

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

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DEPARTMENT OF THE AIR FORCE, .
HEADQUARTERS, AIR FORCE .
LOGISTICS COMMAND, WRIGHT- .
PATTERSON AFB, OHIO .

Respondent .

and .

Case No. 5-CA-80086

AMERICAN FEDERATION OF .
GOVERNMENT EMPLOYEES, .
COUNCIL 214, AFL-CIO .

Charging Party .

.....

Major Richard T. Dawson
Major W. Kirk Underwood
William P. Krueger, Esq.
For the Respondent

Judith A. Ramey, Esq.
For the General Counsel

Julia A. Collier, Esq.
For the Charging Party

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. (herein called the Statute). It was instituted by the Regional Director of Region V based upon an unfair labor practice charge filed November 25, 1987, and by the American Federation of Government Employees, Council 214, AFL-CIO (herein called the Union), against the Department of the Air Force, Headquarters Air Force Logistics Command, Wright-Patterson Air Force Base, Ohio

(herein called the Respondent or AFLC). The Complaint alleged, in essence, that Respondent violated section 7116(a)(1) and (5) of the Statute by failing and refusing to bargain concerning "Last Chance Agreements" and the issuance of temporary credentials for union representatives who are not Air Force employees.

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

A hearing was held before the undersigned, in Dayton, Ohio at which 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.

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.

Finding of Fact

The simple and undisputed facts are as follows:

1. The Union represents unit of approximately 72,000 - 73,000 employees of the AFLC, located at several facilities around the country.
2. Respondent and the Union are parties to a Master Labor Agreement (herein called MLA) which was effective on October 22, 1986.
3. By letter dated October 15, 1987, the Union requested bargaining and submitted proposals concerning "Last Chance Agreements."
4. On November 3, 1987, the Union by letter requested bargaining and submitted proposals concerning the issuance of temporary credentials for union representatives who are not Air Force employees.
5. In response to the above Union letters, on November 6, 1987, the Respondent notified the Union of Respondent's desire to negotiate procedures by which to conduct Union-initiated mid-term bargaining and submitted proposals concerning that subject. Respondent stated it was not

refusing to bargain over the Union's proposals concerning "Last Chance Agreements" and the temporary credentials, and that it would respond to those proposals once an agreement on procedures for conducting Union-initiated mid-term bargaining had been reached. Respondent submitted a list of 16 procedures for Union initiated mid-term bargaining on which it desired to bargain.

6. The Union informed Respondent on November 13, 1987, in three different letters, that it was unwilling to delay negotiations on its proposals concerning "Last Chance Agreements" and temporary credential until negotiation of procedures for conducting Union-initiated mid-term bargaining had been completed. The Union attached 11 counterproposals for the procedures to be used for Union-initiated mid-term bargaining.

7. On November 17, 1987 Respondent returned without action the Union's proposals on "Last Chance Agreements" and temporary credentials and reiterated its position that it would negotiate over those matters once procedures for Union-initiated mid-term bargaining were finalized.

8. The testimony at hearing revealed the parties met on several occasions during the November-December 1987 time period, and at other times subsequent thereto, to negotiate concerning procedures for Union-initiated mid-term bargaining. No agreement has been reached. While the parties' bargaining schedule did not comport with the "on demand" bargaining schedule the Union wanted, both sides remained busy during the November-December 1987 time period with other projects as well and neither side lacked for other projects of mutual concern with the other to work on when not negotiating on these procedures. The testimony of Mr. Biddle, the Respondent's primary representative in these negotiations, also referenced why the Respondent was unable to accommodate the Union's proposed bargaining schedule during the holiday season.

Conclusions

Each side considers the bargaining which took place during November-December 1987 as ground rule negotiations. Each side cites cases, which are recognized as not being on all fours with this case. The cases Department of Defense Dependents Schools, 14 FLRA 191 (1984); Department of Health and Human Services, Region VII, Kansas City, Missouri, 14 FLRA 258 (1984); American Federation of Government Employees, AFL-CIO, 15 FLRA 461 (1984); Environmental Protection Agency, 16 FLRA 602 (1984); Harry S. Truman Memorial Veterans

Hospital, Columbia, Missouri, 16 FLRA 944 (1984); Department of Health and Human Services, Social Security Administration, and Office of Hearings and Appeals, Region II, 17 FLRA 368 (1985); Veterans Administration, Washington, D.C. and Veterans Administration Medical and Regional Office Center, Fargo, North Dakota, 22 FLRA 612 (1986); Department of Health and Human Services, Region IV, Atlanta, Georgia, 9 FLRA 1065, (1982), however, deal with bargaining about ground rules and whether such bargaining is required under the Statute. Those cases, as already noted, do not solve the issue in this matter.

Specifically in Department of Defense Dependents Schools the Authority found:

In performing their mutual obligation to bargain in good faith, the parties ordinarily would need to make certain preliminary arrangements such as the scheduling of the time, place, length and agenda of the meetings. This is a necessary step in "meeting at reasonable times and convenient places" as required by section 7114 of the Statute. The fact that some parties mutually agree to set such preliminary arrangements apart and call them ground rules negotiations does not separate them from the collective bargaining process and the parties' mutual obligation to bargain in good faith. [Footnote omitted.]

In Harry S. Truman, supra the Authority also required the Respondent to "bargain in good faith regarding ground rule proposals which may be submitted in connection with future negotiations."

