UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
OFFICE OF ADMINISTRATIVE LAW JUDGES
WASHINGTON, D.C. 20424

DEPARTMENT OF THE AIR FORCE, OGDEN AIR LOGISTICS CENTER, HILL AIR FORCE BASE, UTAH Respondent	
and	Case No. 7-CA-60308
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1592 Charging Party	

Eileen B. Quigley
and
Joseph Swerdzewski, Esqs.
For the General Counsel

Clare Jones, Esq.
For the Respondent

Before: ELI NASH, JR.
Administrative Law Judge

DECISION

Statement of the Case

This is a proceeding under the Federal Service Labor-Management Relations Statute, 92 Stat. 1191, 5 U.S.C. section 7101 et seq., (hereinafter called the Statute). It was instituted by the Regional Director of Region VII based upon an unfair labor practice charge filed on April 17, 1986 and amended on July 29, 1986 by the American Federation of Government Employees, Local 1592, (herein called the Union), against the Department of the Air Force Ogden Air Logistics Center, Hill Air Force Base, Utah, (herein called the

Respondent). The Complaint alleged, in essence, that Respondent violated section 7116(a)(1), (5) of the Statute by changing Saturday starting and quitting times of the Tuesday through Saturday uncommon tour in the DSFPB, Directorate of Distribution (herein called DSFPB) without bargaining with the Union.

Respondent's Answer denied the commission of any unfair labor practices.

A hearing was held before the undersigned in Ogden, Utah, at which time the parties were represented by counsel and afforded full opportunity to adduce evidence and to call, examine, and cross-examine witnesses and to argue orally. Timely briefs were filed by the Respondent and the General Counsel and have been duly considered.1/

Upon consideration of the entire record in this case, including my observation of the witnesses and their demeanor, I make the following findings of fact, conclusions of law, and recommendation.

Findings of Fact

1. At all times material herein, the Union has been the exclusive bargaining representative of all unit employees located in DSFPB.

2. At all times material to this case, the Union and Respondent have been parties to a Master Labor Agreement and Local Supplemental Agreement applicable to all unit employees located at the Hill Air Force Base location.

3. DSFPB is the Central Receiving Branch which receives materials from on and off base. Several classifications of employees work in DSFPB. The classifications include wage grade (WG) employees such as General Equipment Examiners and Sorters and classifiers. General Equipment Examiners inspect materials and documents to insure their compatibility with each other. Material Sorters and classifiers are responsible for reviewing the General Equipment Examiners work for corrections. The work is then passed along to key punch operations who are General Schedule (GS) workers.

1/ The General Counsel's uncontested motion to correct the transcript herein is granted. It is attached on Appendix "B".

4. Normally the WG employees work a 6:00 a.m. to 2:30 p.m. irregular shift on Monday through Friday common tour in the DSFPB. However, every few weeks approximately 5-15 of the 50-60 WG employees on the above Monday through Friday common tour are assigned to work the regular Tuesday through Saturday uncommon tour. AF Regulation 40-610 defines an uncommon tour as "any 40 hour work week scheduled to include Saturday or Sunday." DSFPB WG employees have been rotating into the Tuesday through Saturday uncommon tour for about 5 years. These employees are assigned to the uncommon tour based on seniority and rotate into the uncommon tour approximately 2 or 3 times per year. During this 5 year period, the starting and quitting time for the Saturday uncommon tour was the same as the Monday through Friday common tour 6:00 a.m. to 2:30 p.m.

5. The materials processed by the WG employees are delivered to DSFPB by long haul tractor trailers and air freight shipments 24 hours a day on an irregular basis. When the WG employees arrive for work at 6:00 a.m. Monday through Saturday, they always process materials not finished by the swing shift which worked before them. There is no difference in the way materials are processed or the amount of work performed on Monday through Friday between 6:00 a.m. and 7:00 a.m. as compared with Saturday between 6:00 and 7:00 a.m.

