of the contract; the documents relating to substantive negotiations resumed at Tab 4. (Tr. 71-72). Relative to Section 4 of Article III, this iteration left intact the apparent management proposal found under Tab 2. (Tr. 72; Res. Exh. 8). However, in the language found under Tab 5, the proposed phrase "utilizing Unfair Labor Practice procedures" is lined out and replaced, in handwriting, with "in accordance with statues [sic], law, and regulation." (Tr. 72; Res. Exh. 9). Finally, under Tab 6, the last set of documents to address the provision (Tr. 73-74; Res. Exh. 10), the entire last phrase is "whited-out" and replaced with typewritten language. The whole of Section 4 reads as follows (with the italicized words representing those which appear to be typewritten):

> Disputes arising from the failure of the parties to comply with the provisions of this article shall be processed *utilizing negotiated grievance procedure.*

An unsigned memo found in the file purportedly details the negotiation history. (Res. Exh. 5). The document summarizes (on the fourth unnumbered page) a negotiating

session held on 13 October 1983. It identifies the "[c]ontract under negotiation" as being in "Atch 5" (undoubtedly the "Tab 5" which is also Res. Exh. 9). Relative to Article III, Section 4, it states, "Delete 'utilizing Unfair Labor Practice procedures' and add 'in accordance with statutes, law and regulation'." Later (on the sixth unnumbered page), it cites certain "changes to the contract [which] were requested and approved by Robert Cooney, Management, and Orlando Diaz, Union NMU." Regarding the section at issue, the document directs, "Delete 'in accordance with statute, law, and regulation' and add 'utilizing negotiated grievance procedures.'"

Orlando Diaz, Union representative, testified that he participated in the negotiation of Article III; that the discussion centered on bargaining management changes regarding such matters as leave and check cashing facilities, in which case the Union could file a grievance under Section 4 in case of a dispute, but that there was no discussion whatsoever about repudiation or that Section 4 would have to be used by the Union in the event management repudiated sections of the contract. (Tr. 116-25).

Discussion and Conclusions

The issues presented for determination are (1) whether the unfair labor practice charge was timely filed, (2) whether Respondent repudiated Articles XXIV and XXV of the agreement in violation of section 7116(a)(1) and (5) of the Statute, (3) whether the filing of the unfair labor practice charge with respect to a failure to bargain was expressly precluded by the parties' collective bargaining agreement, (4) whether Respondent unilaterally changed conditions of employment without providing the Union an opportunity to bargain over the substance or the impact and implementation of the change in violation of section 7116(a)(1) and (5) of the Statute.

Timeliness of Charge

Based on the credibility determinations made above, I conclude that Respondent notified the Union of the change on July 26, 1991. Furthermore, it was not until July 31, 1991, that Mr. Balzer notified Mr. Lioeanjie, through their telephone conversation, that the Respondent was actually going to carry through on its "intent" to eliminate, unilaterally, the grievance/arbitration procedures for the non-preference eligible excepted service employees. Hence, it was not until July 31, 1991, that the basis of the charge ripened. Accordingly, the charge, dated January 16, 1992, and received by the Region on January 21, 1992, was filed

within six months of the occurrence of the unfair labor practice and was timely. 5 U.S.C. § 7118(a)(4)(A).

Alleged Repudiation

In Department of Defense, Warner Robins Air Logistics Center, Robins Air Force Base, Georgia, 40 FLRA 1211 (1991) (Warner Robins), the Authority noted that "not every breach of contract is necessarily a violation of the Statute, but that the repudiation of an agreement does violate the Statute." 40 FLRA at 1218. The Authority stated that "the nature and scope of the failure or refusal to honor an agreement must be considered, in the circumstances of each case, in order to determine whether the Statute has been violated." Id. The Authority found a violation of the Statute in Warner Robins, where management refused to assign the union's designated negotiator to the day shift, admittedly a breach of the parties' ground rules agreement, because the refusal to comply with the agreement "went to the heart of the agreement and the collective bargaining relationship itself and, therefore, amounted to a repudiation of the obligation imposed by the agreement's terms." Id.

