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

U.S. CUSTOMS SERVICE (WASHINGTON, D.C.) AND U.S. CUSTOMS SERVICE NORTHEAST REGION (BOSTON, MASSACHUSETTS)	
Respondent	
and	Case Nos. 1-CA-50395 1-CA-70128 1-CA-70129
NATIONAL TREASURY EMPLOYEES UNION AND NATIONAL TREASURY EMPLOYEES UNION, CHAPTER 133	
Charging Party	

Daniel F. Sutton, Esq.
Carol Waller Pope, Esq.
For the General Counsel

Larry Atkins, Esq.
For the Charging Party

Martin J. Ward
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 I, based upon unfair labor practice charges filed on August 23, 1985,

January 27, 1987, and March 31, 1987, respectively and first amended on April 24, 1987, March 31, 1987 and April 10, 1987, respectively and by a second amended charge on April 10, 1987, by the National Treasury Employees Union, and National Treasury Employees Union, Chapter 133 (herein called the Union) against the U.S. Customs Service, Washington, D.C. and U.S. Customs Service Northeast Region, Boston, Massachusetts (herein called Respondent or Respondents). A Consolidated Complaint and Notice of Hearing originally issued on April 28, 1987. The Consolidated Complaint and Notice of Hearing was amended on July 13, 1987 and again at the hearing. The Consolidated Complaint alleged that Respondent violated section 7116(a)(1) and (5) of the Statute by: (a) unilaterally implementing on March 4, 1985 several changes to the rotation schedule, assignments and staffing affecting employees assigned to its Boston District who are represented by the Union while refusing to bargain over proposals submitted by the Union which were subsequently held negotiable by the Federal Labor Relations Authority (herein called the Authority) in National Treasury Employees Union and U.S. Customs Service, Northeast Region, 25 FLRA 731, 25 FLRA No. 61 (1987); (b) that the Respondent unilaterally changed conditions of employment in violation of section 7116(a)(1) and (5) of the Statute on or about October 27, 1987, when it implemented a policy of assigning employees, who had been scheduled to work in relief slots in the Respondent's Airport facilities, to work in the Respondent's Seaport facilities, and vice versa, without having provided the Union with notice of this change or an opportunity to bargain concerning the change and/or the impact and implementation of the change;1/ (c) that the Respondent unilaterally changed conditions of employment in violation of section 7116(a)(1) and (5) of the Statute on or about December 2, 1986 by creating and filling an assignment as Designated Intelligence Officer, and on or about March 1, 1987, by terminating this assignment, in both instances without furnishing the Union with notice and without affording it an opportunity to bargain concerning the impact an implementation of these changes.

1/ The Consolidated Complaint was amended at the hearing, basically to clarify this allegation. That amendment was allowed because it bore a reasonable relationship to the change and appeared to be closely related to the events complained of. See e.g. Bureau of Land Management, Richfield District Office, Richfield, Ohio, 12 FLRA 686, 698, 12 FLRA No. 133 (1983) and U.S. Customs Service, Region I, 15 FLRA 309 at N.1, 15 FLRA No. 67 (1984).

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

A hearing was held before the undersigned in Boston, Massachusetts 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 parties 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 recommendations.

Findings of Fact

A. Background

At all times material herein, the Union has been the exclusive representative of a nationwide unit of Respondent's employees including all nonprofessional employees assigned to Respondent's Northeast Region.

At all times material herein, the bargaining unit described above was covered by a National Collective Bargaining Agreement (herein called the National Agreement) in effect between Respondent and the Union.

Article 20 of the above-described National Agreement entitled "Assignment of Work" provides in Section 16 for Respondent to "rotate employees through different work locations, assigned works, shifts and a time of duty . . ." The rotations are done in one month increments.

Sometime in 1980, after negotiations with the Union were completed, Respondent implemented a rotation system in its Boston Office which is central to any consideration of this case. Under this rotation system, Customs Inspectors rotate on a periodic basis through a series of "slots." Some of the slots in the rotation are at specified duty stations or work locations while other slots are designated as "relief" and are used to fill in at other specified slots. In addition, some Customs Inspectors are assigned to special details or assignments which are not included in the basic rotation. The assignments or work locations included in the basic rotation are in either the Respondent's Seaport or Airport Divisions. Each Division is headed by its own supervisor and has a distinct geographic jurisdiction, hours of work and overtime lists.

B. Case No. 1-CA-50395
Implementation of changes on March 4, 1985.

Around January 14, 1985, the Union's President, Edward J. Pacewicz received a letter from the then Assistant Director (Inspection and Control) Ralph M. Batchelder, Jr. notifying it of several changes which Respondent proposed to implement effective February 4, 1985. The letter identified several specific changes such as: (1) removing the Seaport and Airport Document Analysis Units (hereinafter called DAU's) from the jurisdiction of the Contraband Enforcement Supervisor and reassigning both the DAU's and the employees assigned to the DAU's to the basic rotation; (2) a reduction in the number of employees assigned to the Contraband Enforcement Team (hereinafter called CET) and reassignment of one GS-11 Senior Inspector and two GS-9 Inspectors to the basic rotation; (3) establishment of a "voluntary" Carrier Accountability Team (hereinafter called CAT) consisting of one GS-11 Senior Inspector and two GS-9 Inspectors whose initial assignments to CAT were to be for one year;2/ and (4) revisions to the basic rotation resulting from these changes.