Despite the parties arguments in this case, it is my view that the issue here is whether the parties were indeed engaged in ground rule negotiations or whether they are involved in substantive negotiations concerning the Respondent's proposals of November 6, 1987 entitled "Procedures for Union Initiated Mid-Term Bargaining." If they are involved only in ground rule negotiations, under existing Authority precedent, my view is that on the factual situation presented herein no violation of the Statute exists. If not involved in ground rule bargaining then Respondent's conditioning bargaining on completing bargaining on substantive proposals before conducting mid-term bargaining with the Union might well be violative of the Statute.

The first question to be resolved is what constitutes ground rules. In Department of Health and Human Services, Region VII, Kansas City, Missouri, the Authority looked at what the parties had negotiated and considered that:

matters related to the "framework" of negotiations, such as the number of participants for each side; the location of negotiations; a schedule for negotiation meetings; the procedures for initiating, negotiating and agreeing to proposals; and to procedures to help resolve impasses.

Such matters as listed above constitute ground rules. Further, I find no clearer indication of what comprises ground rules than the above statement by the Authority. If indeed, only matters relating to the "framework" of negotiations are what makes a ground rule a ground rule, I find that while Respondent's proposals include some of these framework matters it also includes substantive matters which clearly cannot be classified as a ground rule. Thus, while Respondent is contending that its desired is to work out procedures for Union-initiated mid-term bargaining proposals by setting out ground rules for those matters it is also attempting to bargain over substantive matters. Its proposals include negotiations on a "zipper clause" by AFGE, about which the Union probably has no authority to bargain; waiver of the Union's right to obtain information or data; limitations on the number of proposals the Union can make; waiver of date and times for negotiations. Indeed, what was proposed as ground rules by Respondent constituted, at best, a mixed bag.

The question here is not as Respondent insists, that it was bargaining over ground rules, but whether those ground rules were offered in good faith. Based on the above, I find that they were not. The mere fact that Respondent offered as ground rules matters which were for the most part substantive and then sought to bargain to impasse on those matters in the name of "ground rule" bargaining belies any good faith, argument it might make. I find, that what Respondent required to be completed before negotiations began on the "Last Chance" and temporary credentials was not merely ground rule negotiations, but contained substantive matters on which it was conditioning bargaining on the two proposals requested by the Union. Imposing such onerous conditions, in the name of "ground rules" which had to be resolved prior to bargaining on any Union mid-term proposals, in my opinion, subverts the collective bargaining process. Consequently, I

reject Respondent's assertion that the totality of the evidence shows that it was engaged in good faith bargaining over ground rules which should satisfy its obligation to bargain concerning the "Last Chance Agreement" and the temporary credentials for union representatives who were not Air Force employees. This argument ignores the fact that what Respondent would classify as ground rule bargaining was in actuality more than bargaining over the framework for Union-initiated mid-term bargaining.

Accordingly, it is found that Respondent violated section 7116(a)(1) and (5) of the Statute by refusing to bargain concerning "Last Chance Agreements" and the issuance of temporary credentials for union representatives who are not Air Force employees. Therefore, it is recommended that*/ the Authority adopt the following:

ORDER

Pursuant to section 2423.29 of the Federal Labor Relations Authority's Rules and Regulations and Section 7118 of the Federal Service Labor-Management Relations Statute, the Authority hereby orders that the Department of the Air Force, Headquarters, Air Force Logistics Command, Wright-Patterson Air Force Base, Ohio shall:

1. Cease and desist from:

(a) Refusing to bargain in good faith with the American Federation of Government Employees, Council 214, AFL-CIO, the exclusive representative of certain of our employees, concerning "Last Chance Agreements" and the issuance of temporary credentials for union representatives who are not Air Force employees.

(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.

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

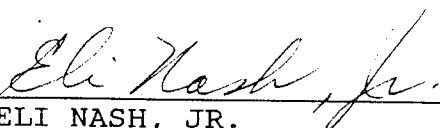
(a) Upon request, bargain with the American Federation of Government Employees, Council 214, AFL-CIO, the exclusive representative of certain of its employees, concerning "Last Chance Agreements" and the issuance of temporary credentials for union representatives who are not Air Force employees.

*/ Respondent's Motion for Summary Judgment is denied.

(b) Post at all its facilities where bargaining unit employees represented by the American Federation of Government Employees, Council 214, AFL-CIO, are located, 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 Commander, or a designee, and shall be posted and maintained for 60 consecutive days thereafter, in conspicuous places, including 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.

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

Issued, January 27, 1989, Washington, D.C.



ELI NASH, JR.
Administrative Law Judge

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 refuse to bargain, upon request of the American Federation of Government Employees, Council 214, AFL-CIO, the exclusive representative of certain of our employees, concerning "Last Chance Agreements" and the issuance of temporary credentials for union representatives who are not Air Force employees.

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 bargain with the American Federation of Government Employees, Council 214, AFL-CIO, the exclusive representative of certain of our employees, concerning "Last Chance Agreements" and the issuance of temporary credentials for union representatives who are not Air Force employees.

(Activity)

Dated: _____ 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, Region V, whose address is: 175 W. Jackson Blvd., Suite 1359-A, Chicago, IL 60604, and whose telephone number is: (312) 353-6306.