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

DEPARTMENT OF THE AIR FORCE SCOTT AIR FORCE BASE, ILLINOIS Respondent and NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES, LOCAL R7-23, SEIU, AFL-CIO Charging Party	Case No. 5-CA-60307

Lt. Colonel Lewis G. Brewer
Lt. Colonel Charles L. Wist, Jr.
For the Respondent

Mr. Carl Denton
For the Charging Party

Judith A. Ramey, Esquire
For the General Counsel

Before: WILLIAM B. DEVANEY
Administrative Law Judge

DECISION

Statement of the Case

This matter, under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the United States Code, 5 U.S.C. § 7101, et seq.,1/ and the Final Rules and Regulations issued thereafter, 5 C.F.R. § 2423.1, et seq., concerns whether Respondent violated §§ 16(a)(5) and (1) of the Statute where, after notice to the Union that certain work was to be contracted out and after notice to

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1/ For convenience of reference, sections of the Statute hereinafter are, also, referred to without inclusion of the initial "71" of the statutory reference, e.g., Section 7116 (a)(5) will be referred to, simply, as "§ 16(a)(5)".

the Union of the positions to be cancelled and the impact on the affected employees, the Respondent issued RIF notices before completion of negotiations. The Union refused to bargain unless and until the RIF notices were withdrawn; no bargaining took place; and the RIF was implemented.

This case was initiated by a charge filed on July 7, 1986 (G.C. Exh. 1(a)). The Complaint and Notice of Hearing issued on May 14, 1987 (G.C. Exh. 1(c)) and set the hearing for July 14, 1987, pursuant to which a hearing was duly held on July 14, 1987, in St. Louis, Missouri before the undersigned. All parties were represented at the hearing, were afforded full opportunity to be heard, to introduce evidence bearing on the issues presented, to examine and cross-examine witnesses, and were afforded the opportunity to present oral argument. At the conclusion of the hearing, August 14, 1987, was fixed as the date for mailing post-hearing briefs and General Counsel and Respondent each timely mailed an excellent brief, received on August 17, 1987, which have been carefully considered. Upon the basis of the entire record, I make the following findings and conclusions:

Findings

1. The National Association of Government Employees, Local R7-23, SEIU, AFL-CIO (hereinafter referred to as the "Union") is the certified exclusive representative of all non-supervisory employees at the Scott Air Force Base, Illinois (hereinafter referred to as "Respondent"), as more fully set forth in Paragraph IV of the Complaint (G.C. Exh. 1(c)) and in Article I of the Agreement of the parties (G.C. Exh. 2), including shelf stockers and custodial workers at Respondent's Commissary.

2. In August or September 1985, Respondent notified the Union that a study was to be conducted to determine whether the custodial and night shelf stocker functions in the Commissary should be contracted out (Tr. 14-15, 48-49).

3. In September and October, 1985, the Union requested certain information from Respondent regarding the possible contracting out and gave notice of a desire to negotiate the impact and implementation of any decision to contract out (G.C. Exhs. 3, 4; Tr. 15-16). One of the Union's requests was that, ". . . the status quo be maintained throughout the interim and any negotiation process." (G.C. Exh. 3; 4). On January 22, 1986 (G.C. Exh. 5), the Union requested additional data, including a list of affected employees and statements of anticipated impact, and submitted proposals. By letter dated January 30, 1986 (G.C. Exh. 6), Respondent

provided certain requested information; advised the Union that, ". . . no final decision to contract out has been made by Congress" but that ". . . we are now in the process of seeking Congressional approval to contract out subject service with NISH [National Institute for the Severely Handicapped]; acknowledged the Union's request to maintain the status quo and to negotiate over the impact and implementation of a decision to contract out; and stated that it would keep the Union advised.

