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

DEPARTMENT OF THE AIR FORCE WILLIAMS AIR FORCE BASE CHANDLER, ARIZONA Respondent	
and	Case No. 8-CA-80124
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1776, AFL-CIO Charging Party/ Union	

Deborah S. Wagner, Esquire
For the General Counsel

Major Phillip G. Tidmore, Esquire
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. (herein called the Statute). It was instituted by the Regional Director of Region 8 based upon an unfair labor practice charge filed on December 9, 1987 by the American Federation of Government Employees, Local 1776, AFL-CIO (herein called the Union) against Department of the Air Force, Williams Air Force Base, Chandler, Arizona (herein called Respondent). The Complaint alleges that the Respondent violated Section 7116(a)(1) and (5) of the Statute by unilaterally eliminating 8 parking spaces for

bargaining unit employees, without first notifying the Union and affording it an opportunity to bargain over the change and by implementing a new local supplement to an Air Force Regulation without first notifying the Union and providing it with an opportunity to negotiate concerning the substance and/or implementation and import change.

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

A hearing was held before the undersigned in Phoenix, Arizona, at which time all parties were represented by counsel and afforded full opportunity to adduce evidence and to call, examine, and cross-examine witnesses and argue orally. Timely briefs were filed and have been duly considered.

Upon consideration of the entire record in this case, including my evaluation of the testimony and evidence presented at the hearing, and from my observation of the witnesses and their demeanor, I make the following findings of fact, conclusions of law, and recommended order.

Findings of Fact

The Union represents about 500 bargaining unit employees. Its local office is located in Building 320 and is open for business everyday. The Union has 8 elected officers and approximately 15 stewards. There are also bargaining unit employees working in Building 321 and 322 which are close to the parking spaces at issue in this matter.

Around September 2, 1982, Respondent published Air Force Regulation 125-14, the Fighter Training Wing Supplement 1 (herein called AFR 125-14). Thereafter, on December 2, 1982 Respondent published Air Force Regulation 18-3 on the Personnel Parking Facilities Program. In 1985 or 1986, the Air Force Office of Special Investigations (OSI) was granted 2 reserved parking spaces in front of Building 321 at the request of the Base Commander.

On March 16, 1987 the 82nd Flying Training Wing Supplement to AFR 125-14 was published. Between August-November 1987, all of the Base parking lots were sandblasted to conform to the wishes of the base wing commander.

Sometime around October 14, 1987, Union President Kit Snyder sent a letter to the Director of Personnel Civilian Employee Relations Specialist requesting bargaining over changes in parking policy from its original "first come, first serve basis to some form of designated status." The letter requested bargaining noting that this was not a management right issue and further requesting that all parking spaces be returned to the status quo ante until agreement was reached.

According to Snyder, he wrote this letter because he noticed that Respondent had eliminated or reserved a number of parking spaces in the lot outside the Union office located in Building 320. There are three virtually identical buildings in a row, numbered 320, 321 and 322, with a parking lot along the front of all three buildings. Across from these three buildings, on the other side of the parking lot, is the Officers Club Building 300. Snyder testified that four spaces were eliminated about 50 to 60 feet from the Union office, in front of Building 321, when the area was designated a loading zone. In addition, there were four other spaces in front of Building 320 marked reserved which in fact means they were eliminated. Two of these spaces were reserved for use by OSI, sometime between July and September 1987, when the curbs were painted yellow with black letters saying OSI.1/ Then this paint was sandblasted off, and the spaces were again available for general use for a few months. In about October 1987, the same two spaces were marked with small brown placards saying "reserved."

The other two spaces in front of Building 320 were marked reserved for the first time in October 1987.2/ Initially, these spaces were reserved for use by Base Administration. When base administration moved out of

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1/ Prior to this time, the same two spaces had badly faded yellow curbs marked reserved, but these signs had fallen into disuse and were basically ignored.

2/ Mary Ann Shonk, the Base Labor Relations Officer stated that there have been no changes in parking, and no spaces eliminated, in the parking lot outside Building 320 and 321. This, however, is contradicted to some extent by Respondent's other witness, Captain Pinter, who testified that there were changes in the lot but that these changes occurred earlier in time than Snyder's testimony indicates.

Building 320 in March 1988, the same two spaces continue to be reserved, and are now used by Professional Military Education, which conducts training classes in Building 320. Captain Pinter claimed that base administration moved out of Building 320 in 1986, and that Professional Military Education was granted two reserve spaces sometime between April - June, 1987. However, he was clearly speculating about when base administration moved out based on when, to the best of his recollection, certain other construction was completed. For about a month before the reserve signs were painted, base administration was trying to reserve the spaces by using orange traffic cones. Prior to that time, these two spaces had never been reserved. Captain Pinter testified that base administration did not have any reserved spaces, and that Professional Military Education was given two reserved spaces in 1987. There was no evidence to establish the precise dates when the base commander's approval of reserved spaces were actually put into effect. Snyder's presence in the Union office daily tends to make his testimony more believable than Pinter's on this particular issue.