Later around January 21, 1985, Pacewicz submitted a package of proposals concerning the proposed changes outlined by Respondent on January 14, and he also requested that Respondent's changes be held in abeyance until an agreement concerning the changes had been reached. In a follow up letter to Respondent on January 31, Pacewicz requested data concerning the proposed changes. In this request, he also stated that upon receipt of the requested information, it would "delete, amend and add to its proposals of January 21, 1985." On January 18, 1985, the arbitration award favorable to the Union issued. Subsequently, on January 23, 1985 the Union requested bargaining over the local impact of the Automated Cargo and Clearance Enforcement Procedures Technique (herein called ACCEPT program). Shortly thereafter, sometime in early February Respondent briefed the Union on the changes. At the briefing, Batchelder and then Seaport Chief Inspector Joseph Wilson explained that as a result of the proposed changes, the CET staffing would be reduced from twelve to eight GS-9 Inspectors and from five to three GS-11 Senior Inspectors, the new CAT would consist of two GS-9 Inspectors and one GS-11 Senior Inspector and

---

2/ Although the letter mentioned other assignments to CAT such as a Customs Entry Aide Respondent apparently decided at a later date not to make such assignments.

the number of employees participating in the basic rotation would increase by two GS-9's and one GS-11. The CET and CAT are one year special assignments with the possibility of extensions and are not included in the basic rotation. CET is an enforcement assignment with a primary emphasis on the interdiction of narcotics, and CAT is an audit team whose basic functions were previously performed by a Central Manifest Unit which was included in the basic rotation for GS-9 and GS-11 Inspectors. Respondent also delivered its response to the Union's January 21 proposals, declaring most non-negotiable.

By letter dated February 8, 1985, Batchelder notified Pacewicz that the changes would be held in abeyance "to facilitate clarification, understanding and input on your part" and that the changes would be implemented on March 4, 1985. Pacewicz delivered amended proposals to Batchelder on this same day. These amended proposals contained what were essentially proposals 1, 2, 3, 13, and 14 which are at issue herein.

Beginning February 11, negotiations began and continued over the next two and one half days. During these negotiations, proposals and counterproposals were exchanged, and although complete agreement was not reached, some proposals were agreed upon and initialed by the parties. On February 12, the Union submitted packages of amended proposals, designated as Union Counter #3. The Union's amended proposals contained the following:

> 1.) All qualified employees (Customs Inspectors, Inspectional Aides and Customs Entry Aides) will be assigned to work locations which have been identified by the Employer utilizing the bid process based on occupational seniority in a descending order. If there is a tie, Customs Service will be utilized to break the tie. If a tie still exists, Service computation date will be used to break the tie. If the tie still exists, a lottery will be used to break the tie. In the alternative, Merit Protection Principals will be utilized to assign employees.
>
> 2.) All qualified employees (Customs Inspectors, Inspectional Aides and Customs Entry Aides) will rotate utilizing the bid process or in the alternative Merit Promotion Principals, every 6 months.

3.) In order to maintain proficiency in sufficient aspects of the employees assigned duties, employees will change work locations once a year. For purposes of this agreement, only the airport passenger (Volpe) assignment will be considered one work location and only the 7/3, 3/11, 4/12 shifts assignments will be considered as one work location.

13.) Assignments of Customs Inspectors to Duty Officer, Terrorist Team and Cargo Accountability Team (C.A.T.) will be made in accordance with Article 20, Section 5 of the National Agreement. These assignments will have a duration of 6 months.

14.) The assignment of Customs Entry Aides to the Cargo Accountability Team will be in accordance with Article 20, Section 5 of the National Agreement. This assignment will have a duration of 6 months.

The Respondent declared proposals 1, 2 and 3 non-negotiable, citing Article 21, Section 2 of the National Agreement,3/ but offered counterproposals on proposals 13 and 14. On the third and final day of the negotiations, February 13, Pacewicz requested that Batchelder provide the Union with a declaration of non-negotiability, and he indicated that the Union wished to continue bargaining and would submit amended proposals. The Union submitted a Union Counter #5 and on February 15, 1985, Pacewicz informed Batchelder that Union Counter #5 was the Union's final position. The Union stated it considered the negotiations at impasse and would request the assistance of the Federal Mediation and Conciliation Service which the Union's national office did on February 15. Thereafter, Batchelder provided

---

3/ Article 21, Section 2 reads as follows:

For employees engaged in inspectional activities, law enforcement activities, and their required support personnel (normally those employees working under the jurisdiction of the Office of Enforcement and the Office of Inspection and Control), the Employer shall establish, maintain and change those shifts, tour of duty and hours of work to best promote the efficient and effective accomplishment of the mission and operations of the Service.

the Union with the requested statement of the Respondent's position on the negotiability of the Union's unresolved proposals, declaring union proposals 1, 2, 3, 13, 14 to be non-negotiable.

By letter dated February 25, 1985, the Respondent notified the Union of its position that the parties were not at impasse since there were no negotiable proposals on the table, and that the changes would be implemented on March 4, 1985. The changes were implemented as scheduled on March 4, 1985, despite the Union's request that implementation be delayed until agreement had been reached.