4. By letter dated May 9, 1986, the Union again inquired as to the status of the contracting out (G.C. Exh. 7). Respondent by letter dated May 22, 1986, advised the Union that contracting out had been approved and, ". . . we expect implementation no earlier than August 1986." (G.C. Exh. 8). Respondent also transmitted copies of the ". . . first two NISH proposals" and inquired if the Union's 1 & 1 proposals of January 22, 1986, were still valid.

5. The parties' Agreement contains an Article [**ARTICLE XIV**] on **"REDUCTION IN FORCE"**, which provides, in part, as follows:

> "Section 1: The Employer agrees to do everything possible to avoid or minimize a reduction-in-force by restricting recruitment and promotions, by meeting ceiling limitations through normal attrition, and by reassignment of surplus employees to vacant positions authorized for staffing. The Employer agrees to notify the Union in advance of implementation of officially approved reductions-in-force affecting the unit. The Employer agrees to provide the following:
>
> a. Initial information on the anticipated impact of the reduction-in-force together with updated status reports concerning the implementation. The Union should notify the Civilian Personnel Office, in advance, of requests for updated status reports.
>
> b. A listing of positions abolished which precipitated the programmed reduction-in-force together with a listing of Scott AFB vacancies authorized for staffing five (5) workdays before the issuance of reduction-in-force notices.

c. A copy of applicable reduction-in-force retention registers five (5) workdays before the beginning of the reduction in force.

d. Access upon advanced request by a Union representative to updated working copies of retention registers and the competitive level book following the issuance of reduction-in-force notices to employees in the bargaining units.

. . . " (G.C. Exh. 2, Article XIV, pp. 7-8) (Emphasis added).

Two other provisions of the Agreement also directly relate: Article XX, Section 6, which covers contracting out; and Article XXXV, which, inter alia, covers abolishing occupied civilian positions. Article XX, Section 6 provides as follows:

"Section 6: Management recognizes its obligation to meet and confer on the impact of any decision to contract-out which affects unit employees. The employer agrees to provide timely notification of a proposal to contract-out a function encumbered by unit employees. Upon written request, the union also will be provided access to or a copy of the following data, if available:

a. Statement of work

b. Unit manning document for the 12 month period preceding the notice to the union.

c. Other data as defined by Section 7114(b)(4), PL 95-454.

In addition a copy of AFM 26-1 will be given to the union for its retention and use." (G.C. Exh. 2, Article XX, Section 6, p.13)

Article XXXV - **MANPOWER** provides, in pertinent part, as follows:

"Section 1: Management shall adhere to the applicable provision(s) of governing directives when . . . abolishing occupied civilian positions. As applicable, representatives of the Civilian Personnel Office will meet and confer with the Union regarding the impact of such action. To the extent possible, the Civilian Personnel Office agrees to notify the union of unit positions which have been abolished.

Section 2: In an effort to maintain a viable career oriented program for bargaining unit employees, the employer agrees to meet and confer with the exclusive representative on the impact of officially approved RIFs, or the elimination of civilian slots." (G.C. Exh. 2, Article XXXV, p. 21).

6. By letter dated May 30, 1986 (G.C. Exh 9), Respondent notified the Union that the effective date of the reduction in force would be August 17, 1986. Respondent also set forth the number of positions to be cancelled (10 part-time encumbered positions; 8 full-time encumbered positions; 3 part-time and 1 full-time vacant positions); the impact on current commissary employees (2 proposed separations; 6 proposed changes to lower grade; 12 proposed reassignments [while there were only 18 encumbered positions cancelled, due to displacement within the competitive level, 2 additional employees were affected]; list of affected employees (G.C. Exh 9, pp. 3-4); and a list of all wage grade vacancies at and below the equivalent grades of affected employees, as well as list of general schedule vacancies for which some affected employees were qualified (G.C. Exh. 9, p. 5). Respondent requested that any impact and implementation proposals be submitted by June 13, 1986.