Snyder then testified that he received no response to his letter. Shonk, contradicted by alleging that she spoke with him about the letter on October 19, 1987. Snyder recalled such a conversation, but says it took place in late November early December, after he had filed the notification of a potential unfair labor practice charge with Respondent as required by the negotiated agreement between the parties. Snyder recalled that the parties discussed what could be done to resolve the problem. According to Snyder, the Union asked that Respondent rescind the new regulation and return the reserved parking spaces and eliminated spaces back to status quo ante, which would have been open parking on a first come, first served basis. Shonk according to Snyder, was not sure she could do that. Shonk's Memo for Record of the October 19, 1987 conversation shows Snyder explained about the four spaces that were eliminated in the parking lot between Building 300 and Buildings 320/321. In it he described the spaces that were reserved with cones outside Building 320, and asserted there appeared to be more reserved spaces in the vicinity of Building 320. In addition to the items included in the complaint, Snyder discussed some other changes in parking which had occurred in the past several years. These included the elimination of parking along 7th Street (which runs along the back of the Buildings 320/321), and the construction of the Shopette in an area that was once available for parking. Shonk's memorandum indicates she told Snyder that she was unaware of

any changes in parking and suggested he may have been confused by the fact that the reserved signs were different. He insisted, however, that there changes had been made. Shonk also told Snyder that if he was looking for reserved space for the Union, there was nothing to preclude him from requesting it. Snyder indicated he did not want to do that. Shonk was well aware that the Union had already made such a request, and the Commander had turned it down. The Union made it clear that it was seeking as status quo ante remedy in this matter.

Sometime, in early November 1987, the Union became aware of a memorandum from the base commander regarding reserved parking spaces, dated November 4, 1987. The memorandum mentioned a 16 March 1987 base supplement to AFR 125-14, addressing reserved parking. Until the Union discovered this memorandum, it was totally unaware of the March 16, 1987, 82 FTW Supplement, the local supplement. Upon its discovery the Union requested a copy of the new supplement dated March 16, 1987, and the previous supplement it replaced. In February 1988, the Union was given a two page extract of the 16 March 1987 supplement and the prior 2 September 1982 supplement it replaced portion of each supplement concerning both of which concerned reserved parking. The Union was not provided any notice of the new supplement before it was implemented.

There were several differences between the old and the new supplemental regulations. First, the new regulation eliminated "award recipients" as one of the priorities for reserved parking. This category applied to certain bargaining unit employees. Another category concerning "Other reserved parking as determined and approved by the base commander was also eliminated." Depending on the circumstances this category might also apply to civilian bargaining unit employees.

The procedures by which reserved spaces were assigned, were also changed. In the past, the proper forms were submitted through the chief of security policy to the base commander for approval or disapproval. The new regulation provided under Section 4-7(c), that requests for "reserved key personnel parking spaces" must be submitted to the chief of security police, along with justification, the total number of spaces available, and the total number needed. Parts (c) and (d) also place certain restrictions on the number of spaces which may be reserved. Part (e) requires chief of security to review all requests and recommend approval or disapproval to the base commander. Part (f)

explains the procedure to be followed after the request is approved. The key personnel spaces will be marked reserved with a number i.e. "reserved W-1, 2, 3, etc." The organizational commander or civilian equivalent can then assign those spaces as they see fit. This has created some parking difficulties for employees in certain areas. For example, in the supply parking lot, between the spaces reserved for key personnel and those reserved for customer parking, nearly a quarter of the parking lot is reserved. Part (h) authorizes certain reserve parking at the Base Exchange, Commissary, and Open Messes. All three places employ civilian bargaining unit workers. Thus, the new regulation set up some substantially new procedures and requirements. Shonk testified that the changes were minor saying, "There was nothing very important there. It may have deleted some of the reserved parking, but there was nothing that precluded anyone from continuing to request reserve parking through the security police to the base commander." Employees who lost reserved parking spots, or others who had their requests disapproved, probably did not find the changes quite so unimportant.

Conclusions

FAILURE OF THE UNION TO REQUEST A COMPELLING NEED FOR EITHER AIR FORCE REGULATIONS 125-14 AND THE WILLIAM SUPPLEMENT THERETO.

Respondent places a new twist to the "compelling need" argument in this case. It simply argues that the Union made no request under section 7117(a) of the Statute for a compelling need determination in the case and that since it did not, the matter is not ripe for determination in an unfair labor practice forum.