A consequence of these changes was that the number of GS-9 and GS-11 Inspectors assigned to the basic rotation increased by two GS-9's and one GS-11, and the number of slots included in the basic rotation increased from 46 to 48 for GS-9's and from five to six GS-11's. There was also a total of 22 changes in the assignments, duty locations and sequence of slots in the basic rotation for GS-9's including the reassignment of the Airport and Seaport DAU functions from CET to basic rotation. Many of those changes also involved changes in days off and hours worked for the affected employees. Further, as already seen, the number of GS-9 and GS-11 Inspectors assigned to CET decreased from twelve to eight GS-9's and from five to three GS-11's. Finally, there was the new CAT which was staffed by two GS-9's and one GS-11.

Testimony of affected employees sought to establish adverse impact. General Counsel's witnesses testified that CET and CAT are regarded as desirable assignments because of the different nature of the work and in the case of CET the promotion potential. CAT also offered regular work hours. Clearly, both CET and CAT involve specialized work different from that performed by employees who are in the basic rotation and, as already stated, both assignments offer regular work hours while employees in the rotation work a variety of different shifts which include weekend work. The desirability of these assignments is shown by testimony of Ellen Spirytus and Leslie Thompson who stated that they had not only volunteered for these assignments initially, but had requested extensions of their initial assignments. Thompson had unsuccessfully volunteered approximately seven times, and he had even filed a grievance over his non-selection, prior to being placed on CET. And when his one year assignment to CET ended on March 4, 1985 with Respondent's implementation of the CET staffing reduction, Thompson returned to the basic rotation despite his request to extend on CET.

As already noted, CET offered promotion potential. In that regard, of the approximately 16 employees who have been promoted since 1983 to the GS-11 level, either as a Senior or Supervisory Inspector, all but two, Joseph O'Hare and Teddy Woo, had worked on either CET or CAT, with the overwhelming majority of promotions coming from CET. According to Joseph Wilson, Assistant District Director, enforcement which is the primary purpose of CET is a qualifying factor for promotion. It should be noted that eventhough O'Hare and Woo were both promoted to the GS-11 level without having served on CET or CAT, both had worked on other similar special assignments - O'Hare on the Warehouse Inspection program and Woo as the Designated Intelligence Officer which is discussed in greater detail, infra. Accordingly, the undisputed evidence established that virtually all of the employees selected for promotion to the positions of GS-11 Senior Inspector and GS-11 Supervisory Inspector had participated in either CET, or some other similar specialized assignment.

C. Case No. 1-CA-70128
Cross-Assignment of Airport and Seaport Relief.

Without question certain slots in the basic rotation employed by Respondent in the port of Boston are designated as Airport Relief or Seaport Relief. From the inception of the basic rotation in 1980 until October 1986, employees assigned to Airport Relief slots were used exclusively to relieve at locations within the Airport Division while employees assigned to Seaport Relief slots relieved at locations within the Seaport Division, exclusively. Like the rotation system,4/ itself, the procedures relating to the use of relief slots have been subject of negotiations between the parties. In this regard, Pacewicz credibly testified that the parties' negotiations concerning the utilization of relief slots initially focused on the need to identify a specific posted duty location, to which an Inspector assigned to a relief slot would report if not filling in on relief somewhere else, in order to compute any mileage entitlement. Thus, it was agreed that Inspectors

---

4/ The only exception to this uniform practice appears to have occurred around 1983 when an Inspector who was assigned to a Seaport Relief slot was directed to report to the Airport. Upon learning of this, Pacewicz called Batchelder, who rescinded the Airport assignment after one day and agreed to abide by the parties' agreements relating to the use of relief in the future.

assigned to a designated Airport Relief slot "will normally report" to a designated Airport location "unless assigned to relief at the airport" and that Inspectors assigned to a designated Seaport Relief slot "will normally report" to a designated Seaport location "unless assigned to relief at the Seaport." This same language has been repeatedly used by the parties and has been carried over from one agreement to the next with minor modifications i.e., adding or subtracting a particular relief slot. For example, during both the February 1985 and August 1985 negotiations discussed above, the parties initialed this language, without any specific discussion regarding the use of relief positions. This language was also initialled by the parties again in February 1986. Although the parties discussed the matter at that time, they failed to reach any agreement as to, when and under what circumstances it was appropriate to utilize a relief slot, there again was no discussion of either cross-assigning Airport Relief to Seaport locations, or vice versa. Respondent witnesses Wilson and Vecchiarello both testified concerning the cross-assignment situation. Neither version supports the other and I find it difficult to attach total reliability to their testimony concerning the bargaining history of this particular problem.

Sometime around October 27, 1986, Respondent for the first time other than one 1983, cross-assignment of an Inspector mentioned above, began cross-assigning Inspectors to Airport Relief slots to Seaport locations, and vice versa. As of the date of the hearing, four such cross-assignments had occurred affecting four different employees. Specifically, the record shows that Inspector Scopa, who was originally assigned to work slot 17, an Airport Relief assignment on a 10 to 6 shift with Sundays and Tuesdays or Wednesdays off during the October 27 to November 8, 1986 work period was cross-assigned to the Seaport DAU for this period at a different location, different hours (8 to 5) and with different days off (Saturday and Sunday). In addition it shows that Inspector Saia, who was originally assigned to work slot 31, an Airport Relief assignment, on a 10 to 6 shift with Sundays and Wednesdays or Thursdays off during this same two week period was cross-assigned to the Seaport's Coastal Trucking Terminal on an 8 to 5 shift with Saturdays and Sundays off. Inspector Harmon Tate testified that a few weeks later, during the December 7 to December 20 work period, he was cross-assigned from slot 17, an Airport Relief slot to the Seaport's Castle Island facility where his shift changed from 10 to 6 to 8 to 5, and his days off changed from Sunday and Wednesday to Saturday and Sunday. Tate's commute to work was almost doubled by this cross-assignment. Later as the record reveals, during the four week work period that

began on May 24, 1987, Inspector Hogan was originally assigned to slot 43, a Seaport Relief assignment at the Moran Facility on an 8 to 5 shift with Saturdays and Sundays off. Inspector McGrath testified that Hogan did not work this assignment because he was cross-assigned to the Airport where his schedule for his four weeks at the Airport was as follows:

Monday	7 to 3
Tuesday	3 to 11
Wednesday	4 to 12
Thursday	12 to 8
Friday	12 to 8

Although questions were raised about whether any of the affected employees "volunteered" for these cross-assignments in response to their supervisor's request Respondent's Chief Inspector, Dennis Vecchiarello who is credited, made it clear that had the employees not "volunteered," they would have been assigned. Further, Vecchiarello confirmed that the possibility existed of similar cross-assignments in the future - a recognition that appears particularly reasonable in view of the admittedly significant staffing shortage in the Airport Division.

When an employee is cross-assigned from an Airport Relief slot to a Seaport location, or vice versa, with the accompanying change in shift hours, there can be a dramatic effect on their overtime earnings. In this regard testimony makes it clear that under the applicable overtime policies and practices, an Inspector, who like Scopa, Saia or Tate is cross-assigned from an Airport Relief slot on a 10 to 6 shift to a Seaport 8 to 5 shift, could lose as much as a full day's pay for the same 6:00 a.m. to 8:00 a.m. overtime assignment. On the other hand, their overtime earnings for a 5:00 p.m. to 8:00 p.m. assignment would be double (one day's pay) that which they would receive for working from 6:00 p.m. to 8:00 p.m. on overtime at the end of a 10 to 6 shift. Moreover, overtime opportunities at Seaport facilities appear to be less than those at Airport facilities.

There is no question that Respondent did not notify the Union of its decision to begin cross-assigning employees assigned to Airport Relief slots to the Seaport, and vice versa. When the Union discovered the change, Pacewicz telephoned Wilson and followed with a request to bargain. Respondent never answered the Union's bargaining request.

D. Case No. 1-CA-70129
The creation and subsequent termination of the Designated Intelligence Officer Assignment.

In 1984 Respondent assigned certain intelligence duties to a GS-9 Inspector. At that time, the Union questioned the propriety of these duties being assigned to a GS-9 and Wilson decided to assign intelligence duties to a GS-11 Senior Inspector, based in part on the Union's concerns and his own plans for the position in the future. Thereafter, intelligence officer duties were assigned to a series of GS-11 Senior Inspectors including Moran, Cannon and Somers. In April 1986 the Union filed a grievance over the matter which it did not pursue. All the employees listed above apparently performed the intelligence officer duties on a part-time basis and for brief periods of time. Wilson's testimony and Respondent's work schedules show no separate listing for any intelligence officer assignment which buttresses the part-time nature of the work.5/ Around August 1986, however, Somers was promoted and a GS-9 Inspector, Teddy Woo, was detailed to the Designated Intelligence Officer assignment for an initial 30 day period beginning on September 2 in accordance with the National Agreement. After the 30 day detail expired around October 3, 1986, Woo was temporarily promoted to the GS-11 level for 60 days. During this time, Woo continued to be shown on the work schedules in a slot on the basic rotation.

A November 13, 1986 letter from Wilson to Pacewicz, informed the Union of Respondent's intention to make several changes including the creation of an "ACS processing unit" to be staffed by, among others, "one (1) Designated Intelligence Officer - GS-11 Senior." This letter further indicated that assignments to this ACS unit would be for one year. On November 15, Pacewicz requested bargaining concerning the changes outlined in Wilson's November 13 letter. He also requested a briefing and for the changes to be held in abeyance pending agreement. During a telephone conversation with Pacewicz, Wilson agreed to the requested briefing, but stated that he did not know when he could provide the briefing because he need more information himself regarding the proposed changes.

Pacewicz then received a copy of a memorandum dated December 2, 1986 from Wilson to the Chief Inspector, Inspection and Control Division, which stated, in relevant part, "Effective December 8, 1986 the following adjustments to the work schedule will be implemented:

5/ At some point although not exactly clear when it happened, the individual assigned to the intelligence officer duties became known as the District Intelligence Officer and, later, the Designated Intelligence Officer.

* * * * *

PAGE 2

* * * * *

Theodore Woo - Slot 28 (DIO)"

On December 5, Pacewicz delivered a request to Wilson for bargaining over the changes outlined in the December 2 memorandum. Pacewicz restated his request that the change be held in abeyance pending completion of negotiations, and suggested that briefing on these changes be consolidated with the briefing on the ACS program. Wilson's response in a letter dated December 9, 1986 was that the changes involved the exercise of managerial rights under 5 USC 7106(b)(1) and that the Respondent elected not to bargain since there was no evident adverse impact. The changes were then implemented on December 8, 1986, but the requested briefing was not held until February 1987. With regard to his bargaining request, Pacewicz testified that the Union wished to address concerns such as selection procedures for the Designated Intelligence Officer assignment, the duration of the assignment, which overtime list the assignee would be on, whether travel would be involved and whether a vehicle would be provided, and whether the assignee would receive an addendum to or a new performance appraisal.