7. The Union responded by letter dated June 2, 1986 (G.C. Exh. 10) in which it stated that its proposals of January 22, 1986, were still valid; made additional proposals; requested that status quo be maintained throughout negotiations; and requested that RIF notices not be handed out until after negotiations were completed.

8. On June 6, 1986, Respondent gave notice to Union President Denton that RIF notices were to be issued that day. Affected employees were issued notices (dated June 5, 1986) on June 6, 1986 (G.C. Exhs. 11 and 12).

9. Prior to June 6, 1986, the parties had sometimes negotiated impact and implementation after issuance of RIF notices as well as before the issuance of such notices (Tr. 29).

10. In reduction in force, employees are normally given 60 days advance notice (Tr. 35).

11. At the time the RIF notices were issued, on June 6, 1986, the parties had a bargaining meeting set for June 10, 1986 (Tr. 36, 50); but after the RIF notices were issued, the Union refused to bargain unless the RIF notices were withdrawn (Tr. 36, 51).

12. Respondent remained ready to negotiate over the impact and implementation of the reduction in force; asserted that the reduction in force was not to be implemented until August 17, 1986; and that it had informed the Union of its continuing readiness to bargain. Ms. Emily Denise Stepanik, since March 1987, a classification specialist (Tr. 47) but from December, 1984, until then a labor relations specialist and negotiator for Respondent, testified, without contradiction, in part, as follows:

> ". . . on the 10th of June, just prior to our session, Mr. Denton had given me a call
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> "Q. And what did Mr. Denton tell you at that time?
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> "A. He had indicated -- I first had asked him whether he was planning on meeting with me at 8:30 that morning, and he said he would not, that he wanted the RIF notices to be rescinded and, should we do that, then he would be willing to meet.
>
> "Q. And what was your response to that?
>
> "A. Well, my response essentially was that we felt we had not implemented the reduction in force, that we were willing to continue negotiations, that, essentially that, you know, the effective date of the reduction in force was not to occur until the 17th of August. In fact,

it's typical of personnel policy -- it's even indicated in our Federal Personnel Manuals -- it's typical personnel policy that an effective date is the date that the employees would actually be impacted, would actually be moved.

"Q. Did you indicate that management was willing to discuss Mr. Denton's proposals, including the extension of the RIF notices?

"A. Yes, I certainly did. There were, in fact -- I think, from that time and a bit afterwards, there were subsequent changes to the types of offers that were made. The RIF notice was simply that, a notice period, and that we had to sit down and talk about that notice period and talk about the other proposals that the union provided us.

"Q. Did you attempt to meet with Mr. Denton or request that he bargain with you any further after the conversion you had on about the 10th of June?

"A. Yes. I did . . . During the 10 June conversation, Mr. Denton indicated we had not provided him with copies of the RIF notices. He indicated that he wanted those copies, provided us with a letter. We sent those or actually delivered those to the union office on the 17th of June . . .

"Q. Did you have a requirement under the contract to provide him with copies of the RIF notices?

"A. No, we sure don't . . . that's why he said, 'I will be sending you a letter.'

. . .

"Q. Did you talk to him, again, after you delivered the RIF notices?

"A. Yes . . . when I knew the RIF notices were delivered to him, I, again, called him and indicated that they had been delivered and that I was ready to negotiate on the impact and implementation of the decision, and he indicated that he was too busy at that time and had not had a change to look at the RIF notices.

"I subsequently called him the 18th and on the 19th. Both times he was too busy to talk.

"Q. What was the last thing you indicated in these conversations with Mr. Denton?

"A. That it's our position that we have not implemented the reduction in force and that we were ready to negotiate anytime that he is." (Tr. 51-53).

13. The RIF notices (G.C. Exhs. 11 and 12) advised each employee of the position proposed, the effective date, and advised each that if there were no response he, or she, would be separated. Each letter also provided a considerable amount of information about the RIF, the options available, and where to find additional information.

