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

DEPARTMENT OF THE AIR FORCE HEADQUARTERS, AIR FORCE LOGISTICS COMMAND, WRIGHT-PATTERSON AIR FORCE BASE, OHIO Respondent	
and	Case No. 5-CA-80234
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, COUNCIL 214, AFL-CIO Charging Party	

Judith A. Ramey, Esq.
For the General Counsel

William P. Kruger, Esq.
For the Respondent

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, Chapter 71 of Title 5 of the U.S. Code, 5 U.S.C. section 7101 et seq., 92 Stat. 1191 (hereinafter referred to as the Statute) and the Rules and Regulations of the Federal Labor Relations Authority (FLRA), 5 C.F.R. Chapter XIV section 2410 et seq.

On March 18, 1988, the American Federation of Government Employees, Council 214, AFL-CIO (hereinafter referred to as the Union) filed an unfair labor practice charge against Department of the Air Force, Headquarters, Air Force Logistics Command, Wright-Patterson Air Force Base, Ohio

(hereinafter referred to as Respondent). Based on the investigation of that charge the Regional Director of Region V issued a Complaint and Notice of Hearing on May 26, 1988 alleging that the Respondent violated section 7116(a)(1) and (5) of the Statute when it refused to bargain the procedures for mediation/arbitration in connection with Respondent initiated mid-term changes, as requested by the Union.

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

A hearing was held before the undersigned in Dayton, Ohio. All parties were represented and afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence and to argue orally. Post hearing briefs were filed 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, conclusion of law and recommendations.

Findings of Fact

At all times material herein, the Union has represented a unit of approximately 73,000 civilian employees of Respondent located at several different Air Force Logistics Command (herein called AFLC) facilities around the country as well as AFLC headquarters, which is located at Wright-Patterson Air Force Base, Ohio. These civilian employees comprise almost 90 percent of Respondent's work force. An estimated 20,000 supervisors are involved in supervising the above employees.

Respondent and the Union have been parties to a Master Labor Agreement (herein called MLA) at all times material herein. The present MLA became effective in October 1986. It was preceded by an earlier MLA, which became effective sometime in either April or May 1979.

Sometime around December 15, 1987, Paul Palacio the Union's president submitted a request to bargain to William Langley, a labor relations officer, on procedures concerning the mediation/arbitration of disputes arising from negotiations on AFLC initiated mid-term changes in conditions of employment. Considering this request to be a Union initiated proposal, Palacio cited Internal Revenue Service, 29 FLRA 162 (1987), a case requiring an agency to bargain in good faith

during the term of a collective bargaining agreement on negotiable union-initiated proposals. Some two months earlier, around October 1987, the Union had submitted its only other union initiated mid-term bargaining request. The earlier request also became the subject of an unfair labor practice. That case Department of the Air Force, Headquarters, Air Force Logistics Command, Wright-Patterson Air Force Base, Ohio OALJ-89-34 and (hereinafter referred to as Wright-Patterson) was decided by the undersigned on January 27, 1989.

During November and December 1987, the parties negotiated Respondent's proposals for general procedures for such bargaining. On December 24, 1987, Respondent answered the Union's request by letter from Langley stating as follows:

> Before we engage in union initiated mid-term bargaining, procedures will have to be negotiated. As you know, the parties are currently engaged in such negotiations. Your proposals are therefore returned without action until such time as procedures for union initiated mid-term bargaining are in place.

Following receipt of this letter, Palacio on January 4, 1988 again requested negotiation of "an agreement on procedures for mediation/arbitration resulting from AFLC initiated mid-term bargaining changes. . . ." Respondent's reply to this request was identical to its December 24, 1987 letter.

Although the parties negotiated on ground rule procedures during the relevant period and later bargained to impasse on the matter, it is clear that the negotiations on the Union initiated mid-term proposals never took place.

Conclusions

The fact that mid-term bargaining was involved in both this case and Wright-Patterson, supra, is readily conceded. Furthermore, Respondent is not really challenging the concept that it might have an obligation to negotiate over validly initiated union mid-term proposals in this case. Consequently, it is unnecessary to belabor that point or to address any concern as to whether there was an obligation on Respondent's part to bargain on validly initiated Union mid-term proposals. That obligation is clearly established in Internal Revenue Service, supra.