As a result of the changes implemented on December 8, Woo was no longer listed on the work schedule in a rotational assignment. Rather, he was taken from the rotation and listed as the Designated Intelligence Officer on the second page of the schedule where details and longer duration special assignments are reflected. Woo also moved to the regular Monday-Friday, 8-5 shift as a result of the change. Wilson suggests that these actions, as well as his December 2, 1986 memorandum were merely part of a "strategy to justify to my supervisors that I needed another GS-11 senior position to fill the duties of the DIO" that as of December 8, 1986, Respondent established a new special assignment for a GS-11 Senior Inspector as Designated Intelligence Officer.6/ In this regard, Wilson conceded

---

6/ Wilson's explanation offered for these actions that he was simply reflecting Woo's temporary promotion as a GS-11 - is similarly unpersuasive since Woo had been temporarily promoted to the GS-11 level since on or about

(footnote continued)

that, in contrast to previous employees, Woo's primary function was as Designated Intelligence Officer, and that he intended Woo to remain on the Designated Intelligence Officer assignment indefinitely. The fact that Respondent created a new special assignment of Designated Intelligence Officer on December 8, 1986 is further supported by Wilson's testimony that he had originally reassigned intelligence officer duties from GS-9 to a GS-11 based on his intentions for the position "in the future." It is undisputed that in March 1987, Woo was promoted to an Operations Enforcement Analyst, GS-12 position and that there is no longer any GS-11 or GS-9 Inspector assigned or detailed to the Designated Intelligence Officer assignment. Finally, it is uncontested that Respondent never notified the Union of its decision to no longer assign Designated Intelligence Officer duties to GS-9 or GS-11 Inspectors. Instead, these duties were reassigned to the newly-created Operations Enforcement Analyst position.

Conclusions

A. Whether Respondent violated section 7116(a)(1) and (5) of the Statute when it implemented changes in conditions of employment on March 4, 1985 after refusing to bargain over Union proposals which were subsequently found negotiable by the Authority.

1. Whether the charge in Case No. 1-CA-50395 was filed within six months of the occurrence of the alleged unfair labor practice as required by section 7118, and whether paragraphs 8 and 9(a) of the Complaint are reasonably related to that change.

Respondent filed a Motion to Dismiss alleging that the original charge filed on August 23, 1985 and the First Amended Charge, filed on April 28, 1987 were untimely filed

---

6/ (footnote continued)

October 2, 1986. The record also reveals that Woo was selected for a permanent promotion to a GS-11 Senior Inspector position in November 1986, but that this promotion did not become effective until January 1987. Seemingly nothing occurred vis a vis Woo's promotional status on or around December 8, 1986 which would explain the work schedule change.

under section 7118(4)(A).7/ Respondent asserts that the March 4, 1985 date used in the charge is immaterial since the only changes that occurred on that date related to another issue, not mentioned in the charge. Respondent concludes that since the charge was filed more than six months after the event which gave rise to the charge, the instant Complaint should not have issued. Additionally, Respondent asserts that the Complaint must also be dismissed because it was not "based on the charge." In this regard, Respondent maintains that the General Counsel sought to avoid the fatal defect of the untimely filed charge by alleging a violation in connection with the CAT program, which had nothing at all to do with the ACCEPT program which was the subject of the Arbitrator's Award relating to changes to the rotational pattern for Customs inspectors in the Boston district. The ACCEPT program was initially implemented in 1983 and involved the rotation system. As noted, the parties went to arbitration over the matter and the Union prevailed before the Arbitrator.

The General Counsel asserts that notwithstanding the references to ACCEPT and the Arbitrator's award, the charge itself alleges that Respondent implemented changes in conditions of employment on March 4, 1985 without having fulfilled its statutory obligations. The General Counsel argues that it is undisputed that the changes in question were indeed implemented on March 4, 1985, and the Union's charge, was filed on August 23, 1985 or within six months of March 4, 1985, and satisfies the timeliness requirements of section 7118 insofar as it involves the March 4, 1985 changes.8/ Further, since the charge does concern the changes implemented on March 4, 1985, the complaint, which alleges that the implementation of such changes on March 4, 1985 constituted an unfair labor practice is clearly based

---

7/ Section 7118(4)(A) reads as follows: Except as provided in subparagraph (B) of this paragraph, no complaint shall be issued based on any alleged unfair labor practice which occurred more than 6 months before the filing of the change with the Authority.

8/ While Respondent does not directly question the procedure used by the Regional Director in the matter, of waiting until the Authority issued its decision and Order on the Union's negotiability appeal before issuing a complaint in this matter, it is clear that such a course is not precluded by the Statute. See NLRB Union v. FLRA, 126 LRR 3296 (1987).

upon the underlying change. Moreover, even assuming as Respondent's counsel argues, that the focus of the charge is the ACCEPT program, applicable Authority case law does not require a complaint to precisely mirror the charge according to the General Counsel. Rather, it is enough that the complaint bear a reasonable relationship to the charge. See e.g. Bureau of Land Management, Richfield District Office, Richfield, Utah, 12 FLRA 686, 12 FLRA No. 133 (1983). It is clear that a charge has never been considered a pleading which precisely binds an agency. Therefore, specificity in the charge is never required since its purpose is merely to initiate agency investigations to determine whether a complaint should issue. See for example, Fort Milling Co., 360 U.S. 301; Texas Industries, 139 NLRB 365, 336 F.2d 128 (CA5). Thus, the General Counsel maintains that since the charge refers to the March 4, 1985 implementation of the changes which are the subject of the complaint, this test is easily satisfied. I agree, that the charge is sufficient to include an allegation that Respondent implemented certain changes on March 4, 1985 which it deemed non-negotiable and about which it refused to bargain, and some of the changes it implemented were subsequently held negotiable by the Authority. In such circumstances, the date of implementation is the operative date rather than the date urged by Respondent.