14. The shelf stocker positions were night shift jobs which paid a night differential of ten percent. The RIF meant a loss of this differential even where employees were reassigned to other jobs with the same basic hourly rate. The RIF was completed in July and August, 1986 (Tr. 28, 45).

Conclusions

The Complaint alleged, in part, that

". . . On or about June 6, 1986, Respondent unilaterally implemented a Reduction in Force in regard to the Commissary RIF without negotiating with the Union on the impact and implementation of this change." (G.C. Exh. 1(c)), Par. VI).

The Complaint further stated, of course, that by the conduct alleged in Paragraph VI, Respondent violated §§ 16(a)(5) and (1) of the Statute. In her Brief, General Counsel states the issue as follows:

> "The key issue for resolution . . . is whether implementation of the reduction-in-force at the Commissary occurred on or about June 6, 1986 . . . ." (General Counsel's Brief, p. 4).2/

General Counsel asserts that,

> ". . . it is also clear that, if implementation commenced with the issuance [i.e., the RIF notices issued to employees on June 6, 1986], Respondent failed to meet its bargaining obligation." (General Counsel's Brief, p. 5).

General Counsel contends that, "on this issue the case cannot be distinguished from U.S. Department of Labor and American Federation of Government Employees, 16 FLRA 969 (1984)" (hereinafter DOL case) where "The Authority held that the issuance of the notices [of furlough] was tantamount to implementation of the furlough and that the agency had violated its duty to bargain." (General Counsel's Brief, p. 5). I do not agree that the DOL case is not distinguishable; that the Authority held that the issuance of the notices was tantamount to implementation of the furlough; or that whether the furloughs were "implemented" when notices were issued to employees (December 19 and 28, 1981) or when the furloughs began (January 4, 1982) was an issue nor was it decided in DOL. In DOL, supra, the Authority adopted the findings, conclusions and recommended Order of the Administrative Law Judge, the late Louis Scalzo. In DOL, Respondent advised the Union on the morning of December 15, 1981, that there would be a furlough; the Union at 12:15 p.m. on December 15, requested bargaining on impact and implementation; Respondent refused to bargain because there ". . . was no obligation to negotiate in this case" (16 FLRA at 978); late, in the afternoon of December

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2/ Respondent states the issue similarly as follows:

> "Did the Respondent violate Section 7116(a)1) and (5) of the Statute by issuing Reduction in Force Notices to affected employees prior to completing negotiations over the impact and implementation of the proposed Reduction in Force?" (Respondent's Brief, p. 4).

15, Respondent reported to the Union that 215 employees would be furloughed, that the furlough would take effect on January 4, 1982, and that notices would issue late in December; on December 16, the Union reiterated its demand to bargain; on December 16, the Union requested a list of the employees selected for furlough with their office assignment; the notices of furlough were signed on December 18, and some were mailed on December 19, but, due to a clerical error, the remainder were not mailed until December 28; on December 18, Respondent advised the Union that paperwork on furlough had been completed and Union again requested negotiations; on December 18, a telex was sent to the Union as "official notice"; on December 22, Respondent advised the Union that its bargaining request was denied and the list of employees selected for furlough was denied; on December 28, Union mailed a second formal bargaining request; no bargaining ever held; furloughs began January 4, 1982, and extended through February 2, 1982.

The facts in DOL were wholly different than the facts here. In DOL, Respondent refused to bargain, contending there was no duty to negotiate. DOL's refusal to bargain was initially made before the details of the furlough were known, was repeated after some notices had been issued; and DOL refused to furnish a list of the employees to be furloughed. Here, Respondent never refused to bargain. To the contrary, it was the Union which steadfastly refused to bargain. Here, Respondent furnished all requested information.