Respondent's action in July 1991 of terminating the negotiated grievance and arbitration procedure as it related to non-preference eligible excepted service employees was consistent with law and regulation insofar as it applied to Mr. Madrid and other aliens or noncitizens of the United States who occupy positions outside the United States, employees expressly excluded from the Civil Service Due Process Amendments of 1990, Pub. L. No. 101-376, 104 Stat. 461 (1990). See 5 U.S.C. § 5102(c)(11) and 7511(b)(9).

The General Counsel and the Charging Party argue that the Panama Canal Act of 1979 mandates that United States governmental agencies treat their citizen and noncitizen civilian employees in a nondiscriminatory fashion with regard to employment standards and wages. See 22 U.S.C. § 3656. Counsel argue that the negotiated grievance procedure is one of those standards. This argument cannot prevail over the specific provisions of 5 U.S.C. § 5102(c)(11) and 7511(b)(9). See Panama Canal Commission and Panama Area Metal Trades Council, 43 FLRA 1483 (1992), in which a similar argument was made.

Respondent's action was not consistent with law and regulation as it applied to other unit employees who were entitled to the benefits of the Due Process Amendments which extended to certain non-preference eligible excepted service employees, with other exceptions not relevant here, the statutory protections and rights provided to employees in

the competitive service for appealing adverse actions. See 5 U.S.C. § 7511(a)(1)(C). Without question, any otherwise qualified United States citizen in the bargaining unit is now entitled to use the negotiated grievance procedure including binding arbitration, and was so entitled in July 1991. Respondent's action in terminating the right of such employees to grieve adverse or performance based actions through the negotiated grievance and arbitration procedure constituted more than a mere breach of the terms of the parties' agreement, but, as in Warner Robins, "went to the heart of the agreement[.]" Id. at 1220. The action amounted to a repudiation of the obligations imposed by the terms of the collective bargaining agreement in violation of section 7116(a)(1) and (5).

Duty to Bargain

When management is required to correct an unlawful practice once discovered, there is nonetheless an obligation to give notice of the change and, upon request, bargain to the extent consonant with law and regulation concerning the impact of the required change and, if possible, concerning its implementation. See Portsmouth Naval Shipyard, Portsmouth, New Hampshire, 49 FLRA 1522, 1527-28 (1994) and Department of Interior, Geological Survey Conservation Division and AFGE Local 3457, 9 FLRA 543 (1982).

The record reflects that the Union, upon receiving notice of the change, requested to bargain on its impact and implementation, but the Respondent failed to do so. Respondent contends that, under the parties' collective bargaining agreement, any dispute "arising from the failure of the parties to comply with the provisions of this article [matters appropriate for consultation and negotiation] shall be processed utilizing the negotiated Grievance Procedure," and the parties thereby clearly and unmistakably waived their respective rights to file an unfair labor practice charge in the case of such a dispute.

Under the Authority's decision in Department of Health and Human Services, Social Security Administration, 47 FLRA 1206, 1211 (1993), it is necessary to interpret the provisions of the parties' agreement that are alleged to constitute such a waiver in order to resolve the allegations of the unfair labor practice complaint. A union's waiver of a statutory right must be clear and unmistakable. Missouri National Guard, Office of the Adjutant General, Jefferson City, Missouri, 31 FLRA 1244, 1247-48 (1988).

The parties in Article III have created a contractual right to "meet and confer," have set forth matters appropriate for such "consultation and negotiation," and

have stated that the "right to meet and confer will be governed by the provisions of Title 5, United States Code, Chapter 71, the Federal Service Labor-Management Relations Statute." They have also stated in section 4 that "Disputes arising from the failure of the parties to comply with the provisions of this article shall be processed utilizing the negotiated Grievance Procedure."