Accordingly, based on the above, Respondent's Motion to Dismiss because of untimeliness and because the Complaint in Case No. 1-CA-50395 "was not based on the charge," is denied.

> 2. Whether Respondent was obligated to bargain with the Union about the impact and implementation of the March 4, 1985 changes.

Respondent presented multiple defenses regarding its actions revolving around the March 4, 1985 changes. Initially, Respondent contends the Arbitrator's award required it to bargain over the local impact of the ACCEPT program on the part of the Boston rotation pattern, that it bargained and it agreed to the new rotation pattern in the Union's proposals. Concerning Proposals 1, 2, 3, 13, and 14 Respondent asserts that there was no obligation to bargain since the proposals were not related to any change. Addressing each proposal separately, Respondent argues the following:

> Proposal 1 deals with the method of selecting employees for work locations. It is clear beyond doubt that there was no change in the method of selecting employees for the work locations.

The employees continued to rotate through the schedule, dropping from position 1 to position 2 to position 3, etc. This system of selection of employees for assignment has been the same since 1980.

Proposals 2 and 3 relate to length of assignments and time one way remain in a work location. Again, the changes involved did not concern in any way the length of assignments or the time one would remain in a work location. As noted above, the inspectors rotated from one position on the schedule to another position every two weeks. There was no proposal by the Respondent to change the length of the rotation.

The argument concerning Proposals 1, 2, and 3 are applicable even to the CAT program, which, as stated above, should not be a part of this action since it was not a part of the changes filed in this case. Nonetheless, even if the CAT program were considered to be part of this case, which Respondent contends it should not be because it considers the charge defective, that program did not propose to and did not change the method of selection, length of rotation, or time one would remain in a work location.

Proposal 13 states that assignment of Custom inspectors to Duty Officer, Terrorist Team, and Cargo Accountability Team will be made in accordance with Article 20, Section 5 of the National Agreement, and that these assignments will have a duration of six months. Again, the ACCEPT program did not make any changes relating to this subject. Also, even the CAT program was not concerned with duty officers or the terrorist team. The proposal of a different length of time for rotation than the one proposed by the Agency is not a proposal that relates to the impact and implementation of the management proposal.

Proposal 14 deals with assignments of Custom Entry Aides of the Cargo Accountability Team. This proposed change was never put into effect.

Respondent also argues that there was no obligation to bargain over proposals 1, 2, 3, 13, and 14 since the subject matter of those proposals was bargained over extensively in

Article 20 of the collective bargaining agreement under the heading of "Assignment of Work." Furthermore, according to Respondent proposals 13 and 14 were also matters which were bargained and agreed upon in the National Agreement. Having bargaining at the national level, does not in my view preclude impact bargaining at the local level and Respondent cites no authority to the contrary. Thus, it is found that under the present standard where a change is more than de minimis an impact and implementation obligation indeed can exist.

Lastly Respondent maintains that even if the CAT program is a part of this case, no obligation to bargain existed since the proposed changes were not "substantial" changes to the established rotation system governed by that Article and Article 37 of the National Agreement. Respondent contends that the CAT program resulted in only a few minor adjustments and in fact, the system of rotation remained the same. Furthermore, the apparent admitted reduction of details caused by the CAT program had no adverse impact on bargaining unit employees and did not affect vacancy announcements for promotion. Although certain of the proposals, or portions thereof, do not specifically involve or address precisely the changes implemented on March 4, 1985, all of the proposals relate to conditions of employment of bargaining unit employees and it is clear that Respondent refused to negotiate over any of those proposals based on its feeling that management rights were involved. Its position was rejected by the Authority. Furthermore, proposals 1, 2, and 3 all deal with procedures for assigning employees to CAT and other special assignments and can hardly be considered extraneous.

Since Respondent raises an argument of whether the changes were substantial an examination of the de minimis standard presently applied by the Authority is necessary. In Department of Health and Human Services, Social Security Administration, 24 FLRA 403, 24 FLRA No. 42 (1986) the Authority considered the question of the appropriate standard to be used in determining whether a change in conditions of employment resulting from the exercise of management rights under Section 7106 of the Statute gives rise to a bargaining obligation. The Authority modified its de minimis standard for determining whether a particular change in conditions of employment was sufficient to require bargaining stating that it would carefully examine the particular facts and circumstances presented in each case. 24 FLRA 407. Under the new standard, the Authority placed "principal emphasis on such general areas of consideration

as the nature and extent of the effect or the reasonably foreseeable effect of the change on conditions of employment of bargaining unit employees." 24 FLRA 408. The Authority also felt it necessary to take into account equitable considerations in balancing the various interests involved and deemed that such factors as the number of employees involved and the parties' bargaining history would not be controlling considerations and would be used to expand rather than limit the number of situations where bargaining will be required. Under this new standard the size of the bargaining unit was eliminated as a factor in determining whether a change is more than de minimis. 24 FLRA 408.