Not only is DOL distinguishable on its facts, but Judge Scalzo did not hold that DOL refused to bargain because ". . . the issuance of the notices were tantamount to implementation of the furlough" as General Counsel asserts.3/ To the contrary, he found that, "There was a

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3/ I am aware of the statements in Judge Scalzo's decision in which terms were somewhat loosely used; nevertheless, Judge Scalzo did not make any finding nor did he make the holding General Counsel attributes to him. For example, he found:

> ". . . the furlough was effectuated on December 19th and December 29, with January 4, 1982, being the day on which the actual furlough began." (16 FLRA at 975).

(Footnote continued)

specific refusal to negotiate concerning procedures management would use to effect any furlough" (on December 15) (16 FLRA at 978); that ". . . Respondent's representative took the position that no obligation to negotiate existed" (on December 18) (16 FLRA at 979); that "on December 22, 1981 . . . [Respondent] advised that the bargaining request would not be honored . . . ." (16 FLRA 981); and he held,

> "In this case the Union was apprised of the decision to furlough as early as the afternoon of December 15, 1981, during

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3/ (Footnote continued)

> ". . . Although implementation of the furlough had in fact occurred, either Mr. Cole or Mr. Taub endeavored to leave the erroneous impression [on December 18] that the Respondent might negotiate before implementation . . . A letter dated December 18, 1981 was telexed to Mr. Rios, ostensibly as a belated post-implementation official notice of the furlough decision . . . ." (16 FLRA at 980).
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> "The administrative machinery set in motion on December 19 and 28, 1981, [notice to employees] . . . continued without interruption; and as mandated the period of furlough commenced . . . on January 4, 1982. The record is clear that impact and implementation bargaining negotiations, in response to the request, did not occur prior to the filing of the charge [December 29], and further, that negotiations have not occurred since . . . ." (16 FLRA at 981).
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> "Here counsel for the General Counsel has established that implementation of the MSHA furlough imposed unjustified and unwarranted personnel actions upon affected employees. . . ." (16 FLRA 987).

> collective bargaining on other unrelated issues. A bargaining request filed with the Respondent early on December 15th in anticipation of the decision to furlough was accepted by Respondent without reservation, and retained for appropriate action by the Respondent. It was retained after finalization (on December 15th) of the MSHA decision to furlough employees, with the full understanding that the Respondent would reply to the request. Despite the request, the Respondent effectuated the furlough of bargaining unit employees without first bargaining on impact and implementation. In fact, it clearly appeared that steps toward eventual implementation were proceeding apace even while repeated requests were being made by the Union to persuade the Respondent to bargain, and while the Respondent was refusing to accede to the Union's requests. This refusal to bargain was, in large measure, admitted. . . ." (16 FLRA 982-983).

Judge Scalzo further held, in relevant part, that,

> ". . . Here the Union was not, prior to implementation, or thereafter, provided with an opportunity to negotiate bargainable proposals relating to impact and implementation of the decision to furlough. The entire matter was deferred by the Respondent in favor of almost immediate implementation of the decision to furlough . . . bargaining was not permitted in the first instance." (16 FLRA at 983).

It is Hornbook law that under the Statute an agency must notify the exclusive representative of proposed changes in working conditions and provide the exclusive representative with ample opportunity to negotiate concerning the substance of the proposed changes, Department of Justice, United States Immigration and Naturalization Service, El Paso District Office, 25 FLRA 32, 36 (1987), and/or the impact and implementation of such changes, Department of the Navy, Philadelphia Naval Shipyard, 18 FLRA 902, 914 (1985), unless the exclusive representative has clearly and unmistakenly waived its bargaining rights. Department of the Air Force,

Scott Air Force Base, Illinois, 5 FLRA 9, 11 (1981), and, further, that a party must meet its obligation to negotiate before making changes in established conditions of employment, Department of the Air Force, Scott Air Force Base, Illinois, supra. A corollary is that when an agency exercises a management right under § 6 of the Statute, it must, nevertheless, notify the exclusive representative and negotiate concerning the impact and implementation of such change when the foreseeable impact is more than de minimus, Department of Health and Human Services, Social Security Administration, 24 FLRA No. 42, 24 FLRA 403, 405, 407-408 (1986).