6. Supervisors from the various Divisions in the Directorate of Distribution rotate into the Tuesday through Saturday uncommon tour in a similar manner to the employees. Prior to April 5, 1986, when a DSFPB supervisor rotated into the Tuesday through Saturday uncommon tour he arrived for work at 6:00 a.m. on Saturday, the same as the WG employees. However, supervisors from the DSFPA division of the Directorate of Distribution who rotated into the uncommon tour reported to work at 7:00 a.m. Thus, prior to April 5, 1986, WG employees worked with supervision between 6:00 a.m. and 7:00 a.m. only on those Saturdays when a DSFPB supervisor rotated into the uncommon tour.

7. In February 1986, Juan Pinedo, Alternate Chief Steward of the DSFPB heard a rumor from co-workers in DSFPB that management was planning to change the starting and quitting time of the Tuesday through Saturday uncommon tour of duty (weekend coverage shift). Pinedo responded to the rumor and asked his second-line supervisor, Section Chief Frank E. Brown, whether management contemplated changing the starting and quitting times for the weekend coverage shift.

Brown informed Pinedo that management was contemplating a change. Pinedo asked Brown if there was anything he could do to stop the change and Brown told him it was Branch Chief Dale Johnston's prerogative. However, Brown gave Pinedo permission to ask Johnston (Pinedo's third-line supervisor) about the matter. Later that same day Pinedo met with Johnston and asked him whether management was changing the staring and quitting time of the weekend coverage shift. Johnston answered that the change was not negotiable and that he did not have to bargain over the matter so long as he had irregular shifts noted on the time cards. Pinedo related the proposed change to his co-workers and in discussions with them learned that approximately 70 percent of the WG employees were not in favor of a change in the Saturday starting and quitting time.

8. On or around February 25, 1986, Pinedo was given a copy of an OOALC Form 859 "Request for Uncommon Tour of Duty/Irregular or Night Shift" (herein Form 859) by Johnston. This is the document Respondent uses to request a change in hours of work. Johnston informed Pinedo that the Form 859 was a request for a change in the starting and quitting times on the Tuesday through Saturday uncommon tour of duty. Block one on the second line of Form 859 indicated that management was requesting an irregular shift. The Form 859 indicated that Johnston wanted to change the Saturday starting time on the uncommon tour of duty from 6:00 a.m. to 7:00 a.m. and the quitting time from 2:30 p.m. to 3:30 p.m. on April 5, 1986. In Johnston's presence, Pinedo wrote across the bottom of the Form 859 in Block Number 8 "AFGE Local 1592 reserves the right to bargain." Block Number 8 of the Form 859 also indicates that the irregular shift was requested in order to meet posting timeliness standards set by HQ AFLC. According to Pinedo this phrase is written by him on all documents presented to him by management when he does not have authority to negotiate for the Union over a particular matter. The statement on the Form 859 allegedly indicated that Pinedo did not waive the Union's right to bargain over the change in the Saturday starting and quitting time.

9. According to Pinedo, Johnston told him that he was making the change in starting and quitting time in order to keep up with the late date processing/tailgate time which is the time allotted to process materials through the DSFPB. Generally, from the time material is delivered to the DSFPB, employees have three days to get the material posted on the computer system and located and stored in the warehouse.

According to Pinedo, Johnston also told him that the change was necessary because Johnston was concerned that the WG employees who arrive for work at 6:00 a.m. on Saturday were not generating enough work for the GS (key punch operators) who come in at 7:00 a.m. However, no evidence or statistics was presented to Pinedo to support this contention. Johnston testified that he "felt" that having all employees on the same shift would increase production. However, Johnston admitted that he did not know, comparatively how much less work the wage grade employees were performing on Saturday between 6:00 a.m. and 7:00 a.m. Johnston also testified initially that he "hoped" that if the wage grade employees arrived at work at 7:00 more work would get done because there would be a supervisor on the job. However, he later stated that employees on skeleton shifts are often more productive because they are not harassed as much. Further, the position descriptions of the WG employees who work at 6:00 a.m. on Saturday state that they can work without supervision. Finally, there did not appear to be any disciplinary problems occurring between 6:00 a.m. and 7:00 a.m. on Saturday. Johnston was promoted shortly after the April 5 change and does not know how the change in starting and quitting times impacted productivity in DSFPB. Respondent offered no evidence to show any positive production increase.