The instant record disclosed that two GS-9 Inspectors and one GS-11 Senior Inspector were returned to the basic rotation from CET which was reduced in size from 12 to eight GS-9's and from five to three GS-11's. A new CAT was also established and Respondent reassigned two GS-9's and one GS-11 to the new CAT. CET and CAT both involve specialized work which differs from that performed by employees in the basic rotation and both CET and CAT feature regular Monday to Friday, 8 to 5 shifts, whereas employees in the rotation are subject to a variety of changing shift days and hours. Furthermore, it was disclosed that the CET and CAT assignments are regarded as desirable for the reasons stated above and because an employee's promotional opportunities are improved significantly by CET and CAT experience. The effect or reasonably foreseeable effect then of the changes was to change the duties and hours of both the employees who were removed from CET and returned to the basic rotation and those employees who were assigned to CAT, and to reduce the number of slots available to employees to gain CET experience and help their opportunities for promotion. Furthermore, these were not the only such reassignments since the record reveals a total of 22 other changes to the assignments, duty locations and sequence of slots in the basic rotation including the reassignment of the Airport and Seaport DAU functions from CET to the basic rotation. As already noted, these revisions resulted in changes in the duties, hours and days off of affected employees in the basic rotation.

Three employees were removed from CET and returned to the basic rotation, three employees were assigned to CAT, and 44 employees were affected by the changes in the basic rotation. The parties' bargaining history indicates that Respondent recognized its bargaining obligation with respect to these changes, since it engaged in some bargaining prior to implementing the changes, and the parties have been ordered to bargain over similar changes in the past. Given

the nature and impact of these changes, and the fact that the Respondent indeed recognized its obligation to bargain, it would appear equitable to find that a bargaining obligation exists here. Finally, there has been absolutely no showing that a finding of a bargaining obligation in this case would result in any hardship or would unduly burden on the Respondent.

Respondent's protracted argument about proposals 1, 2, 3, 13 and 14 not being related to any change or having already been bargained about on in the local or national agreement is also without merit. These proposals were indeed submitted by the Union in February 1985 and declared non-negotiable by Respondent prior to the Authority's holding finding the proposals negotiable.

As the matter stands, the changes implemented on March 4, 1985, appear to be more than de minimis and, therefore, of sufficient gravity to obligate Respondent to bargain regarding their impact and implementation. Consequently, Respondent's argument that the proposed changes were not substantial is rejected.

A waiver of a union's bargaining rights under the Statute must be clear and unmistakable. See e.g. Department of the Air Force, Scott Air Force Base, Illinois, 5 FLRA 9, 5 FLRA No. 2 (1981). Furthermore, there is a distinction between statutory and contractual rights, and the failure to secure a contractual right does not constitute a waiver of a statutory right. U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, 21 FLRA 484, 494, 21 FLRA No. 64 (1986).

Any argument that it was not obligated to negotiate concerning the impact and implementation of any of the March 4, 1985 changes because they did not constitute "substantial" changes to an established rotation system within the meaning to Article 20, the National Agreement is essentially a waiver argument. The mere use of the term "substantial" as used by Respondent can hardly be viewed as a conscious yielding of the Union's statutory bargaining rights particularly since "substantial" was the impact standard in use by the Authority when the National Agreement was negotiated in 1983. See Social Security Administration, supra, 24 FLRA at 407.

Article 37 of that Agreement is far from clear as to what extent the Union's impact and implementation proposals relate to a proposed change and provides no basis for concluding that a clear and unmistakable waiver of statutory bargaining rights exists.

3. Whether Respondent violated section 7116(a)(1) and (5) of the Statute when it implemented the changes in employment on March 4, 1985 after having refused to bargain over Union proposals subsequently found negotiable by the Authority.

As already noted the Regional Director had the unfair labor practice charge before him when the negotiability appeal in National Treasury Employees Union and Customs, Northeast Region, 25 FLRA 731 (1987) was filed on September 20, 1985. Furthermore, his holding the unfair labor practice until after the negotiability appeal was resolved was a proper course of action. The aforementioned appeal found a duty to bargain on Proposals 1, 2, 3, 13 and 14. Those proposals were submitted to Respondent who refused to bargain because it felt they were nonnegotiable, a position not upheld by the Authority when faced with these exact proposals. Respondent admittedly told the Union that these proposals "were not negotiable and that there was no impasse." Respondent then implemented these proposals on March 4, 1985. Its refusal to negotiate over negotiable matters eventhough the determination of negotiability was made after its refusal to negotiate is in violation of the Statute. c.f. Department of the Treasury, Internal Revenue Service, Atlanta Service Center, 18 FLRA 731, 733, 18 FLRA No. 83 (1985).

Accordingly, it is found that Respondent violated section 7116(a)(1) and (5) of the Statute when it implemented the changes in conditions of employment on March 4, 1985 after refusing to negotiate over Union proposals which were subsequently found negotiable by the Authority.

B. Whether Respondent violated section 7116(a)(1) and (5) of the Statute when it implemented a policy of cross-assigning employees from Airport relief slots to Seaport locations, and vice versa, without having provided the Union with notice of the change and/or an opportunity to bargain regarding the change and/or the impact and implementation of the change.