As General Counsel recognizes, there was no reduction in force on June 6, 1986, which is the date notices4/ were issued (dated June 5) to employees. The effective date of the action in each notice was stated as August 17, 1986 (G.C. Exhs. 11 and 12), although, because each memo was accepted and the Union refused to bargain, the moves actually began on July 17 (Tr. 45). Nevertheless, nothing occurred on June 6 except notice of future action. It is true that to set in motion the notice period, here not less than 60 days, "RIF" notices to employees were necessary and it is true that both the notification of the Union and the "RIF" notices to employees were steps to carry out, fulfill or accomplish, i.e., to implement5/, Respondent's decision to

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4/ Contracting out of the custodial and night shelf stocking functions in the Commissary eliminated certain jobs; but the occupants of those jobs were not directly, or necessarily, separated by RIF. Rather, depending on various factors, incumbents of abolished positions could move to other jobs. While G.C. Exh. 11 was, actually, notification of change to lower grade and G.C. Exh. 12 was notification of reassignment, each in lieu of separation by RIF through application of RIF procedures. For convenience, the notices issued June 6, 1986 (G.C. Exhs. 11 and 12) will be referred to as RIF notices, although, as noted most were offers of jobs in lieu of separation by RIF (two temporary employees, Alicia Cromwell and Billy Gray (Tr. 44, 54) received RIF notices, but only one, Cromwell, was terminated (Tr. 44).

5/ "Implement" is defined as:

> "1a: to carryout: ACCOMPLISH, FULFILL (wondering how he might best ~ his purpose) (continued to clamor for action

(Footnote continued)

contract out the custodial and night shelf stocking functions; but I do not agree with General Counsel's argument that ". . . if implementation commenced with that issuance, Respondent failed to meet its bargaining obligation." (General Counsel's Brief, p. 5). The controlling considerations are: (a) notification to the union of proposed changes in working conditions; and (b) provides ample opportunity to negotiate before making changes. See, for example, The Adjutant General's Office, Puerto Rico Air National Guard, 3 FLRA 343 (1980) (RIF); (activity failed to respond to union's proposals which precluded union's making alternative proposals); United States Department of Defense, Department of the Air Force, Oklahoma City Air Logistics Center, Tinker Air Force Base, Oklahoma, 8 FLRA 740 (change in a matter affecting working conditions [facial hair] made, "implemented", without notice to union); Bureau of Government Financial Operations Headquarters, 11 FLRA 334 (1983) (union not afforded reasonable notice); U.S. Government Printing Office, 13 FLRA 203 (1983) (inadequate notice); United States Department of Labor, supra, (refusal to negotiate); Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 18 FLRA 466 (1985) (failure to maintain status quo while matters

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5/ (Footnote continued)

> to ~ the promise - N.Y. Times) (a committee to ~ the plans so well formulated); esp: to give practical effect to and ensure of actual fulfillment by concrete measures (failure to carry out and ~ the will of the majority - Clement Attlee) (an agency created to ~ the recommendation of the committee) (programs to ~ on foreign policy) b: to provide instruments or means of practical expressions for (survey the problem as a whole and ~ the joint interest in an expanding economy - George Soule 2: supplement SYN see enforce."

and "implementation" is defined as:

> "the act of implementing or the state of being implemented" (Webster's Third New International Dictionary, 1971).

pending before the Federal Service Impasses Panel); Veterans Administration Medical and Regional Office Center, Fargo, North Dakota, 22 FLRA 612 (1986) (Respondents ready and willing to bargain over substance; but union refused to bargain until Respondent bargained on its proposed ground rule that preparation time for negotiations and for intent statements be on official time. Held, violation to implement change in hour and shift times without first bargaining on union's ground rule); Department of Justice, United States Immigration and Naturalization Service, El Paso District Office, 25 FLRA 32 (1987) (change implemented, i.e., made effective, before fulfillment of bargaining obligation).