Moving to the real issue in this matter, it is clear that this case does not differ significantly from the earlier Wright-Patterson case decided by the undersigned to which the parties allude. In that case Respondent offered counter proposals which were found by me to include substantive as well as "framework" proposals which Respondent insisted be negotiated prior to negotiations on the Union's mid-term proposals. Here Respondent offered no proposals at all but merely refused to negotiate until the above-mentioned general procedures for "all union-initiated bargaining are final." Here again, Respondent contends that it is merely attempting to establish a framework for future mid-term negotiations. As stated in the earlier decision, framework matters involve such things as number of participants for each side; location of negotiations; a schedule for negotiation meetings; the procedures for initiating, negotiating and agreeing on proposals; and the procedures to help resolve impasse. Department of Health and Human Services, Region VII, Kansas City, Missouri, 16 FLRA 944 (1984). The only proposals concerning ground rules which are now on the table however, are those Respondent presented to the Union which already have been found to constitute proposals which contained "substantive" as well as framework proposals and as such were not offered in good faith. Respondent's action in insisting that these provisions be bargained to completion in my view stalls bargaining on the matter to the extent that it forecloses any bargaining on any matter of importance raised by the Union as a mid-term initiative. This is clearly shown both in this matter and in the earlier case where there has been no bargaining on the substantive mid-term proposals offered by the Union. Most certainly it was not the intent of the Authority in the ground rules cases cited by both sides that an Agency could preclude bargaining on substantive matters by continually insisting on the completion of alleged framework negotiations when in fact many of the alleged framework matters were substantive. Accordingly, it is found that Respondent was insisting on completion of negotiations of matters which were not entirely framework matters and its action in so doing raises serious doubt as to a good faith performance of its bargaining obligation.

In arguing that there are no cases to support a requirement of synchronous bargaining Respondent states that there is no preponderance of the evidence of a separate need for bargaining which must be met for ground rules and for collective bargaining purposes. That theory will not help it in this case since the record is absolutely clear that Respondent refused on two occasions to even consider the

Union's proposals until ground rules were in place. As the General Counsel points out the unfair labor practice charge herein involves only the two earlier refusals by Respondent to negotiate the mid-term initiations and not matters handled separately after the filing of the instant unfair labor practice charge.

Respondent contends that Article 33 of the MLA which applies to management-initiated mid-term proposals bind it to follow the established procedures in each management-initiated proposal and that the Union should also be bound by some procedures. This argument begs the question. First, those articles are already in place, and secondly, the existing articles contain no statement that the Union has to follow those same steps in offering its mid-term proposals nor is there any showing that the entire bargaining process need be stopped until "framework" proposals are in place concerning union offered mid-term proposals.

Respondent argues also that proposals for mediation/ arbitration matters constitute a contractual dispute under Article 33.04(b) of the MLA and should be handled under Article 6 and 7 of the MLA. Indeed a similar question was grieved by the Union following Respondent's March 16, 1988 declaration of non-negotiability and after the unfair labor practice charge was filed in this case.1/ Unlike that issue the question here is only whether Respondent bargained in good faith. In the undersigned's view, Respondent has not. Accordingly, it is found that the matter was not one which should be handled by an arbitrator.2/

Based on the foregoing, it is found that Respondent violated section 7116(a)(1) and (5) of the Statute by refusing to bargain concerning procedures for mediation/ arbitration resulting from AFLC initiated mid-term bargaining. Therefore, it is recommended that the Authority adopt the following:

1/ The dicta cited by Respondent in NLRB v. FLRA, 834 F.2d 191 (1987) is not controlling in the matter.

2/ Respondent also sought to establish a waiver. Based on all the record evidence, I find neither an express waiver or any waiver by bargaining history. See U.S. Army Corps of Engineers, Kansas City District, Kansas City, Missouri, 31 FLRA 1231 (1988).

ORDER

Pursuant to section 2423.29 of the Rules and Regulations of the Federal Labor Relations Authority and section 7118 of the Statute, it is hereby ordered that the Department of the Air Force, Headquarters, Air Force Logistics Command, Wright-Patterson Air Force Base, Ohio:

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 its employees, concerning procedures for mediation/arbitration resulting from Air Force Logistics Command initiated mid-term bargaining changes.

(b) In any like or related manner interfering with, restraining or coercing any employee in the exercise of 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 Federal Service Labor-Management Relations Statute:

(a) Upon request, bargain in good faith with the American Federation of Government Employees, Council, 214, AFL-CIO, the exclusive representative of certain of its employees, concerning procedures for mediation/arbitration resulting from Air Force Logistics Command initiated mid-term bargaining changes.

(b) Post at 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 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.

(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, Washington, D.C., September 6, 1989

Eli Nash, Jr.

ELI NASH, JR.
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 refuse to bargain in good faith, upon request of the American Federation of Government Employees, Council 214, AFL-CIO, the exclusive representative of certain of our employees, concerning procedures for mediation/arbitration resulting from Air Force Logistics Command initiated mid-term bargaining changes.

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

WE WILL upon request of the American Federation of Government Employees, Council 214, AFL-CIO, the exclusive representative of certain of our employees, bargain in good faith concerning procedures for mediation/arbitration resulting from Air Force Logistics Command initiated mid-term bargaining changes.

_____
(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.