Under section 7117(a) of the Statute and Section 2424 of the Authority's Rules and Regulations, a Respondent may raise compelling need to declare a union proposal nonnegotiable if that proposal would conflict with an agency rule or regulation which meets the criteria set out in section 2424.11 of the Rules and Regulations. Then the Union is obligated to file a negotiability appeal in order to resolve the question of whether a compelling need exists. As Respondent notes, compelling need determinations may only be resolved under a negotiability appeal and not in an unfair labor practice proceeding. Federal Emergency Management Agency, 32 FLRA 502 (1988); Federal Labor Relations Authority v. Aberdeen Proving Ground, 108 S. Ct. 1261 (1988). However, Section 7117(a)(3) stipulates that

compelling need applies only to regulations issued by an agency, such as the Department of Defense, or a primary national subdivision such as the Department of the Air Force. It does not apply to a local supplement issued pursuant to a base commander's exercise of discretion regarding parking. Moreover, compelling need may only be raised by Respondent to declare a particular proposal nonnegotiable. It does not relieve Respondent of its duty to properly notify the Union, and upon request, bargain with it over substantively negotiable changes. Consequently, Respondent's compelling need argument is rejected.

DID THE UNION FAIL TO FILE ITS UNFAIR LABOR PRACTICE CHARGE TIMELY UNDER SECTION 7118(a)(4) OF THE STATUTE.

There is no merit in Respondent's claim that the charge was untimely filed. Respondent asserts that the supplement to AFR 125-14 was out for 7 months before the Union found out about it and that the Union did not file the unfair labor practice charge until 8 months after the supplement issued. Of course the Statute says that a complaint based on a charge can issue "if the charge was filed during the 6-month period beginning in the day of the discovery ...." Both Department of Labor, 20 FLRA 296 (1985) and Department of the Treasury, 20 FLRA 51 (1985) cited by Respondent are distinguishable.

The General Counsel views the time question as one involving when the respective changes were made. The General Counsel urges that the Union had no way of knowing of the supplement unless Respondent informed it. Furthermore, the General Counsel contends that Union President Snyder should be credited over Respondent's witnesses Pinter and Shonk as to when the change actually took place.

With respect to the local supplemental regulation, the Union had no knowledge that the March 16, 1987 supplement existed until it received the base commander's November 4, 1987 letter, referencing the new supplement. Under Section 7118(a)(4), the six month time period for filing an unfair labor practice charge will not begin running until the alleged unfair labor practice is discovered, if the charging party was prevented from filing the charge during the six months after the alleged unfair labor practice occurred because of a failure on the part of the agency to perform a duty owed to the charging party, or because concealment prevented the discovery of the alleged unfair labor practice within the six month period. Here, Respondent failed to

notify the Union of the proposed new supplement to AFR 125-14, thereby failing to perform a duty owed to the Union. The Union was unaware of the new regulation, and had no way to become aware of the new regulation, until it discovered the base commander's letter regarding reserved parking spaces. cf. Veterans Administration and VAMC, Lyons, New Jersey, 24 FLRA 255 (1986); Military Entrance Processing Station, Los Angeles, California, 25 FLRA 685 (1987). Department of the Treasury, Internal Revenue Service, and Internal Revenue Service, Houston District, 20 FLRA 51 (1985). While there is no evidence of an intentional concealment, the Union had no knowledge of the new supplement within six months of the date it became effective. In view of the fact that this charge was filed within weeks after the Union learned of the new regulation, equitable principles would require that the six month limitation be suspended. Department of the Air Force, Headquarters 83rd Combat Support Group, DPCE, Luke Air Force Base, Arizona, 24 FLRA 1021 (1986); Veterans Administration, Washington, D.C. and VA Medical and Regional Office Center, Togus, Maine, Case Nos. 1-CA-70068, 1-CA-70069, OALJ-88-98 (July 6, 1988). Therefore, the portion of this case regarding the March 16, 1987, 82 FTW Supplement 1 to AFR 125-14, is timely filed. Respondent also failed to notify the Union prior to implementing part 4-7 of that supplement regarding reserved parking, and refused to negotiate with the Union when it discovered the new supplement. Consequently, Respondent's assertion that the change is untimely is rejected.3/

DID RESPONDENT VIOLATE THE STATUTE BY FAILING TO GIVE NOTICE AND AN OPPORTUNITY TO BARGAIN.

Respondent, erroneously applying the de minimis standard of Department of Health and Human Services, 19 FLRA 827 (1985) argues that there is no violation herein since the changes were beneficial. That is not the issue in this

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3/ Respondent also asserted that the Union failed to meet the 15 day time requirement of Article 9, section I of the collective bargaining agreement. Apparently, the Union mailed the unfair labor practice on the 17th instead of the 15 day. The question raised here by Respondent is one of contract interpretation which indeed would be more appropriately resolved through the parties' agreement. Therefore, I make no findings concerning the merits of that assertion.

case. See U.S. Army Revenue Components Personnel and Administrative Center, St. Louis, Missouri, 19 FLRA 290 (1985). Where no management right is involved, the exclusive representative is entitled to bargain on the decision itself and the de minimis standard does not apply.