I agree with Counsel for the General Counsel that these express provisions and their bargaining history, as revealed in the business records of Respondent and set forth above, create a contractual right separate from the Union's statutory right to negotiate over changes in conditions of employment. There is no express waiver of the right to utilize the statutory unfair labor practice procedure in the event of a failure to bargain in good faith as required by the Statute and no indication that the provisions are to supplant the statutory provisions. Article II, Section 1 also provides that "the Union is [not] constrained from challenging any published agency policy, regulation, or interpretation thereof through lawful channels."

Article III, Section 4 states that disputes arising "from the failure of the parties to comply with the provisions of this article shall be processed utilizing the negotiated Grievance procedure." The use of the word "shall" "[a]s used in statutes, contracts, or the like . . . is generally imperative or mandatory." Black's Law Dictionary 1375 (6th ed. 1990). But even giving the word its legal and ordinary meaning, this provision merely requires that a failure to comply "with the provisions of this article" shall be processed utilizing the negotiated grievance procedure. The dispute is described in terms of a failure to comply with a contractual, not a statutory violation, even though the parties specifically incorporated in the agreement references to rights under the Statute. See American Federation of Government Employees, Local 3937 and U.S. Department of Health and Human Services, Social Security Administration, Region X, Auburn Teleservice Center, 49 FLRA 785, 79-91 (1994).

Respondent's failure to bargain over the impact and implementation of the change constituted a violation of section 7116(a)(1) and (5) of the Statute, as alleged, irrespective of whether the refusal might also constitute a breach of the parties' agreement. Cf. Department of Defense Schools, 12 FLRA 43, 45 n.5 (1983).

In Internal Revenue Service, Washington, D.C., 47 FLRA 1091 (1993), the Authority noted that the Statute's requirement that every collective bargaining agreement contain a negotiated grievance procedure culminating in

binding arbitration does not remove the choice which section 7116(d) of the Statute accords--that is, the discretion of an aggrieved party to pursue issues which can be raised under a grievance procedure either under that procedure or as an unfair labor practice. The Authority noted, however, that, as in this case, it is necessary to determine the effect of contract rights on statutory rights by determining the meaning of any contract provision raised as an affirmative defense to an alleged violation of the Statute.[6]

Based on the above findings and conclusions, it is recommended that the Authority issue the following Order:

ORDER

Pursuant to section 2423.29 of the Federal Labor Relations Authority's Rules and Regulations and section 7118 of the Statute, it is hereby ordered that 24th Combat Support Group, Howard Air Force Base, Republic of Panama shall:

1. Cease and desist from:

(a) Failing and refusing to comply with Articles XXIV and XXV of its collective bargaining agreement with the Unlicensed Division of District No. 1, MEBA/NMU, the exclusive representative of certain of its employees, with respect to the grievances of certain non-preference eligible excepted service employees, including United States citizens, to the extent consistent with law and regulation.

(b) Unilaterally changing the grievance rights of certain non-preference eligible excepted service employees to the extent consistent with law and regulation without providing the Unlicensed Division of District No. 1, MEBA/NMU, the exclusive representative of certain of its employees, an opportunity to bargain over the impact and implementation of the change.

(c) In any like or related manner interfering with, restraining or coercing its employees in the exercise of their rights assured by the Federal Service Labor-Management Relations Statute.

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6 The Union emphasizes that it tried to proceed with Mr. Madrid's arbitration and possibly resolve the issue in that forum, but Respondent adamantly refused to do so. (G.C. Exh. 4; Charging Party's Brief at 12, n.10.)

2. Take the following affirmative action in order to effectuate the purposes and policies of the Federal Service Labor-Management Relations Statute:

(a) Comply with Articles XXIV and XXV of its collective bargaining agreement with the Unlicensed Division of District No. 1, MEBA/NMU, the exclusive representative of certain of its employees, with respect to the grievances of certain non-preference eligible excepted service employees, including United States citizens, to the extent consistent with law and regulation.