10. After his meeting with Johnston, Pinedo took the problem of the proposed change in starting and quitting time to Union President William Shoell. Thereafter, on March 3, 1986, Shoell sent a bargaining request concerning Respondent's decision to change the starting and quitting time to the Labor Relations Office and the Directorate of Distribution. In his request, Shoell asked that the established shift on the uncommon tour remain as it had been previously established -- 6:00 a.m. to 2:30 p.m. Shoell also sought a meeting with management to establish the reasons for the change and to present bargaining proposals.

11. On or around March 10, 1986, Kay Self, Respondent's Chief of Labor Relations responded to Shoell's request to bargain. Self indicated that management had no duty to bargain over the change in starting and quitting times because as she saw it, uncommon tours of duty had already been negotiated in the Local Supplemental Agreement. At the hearing, Self testified that she "felt" that Respondent did not have a bargaining obligation if it met the requirements in Article 37 S, section 1(e) and (f) of the parties' Local

Supplemental Agreement.2/ Self was not involved in the negotiation of the Local Supplemental Agreement. Shoell, however, was a member of the bargaining teams that negotiated the Local Supplemental Agreement and the Master Labor Agreement. Shoell insisted that the Union did not forgo its right to negotiate over changes in starting and quitting times during negotiations.

12. In a telephone conversation with Shoell sometime after her response to the Union's bargaining request, Self reiterated her "feeling" that management did not have to negotiate over the change in starting and quitting times. Shoell had no other discussions with Self or any other management official concerning the matter. He did however, ask Pinedo to try and resolve the matter with DSFPB management officials. Pinedo then asked Section Chief Brown if there was any way to stop the implementation of the change in the Saturday starting and quitting times. Brown informed him that the decision was Johnston's. Pinedo believed that it would be futile to discuss the matter with Johnston because of his position on the negotiability of the change.

13. On April 5, 1986, the Saturday starting time on the Tuesday through Saturday uncommon tour was changed from 6:00 a.m. to 7:00 a.m.; the quitting time was changed from 2:30 p.m. to 3:30 p.m. However, the Tuesday through Friday starting and quitting times on the uncommon tour remained unchanged - 6:00 a.m. to 2:30 p.m.

2/ Article 37 S, section 1(e) and (f) provides, in pertinent part:

1. Except where the employer would incur increased costs or reduced efficiency of operation, the Employer agrees to the following:

e. Changes to established shifts and hours of work will be kept to the minimum and will be made only when dictated by the mission requirements or resource requirements.

f. A seven-day notice of changes in shift or daily hours of work will be posted on applicable bulletin boards or otherwise provide, in writing, to the employees involved with a copy of such notice furnished the appropriate Union steward. Exceptions to the seven-day advance notice will be made when the following situations arise. . . [.]

14. Since the change on April 5, 1986, there has been no change in the DSFPB WG employees' job duties or in the way the WG employees perform their duties. Both before and after the April 5th change, DSFPB WG employees processed materials which had not been processed by the preceding swing shift. There was no change in the amount of work left unprocessed by the previous shift. All wage grade employees in the DSFPB continue to rotate onto the Tuesday through Saturday uncommon tour two or three times per year. The number of employees rotating onto the uncommon tour has remained the same, i.e., 5-15 employees. There was no change in air freight or trailer truck deliveries to the DSFPB since the change. The deliveries are still made on an irregular basis. Consequently, there has been no change in the amount of unprocessed materials awaiting the DSFPB wage grade employees since they began arriving for work at 7:00 a.m. Moreover, there has been no change in the quantity or type of materials processed on Saturday in comparison with that which is processed Tuesday through Friday.

15. Respondent has proposed changes in shift hours on several occasions in the past. Some of the proposed changes were requested on a Form 859. Occasionally, the Union received verbal notification of shift changes. The Union has requested bargaining over several proposed changes in shift hours and indeed bargaining regarding some changes in shift hours has occurred. Thus, the record shows that the Union negotiated over a proposed change in Building 507's starting time from 7:00 a.m. to 5:00 a.m.; the Union also negotiated over a change in the starting time in Building 840; and, finally, the Union negotiated over changes in the shift hours of employees in the Aircraft Division.