In situations such as this one involving employee parking, Respondent is required to substantively negotiate when it decides to reserve certain parking spaces and eliminate other parking spaces formerly available for employee parking in its lot outside Buildings 320 and 321. Immigration and Naturalization Service, 16 FLRA 1007 (1984); U.S. Marshals Service, 12 FLRA 650 (1983); U.S. Customs Service, Washington, D.C., 29 FLRA 307 (1987).

The changes in parking outside Buildings 320/321, as well as the change in the supplemental regulation, clearly affected working conditions of bargaining unit employees. The Union office, which is located in Building 320, is open to employees on a daily basis, and employees visit that office for various legitimate purposes. The Local has eight officers and 15 stewards who act on behalf of the Union. In addition, there are bargaining unit employees permanently assigned to Buildings 321 and 322. The changes to the local supplement to AFR 125-14 applied to reserved parking throughout the base. Since there are over 500 bargaining unit employees on the base, all of whom are covered by the new procedures, this reserve parking regulation clearly affects a condition of employment for bargaining unit employees. When Respondent makes changes in employee working conditions, it is required to provide the Union with notice and an opportunity to bargain before implementing the change. Since parking is a working condition, Respondent has a duty to notify the Union before making changes affecting parking. Immigration and Naturalization Service, supra. This obviously was not done. Accordingly, it is found that Respondent's conduct is violative of the Statute.

Based on the foregoing, it is concluded that Respondent violated section 7116(a)(1) and (5) of the Statute by unilaterally reserving or eliminating 4 parking spaces located in front of Building 320 and by unilaterally eliminating 4 parking spaces in front of Building 321 and by unilaterally implementing a new local supplement to an Air Force Regulation without first notifying the Union and providing it the opportunity to negotiate concerning these changes. 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 of the Federal Labor Relations Authority and section 7118 of the Statute, it is hereby ordered that the Department of Defense, Department of the Air Force, Williams Air Force Base, Chandler, Arizona shall:

1. Cease and desist from:

(a) Unilaterally implementing changes in the working conditions of bargaining unit employees, by eliminating or reserving 4 employee parking spaces located in front of Building 320 and by eliminating 4 other employee parking spaces located in front of Building 321, and by implementing a March 6, 1987 supplement to AFR 125-14 addressing reserved parking on the base, without first notifying the American Federation of Government Employees, Local 1776, AFL-CIO, the exclusive representative of certain of our employees, and affording it an opportunity to bargain concerning the substance and/or the impact and implementation of said changes.

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

2. Take the following affirmative action designed and found necessary to effectuate the policies of the Statute:

(a) Rescind the March 16, 1987, 82 FTW supplement to AFR 125-14.

(b) Restore the 8 parking spaces in the lot in front of Buildings 320 and 321 to bargaining unit employees for parking on a first-come, first serve basis as it existed prior to June 1987.

(c) Notify and upon request negotiate with the American Federation of Government Employees, Local 1776, AFL-CIO, the inclusive representative of our employees of any intended changes in conditions of employment including intended changes in parking policies and afford it the opportunity to bargain over said changes.

(d) Post at its facility 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 base commander 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.

(e) Pursuant to Section 2423.30 of the Authority's Rules and Regulations, notify the Regional Director, Region 8 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., July 13, 1989.

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 institute unilateral changes in the working conditions of bargaining unit employees by eliminating or reserving 4 employee parking spaces located in front of Building 320, and by eliminating 4 other employee parking spaces located in front of Building 321, and by implementing a March 16, 1987 supplement to AFR 125-14 addressing reserved parking on the base, without first notifying the American Federation of Government Employees, Local 1776, AFL-CIO the exclusive representative of certain of our employees and affording it an opportunity to bargain concerning the substance and/or the impact and implementation of said 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 rescind the March 16, 1987, 82 FTW supplement to AFR 125-14 local supplement involving parking facilities.

WE WILL restore the 8 parking spaces on the street in front of Buildings 320 and 321 to bargaining unit employees for parking on a first-come, first serve basis as it existed prior to June 1987.

WE WILL notify and upon request negotiate with the the American Federation of Federal Employee, Local 1776, AFL-CIO the exclusive representative of our employees in advance of any proposed changes to established first-come, first-serve employee parking on the Base and, upon request, bargain concerning such changes.

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(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 8, whose address is: 350 South Figueroa Street, 3rd Floor Room 370, Los Angeles, CA 90071, and whose telephone number is: (213) 894-3805.