(b) Notify the Unlicensed Division of District No. 1, MEBA/NMU, the exclusive representative of certain of its employees, that it will negotiate in good faith concerning the impact and implementation of changes required by law and regulation concerning the grievance rights of certain non-preference eligible excepted service employees, and take such steps as are necessary to do so pursuant to section 7114(b) of the Statute.

(c) Reinstate any grievances filed, or attempted to be filed, by the Union after July 26, 1991 on behalf of certain non-preference eligible excepted service employees, including United States citizens, which should have been processed under Articles XXIV and XXV of its collective bargaining agreement consistent with law and regulation.

(d) Post at its facilities, 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 Commanding Officer, and shall be posted and maintained for 60 consecutive days thereafter, in conspicuous places, including all bulletin boards and other places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that such Notices are not altered, defaced, or covered by any other material.

(e) Pursuant to section 2423.30 of the Authority's Rules and Regulations, notify the Regional Director of the Dallas Region, Federal Labor Relations Authority, as to what steps have been taken to comply.

Issued, Washington, DC, July 28, 1995

GARVIN LEE OLIVER
Administrative Law Judge

NOTICE TO ALL EMPLOYEES

AS ORDERED BY THE FEDERAL LABOR RELATIONS AUTHORITY

AND TO EFFECTUATE THE POLICIES OF THE

FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS STATUTE

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT fail and refuse to comply with Articles XXIV and XXV of our collective bargaining agreement with the Unlicensed Division of District No. 1, MEBA/NMU, the exclusive representative of certain of our employees, with respect to the grievances of certain non-preference eligible excepted service employees, including United States citizens, to the extent consistent with law and regulation.

WE WILL NOT unilaterally change the grievance rights of certain non-preference eligible excepted service employees to the extent required by law and regulation without providing the Unlicensed Division of District No. 1, MEBA/NMU, the exclusive representative of certain of our employees, notice and an opportunity to bargain over the impact and implementation of such change.

WE WILL NOT in any like or related manner interfere with, restrain or coerce our employees in the exercise of their rights assured by the Federal Service Labor-Management Relations Statute.

WE WILL comply with Articles XXIV and XXV of our collective bargaining agreement with the Unlicensed Division of District No. 1, MEBA/NMU, the exclusive representative of certain of our employees, with respect to the grievances of certain non-preference eligible excepted service employees, including United States citizens, to the extent consistent with law and regulation.

WE WILL notify the Unlicensed Division of District No. 1, MEBA/NMU, the exclusive representative of certain of our employees, that we will negotiate in good faith concerning the impact and implementation of changes required by law and regulation concerning the grievance rights of certain non-preference eligible excepted service employees.

WE WILL reinstate any grievances filed, or attempted to be filed, by the Union after July 26, 1991 on behalf of certain non-preference eligible excepted service employees,

including United States citizens, which should have been processed under Articles XXIV and XXV of our collective bargaining agreement consistent with law and regulation.

(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 of the Federal Labor Relations Authority, Dallas Region, whose address is: Federal Office Building, 525 Griffin Street, Suite 926, Dallas, Texas 75202-1906, and whose telephone number is (214) 767-4996.

CERTIFICATE OF SERVICE

I hereby certify that copies of this DECISION issued by GARVIN LEE OLIVER, Administrative Law Judge, in Case No. DA-CA-20395, were sent to the following parties in the manner indicated:

CERTIFIED MAIL:

James M. Peters, Captain, USAF
Labor Counsel
Central Labor Law Office
Air Force Legal Services Agency
1501 Wilson Boulevard, 7th Floor
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Sidney H. Kalban, Esq.
District No. 4 -- NMU/MEBA (AFL-CIO)
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Joseph T. Merli, Esq
Counsel for the General Counsel
Federal Labor Relations Authority
Federal Office Building
525 Griffin Street, Suite 926, LB 107
Dallas, TX 75202-1906

REGULAR MAIL:

Chief, Labor Relations
Department of the Air Force
24th Combat Support Group
APO Miami, FL 34001-5000

Dated: July 28, 1995
Washington, DC