16. Finally, while Respondent has proposed many shift changes, the differences often have been resolved without initiating formal negotiations. Furthermore, Self testified that there may be times when the Union negotiates with local management rather than with representatives of the Labor Relations Office. Consequently, it appears that a history of bargaining over such changes does exist.

17. All of the approximate 50-60 employees in the DSFPB are affected by this change in the Saturday starting and quitting time. The affected employees allegedly have had to rearrange their transportation arrangements, sleep habits and weekend family and leisure commitments as a result of the change.

Discussion and Conclusions

A. Whether the Union is Entitled to Bargain Over the Decision to Change the Starting and Quitting Time of Wage Grade Employees in the DSFPB, as well as the Impact and Implementation of the Decision.

It has long since been established that an agency may not unilaterally change existing conditions of employment without affording the exclusive representative notice and an opportunity to negotiate. Department of the Air Force, Scott Air Force Base, 5 FLRA No. 2, 5 FLRA 9 (1981). The evidence shows that DSFPB WG employees on the Tuesday through Saturday uncommon tour of duty have been arriving for work every day for approximately five years at 6:00 a.m. and leaving work every day at 2:30 p.m. Since April 5, 1986, wage grade employees on the established Tuesday through Saturday tour have been required to arrive for work on Saturday at 7:00 a.m. and to leave at 2:30 p.m. The Tuesday through Friday starting and quitting times remain unchanged.

Initially, the Respondent submits that the shift change herein was, at least, a determination as to the numbers, types and grades of employees to be assigned to a tour of duty as set out in section 7106(b)(1) of the Statute and as such involved an assignment of work by which the Respondent's operations should be conducted. Primarily, Respondent relies on Department of Justice, Immigration and Naturalization Service and American Federation of Government Employees, National Patrol Council, Local 2455, 23 FLRA No. 10, 23 FLRA 90 (1986). The shift changes in that case were deemed by the Authority necessary "to permit [Respondent] to effectively police the border and to perform its duties most effectively." Since Department of the Treasury, U.S. Customs Service and U.S. Customs Service, Region IX, Chicago, Illinois, 17 FLRA No. 33, 17 FLRA 221 (1983) it has been clear that starting and quitting times are subject to the duty to bargain "unless it can be demonstrated that such a change directly or integrally relates to the numbers, types or grades of employees or positions assigned to a work project or tour of duty so as to be determinative of such numbers, types or grades and therefore negotiable solely at the election of the agency under section 7106 (b)(1) of the Statute." Notwithstanding Respondent's argument in its brief, it has a burden, under existing case law to establish that a change in starting and quitting times such as found herein is more than merely a change in the existing tour of duty. Absent evidence that a change such as here "was in

any manner determinative of the numbers, types or grades of employees assigned to the tour of duty" an agency is obligated to bargain over starting and quitting times. Respondent's argument that mission requirements or that the change was to allow it to perform more effectively, standing alone, does not meet that evidentiary standard.

The General Counsel argues that the change herein is similar to U.S. Customs Service, Region V, New Orleans, Louisiana, 9 FLRA No. 15, 9 FLRA 116 (1982) where it was held that a decision to change the hours of work on an existing shift by advancing the starting and quitting time by two hours was fully negotiable both as to the decision itself and as to the procedures to be used in implementing it and appropriate arrangements for employees adversely affected by it.

In this matter the record reveals that the disputed change was limited to a change in the Saturday starting and quitting time of the pre-existing Tuesday through Saturday uncommon tour of duty. In reviewing the evidence it does not appear that the Saturday job duties of the 50-60 affected wage grade employees have changed or that there was any difference in the manner the WG employees performed their tasks at 6:00 a.m. or 7:00 a.m. and that the work could be performed at either 6:00 or 7:00 a.m. Further, the evidence disclosed no change in the number of DSFPB WG employees who worked on Saturday nor does it show that employees arrival one hour later on Saturday increased the amount of materials processed and reduced the late date/tailgate time. In this regard, despite the need to establish a connection between the change and numbers, types or grades of employees assigned to this tour of duty Respondent presented no evidence or quantifiable data to indicate that, prior to the change, productivity on Saturday was significantly lower than on any other day of the week when DSFPB employees arrive for work at 6:00 a.m. or that productivity has increased as a result of the change. The existing evidence thus shows no change in the quantity or types of materials processed on Saturday since the change. Significantly, the record also revealed no change in the amount of materials left unprocessed by the Friday swing shift and awaiting the arrival of the DSFPB employees on Saturday morning.