The fact that notice of a future action is given by an agency to employees simply is not a controlling consideration. For example, in The Adjutant General's Office, Puerto Rico Air National Guard, supra, the union was given notice of a RIF on April 12, 1977; activity met with the technicians on April 13 and 14 to notify them of the RIF order; Union and activity met on April 22 and at end of meeting, union made two proposals to activity; RIF notices received by employees on May 25 and employees separated July 31. Neither, the fact that the employees were told of the RIF Order on April 13 and 14, nor the receipt of RIF notices by employees on May 25 was found improper. Rather, the activity violated §§ 19(a)(1) and (6) of Executive Order 11491 (essentially the same as § 16(a)(1) and (5) of the Statute) because, and only because,

> ". . . the Activity's statement that a response to the requests would be given later created the impression that the Respondent was willing to consider the proposals concerning the implementation and impact of the RIF. The Activity's failure to respond, as promised, precluded the Complainant from considering the option of presenting alternative proposals." (3 FLRA at 345).

More recently, in U.S. Immigration and Naturalization Service, 24 FLRA No. 77, 24 FLRA 786 (1986), Case No. 2-CA-1151, the Authority again made clear that implementation means the date changes become effective, not the date of notice of the proposed change, and the controlling considerations are: whether the union was given notice of the change; whether the union was provided adequate opportunity to bargain; and whether management

satisfied its bargaining obligation before implementing the proposed revised procedures. See, also, Department of Defense, Department of the Navy, Naval Ordinance Station, Louisville, Kentucky, 17 FLRA 896 (1985). Nor may the RIF notices to employees be used as a basis for an unfair labor practice because they contained information disclosed to the Union as they involved no attempt to bypass the exclusive representative; did not otherwise threaten or promise benefits to employees; and did not undermine the status of the exclusive representative. Division of Military and Naval Affairs, State of New York, Albany, New York, 8 FLRA 307, 321-322 (1982). Indeed, the record shows without contradiction that in the past the parties had negotiated impact and implementation after issuance of RIF notices; that Respondent informed the Union that it remained ready to negotiate over impact and implementation; that Respondent informed the Union that it was willing to discuss all of the Union's proposals, including the Union's proposed extension of the RIF notices; and was consistent with the parties' negotiated Agreement6/ which, inter alia, provided that Respondent furnish, ". . . b. A listing of positions abolished . . . together with a listing of Scott AFB vacancies authorized for staffing five (5) workdays before the issuance of reduction-in-force notices." (G.C. Exh. 2, Art. XIV).

Accordingly, I find that Respondent did not, under the circumstances of this case, violate § 16(a)(5) and (1) of the Statute by issuing RIF notices prior to completion of

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6/ Article XIV does not refer to negotiations, although Article XXXV, Section 2 does, ". . . the employer agrees to meet and confer with the exclusive representative on the impact of officially approved RIFs or the elimination of civilian slots." (see, also, Article XX, Section 6); nevertheless the Agreement does not address the timing of the RIF notice except that a list of abolished positions together with a list of vacancies must be provided the Union 5 days before the issuance of RIF notices. Because the interpretation of Article XIV would not be determinative of the statutory violation alleged herein, Respondent's assertion, that, ". . . the dispute . . . involves differing and arguable interpretation of the parties' collective bargaining agreement, the aggrieved party's remedy lies within the grievance and arbitration procedures of the negotiated agreement rather than through unfair labor practice procedures" (Respondent's Brief, p. 8), is rejected.

negotiations on the impact and implementation of the reduction in force. Consequently, I recommend that the Authority adopt the following:

ORDER

The Complaint in Case No. 5-CA-60307 be, and the same is hereby, dismissed.

Issued, Washington, D.C., July 29, 1988

William B. Devaney

WILLIAM B. DEVANEY
Administrative Law Judge