Respondent claims that prior to the change, the WG's were working without supervision from 6:00 a.m. to 7:00 a.m. on Saturday mornings. However, Respondent did not present any evidence to suggest that the instant change had any

affect on the number of employees working on Saturday, the type work performed or the way the work was performed. Furthermore, the WG's would be without supervision only if a DSFPA supervisor had responsibility on that Saturday since other supervisors started work along with the WG's. The Statute, however, does not relieve management of its duty to bargain over a change in starting and quitting times merely because the change is necessitated by a change in a supervisor's schedule. Again the decision to change starting and quitting times is subject to the duty to bargain unless it can be demonstrated that the change directly or integrally relates to the numbers, types or grade of employees or positions assigned to a work project or tour of duty so as to be determinative of such numbers, types or grades and therefore negotiable solely at the election of the Agency under Section 7106(b)(1). See Customs Service, supra. Any argument that Respondent had no duty to bargain over the change since it was made in order to accommodate the supervisors' schedule must fail since section 7103(b)(2)(B)(iii) of the Statute specifically excludes supervisors from the definition of "employee." Thus, Respondent did not demonstrate that the reason for the change directly relates to the numbers, types and grades of employees assigned to a work project or tour of duty. Accordingly, Respondent's argument concerning the application of section 7106(b) in this case is rejected.

Nor can Respondent argue that the instant change constituted the establishment of a new shift or a new tour of duty. While the Authority held in Department of the Air Force, Scott Air Force Base, Illinois, 20 FLRA 857 (1985), that a significant change in shift hours is to be construed as the abolishment of a prior tour of duty and the establishment of a new tour, a matter which is negotiable only at the election of the agency under Section 7106(b)(1) of the Statute, the change in this case involves only a one hour change in the starting and quitting time of an already existing tour. As previously stated, the decision to change starting and quitting times is subject to the duty to bargain unless it can be demonstrated that such a change directly or integrally relates to the numbers, types or grades of employees or positions assigned to a work project or tour of duty. Again, Respondent presented no evidence to suggest that the instant change had any affect on the numbers of employees working on Saturday, the type of work performed or the way the work was performed.

The General Counsel also urges that a duty to bargain over the impact and implementation of the change in the Saturday starting and quitting time. The Respondent argues

that the change is de minimis. Despite Respondent's contention it is clear that approximately 50-60 employees, WGs were affected by this Saturday change in starting and quitting time inasmuch as they all rotate into the Tuesday through Saturday two or three times a year for several weeks at a time.

The new standard for determining whether a matter is de minimis and not bargainable was set forth in Department of Health and Human Services, Social Security Administration, 24 FLRA No. 42, 24 FLRA 403 (1986) where the Authority stated it would "place principal interest in such general areas of consideration as the nature and extent of effect or reasonably foreseeable effect of the change on conditions of employment of bargaining unit employees." While equitable considerations are to be taken into account the Authority added that the number of employees involved would not be a controlling factor. Several witnesses called by the General Counsel asserted that the change created problems with their transportation, rearrangement of prior commitments in that it affected their ability to get to work. Under the present criteria such interference with their ability to get to work certainly creates an impact which is more than de minimis. Respondent's assertion that this minor change which effects only a small number of employees and should not be subjected to Authority scrutiny must, in light of Department of Health and Human Services, supra, be rejected. Accordingly, it is found that that change in Saturday starting and quitting times was more than de minimis.

B. Whether the Union Waived Its Right to Bargain Over the Change in Starting and Quitting Times.

Respondent argues that Article 37(S) provides a clear statement of how shift changes are to be made in a large complex such as Hill Air Force Base. According to Respondent, nowhere in Article 37(S) or elsewhere within the Supplement or Master Labor Agreement is there any indication that negotiations must take place prior to change in shift and hours of work procedures. Furthermore, Respondent argues that minor shift changes have been accomplished before and that "literally hundreds of such changes take place annually without being negotiated."

While it is true that an exclusive representative may waive or restrict its right to bargain over changes in working conditions, where such a waiver has been found to exist, it must be clear and unmistakable conduct evidencing an intent to waive a right to negotiate. U.S. Department

of Labor, Employment Standards Administration, Wage and Hour Division, 21 FLRA No. 64, 21 FLRA 484 (1986); United States Department of Defense, Department of the Air Force, Air Force Logistics Command, Oklahoma City Air Logistics Center, Tinker Air Force Base, Oklahoma, 21 FLRA No. 87, 21 FLRA 679 (1986). The cases make it clear that a waiver of a statutory right is not lightly inferred. It must be clearly and unmistakably shown that the union consciously yielded its right to negotiate. Library of Congress, 9 FLRA No. 51, 9 FLRA 421, 423 (1982); Social Security Administration, Mid-America Service Center, Kansas City, Missouri, 9 FLRA No. 33, 9 FLRA 229 (1982). A waiver may be established from the language of the agreement, the negotiations leading to the agreement or the past practices of the union and management in implementing the agreement. Department of the Air Force, Scott Air Force Base, Illinois, 5 FLRA No. 2, 5 FLRA 9 (1981). Also, it has been held that the waiver of a statutory right exists only when specific contract language limits the right of the union. Department of the Army, Portsmouth Naval Shipyard, 4 FLRA No. 82, 4 FLRA 619 (1980); Nuclear Regulatory Commission, 8 FLRA No. 124, 8 FLRA 715 (1982). Clearly, there is no language contained in either of the applicable negotiated agreements in any way restrictive of the Union's right to bargain over the change in the Saturday starting and quitting times of the WG employees involved. Silence, without more, has been held not create a clear and unmistakable waiver. Veterans Administration Center, Prescott, Arizona, (ALJ Rpt. No. 60, June 23, 1986) (Case Nos. 8-CA-50230 and 8-CA-50269).

Article 37 S, section 1(e) of the Local Supplemental Agreement relied on by Respondent provides that changes to established shifts and hours of work will be kept to the minimum and will be made only when dictated by mission or resource requirements. Nothing in this section states that when shift changes are required that bargaining over such shift changes is not required. Section 1(f) of Article 37 S provides that a written seven day notice of change will be provided to employees with a copy furnished to the appropriate steward. This section does not indicate that once notice of a change is provided to the employees and the Union that bargaining cannot or would not take place. Indeed, the only logical reason why notice of a change would be given to the Union is so that it might request bargaining where deemed necessary. Thus, I see nothing in the language of the Supplement Agreement or the Master Labor Agreement which states or implies that there need be no bargaining over changes in starting and quitting times.

Respondent argues that Article 37 S of the supplemental agreement sets forth procedures which the parties agreed would be followed in the event a change in hours of work became necessary. The General Counsel contends that nothing in this contractual article refers to the Union's statutory right to bargain. Unfortunately, Respondent presented no evidence to support its position that the Union bargained over hours of work in either of the above-agreements to the extent that it waived its right to bargain over changes in starting and quitting times occurring while those agreements were in existence. None of Respondent's witnesses participated in negotiation of the collective bargaining agreements involved in the case. Labor Relations Chief, Kay Self had no direct knowledge of the bargaining history surrounding the 1980 negotiation of the supplemental agreement. While she testified that she "felt" that as long as Respondent met the requirements in Article 37 S, section 1(e) and (f), it did not have a bargaining obligation. Her feeling however, was not supported by any knowledge of what transpired during earlier negotiations of the two agreements. Union President Shoell, on the other hand, was a member of the negotiating team for both the Supplement and Master Agreement and he testified that he was familiar with the terms of both documents. While Shoell stated that the parties negotiated over and agreed to provisions which related to keeping shift changes to a minimum and providing affected employees and the Union with notice of changes in hours of work, he also indicated that by agreeing to those provisions, the Union did not waive its right to bargain over changes in hours of work. Such uncontradicted testimony clearly tends to undermine a feeling that a waiver occurred. Furthermore, it makes little sense for a union to relinquish its statutory right to bargain over changes in starting and quitting times in exchange for the contractual right to have notice of such changes. Receiving notice of such changes without the concomitant statutory right to bargain renders the notice meaningless and the union unable to negotiate over what could be a significant condition of employment. Based on the testimony of Shoell there is no basis to conclude that the Union, during negotiations, waived its right to bargain over the change in the starting and quitting times of bargaining unit employees.

Neither is the argument convincing that a waiver can be inferred from the past practice of the Union, in not insisting on bargaining, where other changes were made in hours of work. Although Self testified that she was not aware of any Union demands to bargain on changes in shifts since she became Chief of the Labor Relations Unit in 1985

such requests to negotiate may have been addressed to lower level management. In any event Johnston, contrary to Self, testified that the Union had requested to bargain over several shift changes. Shoell's testimony that he had bargained over changes in starting and quitting times on at least three occasions also undermines Respondent's contention that the practice was not to bargain over the changes and that the Union has, by practice, waived its right to bargain over changes in starting and quitting times. Thus, the more persuasive evidence, in my opinion is that there was no waiver of the Union's bargaining right concerning starting and quitting times either through the negotiated agreements or by past practice.

In light of the foregoing, it is found that Respondent violated section 7116(a)(1) and (5) of the Statute by failing and refusing to bargain with the Union over the change in the Saturday starting and quitting time in DSFPB.3/ Accordingly, it is recommended that the Authority adopt the following:

ORDER

Pursuant to section 2423.29 of the Rules and Regulations of the Federal Labor Relations Authority and section 7118 of the Federal Service Labor-Management Relations Statute, the Authority hereby orders that the Department of the Air Force, Ogden Air Logistics Center, Hill Air Force Base, Utah, shall:

1. Cease and desist from:

(a) Instituting any change in the starting and quitting times of the DSFPB wage grade employees on the Tuesday through Saturday uncommon tour without affording the American Federation of Government Employees, Local 1592, the exclusive bargaining representative of its employees, the opportunity to negotiate with respect to such change.

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

3/ In agreement with the General Counsel, a status quo ante remedy requiring the re-establishing of shift hours which existed prior to April 5, 1986, is necessary to remedy the instant violation.

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

(a) Rescind the change in duty hours implemented on April 5, 1986 and restore the previously existing duty hours of 6:00 a.m. to 2:30 p.m. on the Saturday uncommon tour in DSFPB.

(b) Upon request of the American Federation of Government Employees, Local 1592, bargain concerning the starting and quitting times of DSFPB, Directorate of Distribution.

(c) Post at its facilities in the Directorate of Distribution, DSFPB 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 Director of the Directorate of Distribution or a comparable official, or his designee, 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 ensure that such Notices are not altered, defaced, or covered by any other material.

(d) Pursuant to section 2423.30 of the Federal Labor Relations Authority's Rules and Regulations, notify the Regional Director, Region VII, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

Eli Nash, Jr.

ELI NASH, JR.
Administrative Law Judge

Dated: December 22, 1987
Washington, D.C.

APPENDIX A

NOTICE TO ALL EMPLOYEES

PURSUANT TO

A DECISION AND ORDER OF THE

FEDERAL LABOR RELATIONS AUTHORITY

AND IN ORDER TO EFFECTUATE THE POLICIES OF

CHAPTER 71 OF TITLE 5 OF THE

UNITED STATES CODE

FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS STATUTE

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT institute any change in the starting and quitting times of the Directorate of Distribution, DSFPB Wage Grade employees on the Tuesday through Saturday uncommon tour without affording the American Federation of Government Employees, Local 1592, the exclusive bargaining representative of our employees, the opportunity to bargain with respect to 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 rescind the change in duty hours implemented on April 5, 1986 and restore the previously existing duty hours of 6:00 a.m. to 2:30 p.m. on the Saturday uncommon tour in DSFPB.

WE WILL, upon request of the American Federation of Government Employees, Local 1592, bargain concerning the starting and quitting times of Directorate of Distribution, DSFPB Wage Grade employees in the Saturday uncommon tour.

_____
(Agency or Activity)

Dated: _____ By: _____
(Signature)

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, Region VII, whose address is: 535 16th Street, Suite 310, Denver, CO 80202, and whose telephone number is: (303) 837-5224.