Respondent maintains that there was no change in conditions of employment so as to require notice and an opportunity to bargain since the three incidents of cross-assigning involved only volunteers and even so, its action was de minimis; that this is a matter of contract interpretation and the collective bargaining agreement allows schedule changes to meet absences and fluctuating work loads and there

was no agreement or established practice of not using relief employees assigned to locations at the Seaport for relief at the Airport and vice versa; and finally, that no employee was reassigned from Airport relief to a Seaport slot or a Seaport relief to an Airport slot.

With regard to the initial issue raised by Respondent, the record clearly shows the nature and extent of the effect a reasonably foreseeable effect of the change on bargaining unit employees is more than de minimis. In fact it reveals that the cross-assignments have affected four employees to date; that their work locations, shift hours and, in some cases, days off were changed; that at least one employee's commuting time was doubled; and, that it is reasonably foreseeable, given the admitted staffing shortage in the Airport Division, that cross-assignments will occur in the future. More significantly, the uncontroverted testimony of Union President Pacewicz establishes that an employee's overtime opportunities and earnings suffer as a result of a cross-assignment. In these circumstances, and in view of the parties' history of negotiations regarding procedures relating to the utilization of relief slots, it is the view of the undersigned that the change was more than de minimis.

Concerning whether the Respondent fulfilled its bargaining obligations with respect to this change, or the impact and implementation of the change, the credible evidence revealed that Respondent failed to provide the Union with notice of its decision to implement the cross-assignment policy in October 1986, and that thereafter, it ignored the Union's bargaining requests. Furthermore, even assuming arguendo that Wilson did raise the possibility of cross-assignments during the parties' February 1985 negotiations, any passing reference that may have been made by Wilson some 18 months prior to the change, and in the context of the parties' negotiations on unrelated matters, does not constitute the type of clear and specific notice of a change required by the Statute. c.f., Department of the Army, Harry Diamond Laboratories, Adelphi, Maryland, 9 FLRA 575, 576, 9 FLRA No. 66 (1982) (passing reference to a change, in a different context, does not satisfy an agency's obligation to provide clear and specific notice).

Regarding Respondent's argument that the matter is one of contract interpretation. It is impossible to determine from a reading of the contract that the Union agreed, as Respondent is contending to waive any right to bargain over specific matters involving conditions of employment in situations where absences or fluctuations of work loads dictated changes. The above argument notwithstanding,

Respondent has not shown that such a situation was present during the reassignments or rotations involved here. Without a clear and unmistakable waiver of those rights it can hardly be found that this is a matter merely for contract interpretation. Respondent's argument is therefore, rejected. Its argument that there was no agreement not to cross-assign relief employees also has no merit since Respondent has consistently refused to reach any agreement on the matter. Moreover, Respondent's effort to deny that what is involved is not a condition of employment must also fail since such work assignments are most certainly working conditions.

Respondent's final argument that no employee was reassigned from a Seaport slot to an Airport slot is factually out of line since the record discloses that four employees who worked at one area were reassigned to work at another. The objection here is not that the reassignments were permanent as Respondent's argument attempts to suggest, but that they were made without proper notification and bargaining. Accordingly, Respondent's argument is rejected.

As the General Counsel points out, there is little question but that the decision to reassign an employee from the Airport Division to the Seaport Division involves the exercise of the reserved management right to assign employees under Section 7106(a)(2)(A) of the Statute, or a determination on the numbers of employees assigned to an organizational subdivision which is exempted from the mandatory scope of bargaining by Section 7106(b)(1) of the Statute. The employees involved however, had already been assigned to positions that rotate on a regular basis and to specific work locations where they perform their assigned duties, the determination as to which particular employee will be assigned to a specific work location, such as an Airport or Seaport slot, does not require the exercise of any reserved management right. c.f., NTEU and Customs Service, Northeast Region, supra, (proposals 1, 2, 3, 13 and 14). Accordingly, while the Respondent might not have been obligated to bargain over the substance of its decision to reassign employees between its Airport and Seaport Divisions, it was obligated to bargain over the substance of its decision to make such cross-assignments from employees assigned to relief slots, as opposed to seeking, for instance, volunteers among all employees assigned to Airport locations for a cross-assignment to the Seaport, and vice versa. Finally, since the substance of this decision was negotiable, the nature and extent of this impact on affected employees need not be considered. Department of Health and Human Services, Social Security Administration, Baltimore, Maryland, supra.

Based on the above, it is my view that the General Counsel proved by a preponderance of the evidence that the Respondent violated section 7116(a)(1) and (5) of the Statute by unilaterally implementing the policy of cross-assigning employees from Airport relief slots to Seaport relief slots, and vice versa, without having provided the Union with notice of this change and an opportunity to bargain concerning the change or, in the alternative, concerning the impact and implementation of the change.

C. Whether the Respondent violated section 7116(a)(1) and (5) of the Statute when it unilaterally established and filled a new special assignment for a GS-11 Senior Inspector as Designated Intelligence Officer on December 8, 1986, and when it unilaterally terminated that assignment on or about March 1, 1987 without furnishing the Union with notice of the changes or providing it an opportunity to bargain regarding the impact and implementation of the changes.

The last of these three consolidated cases involves the alleged creation of a new special assignment for a GS-11 Senior Inspector as the Designated Intelligence Officer. Respondent denies that such a position was created since there is no document showing that such position was ever formalized. Respondent further asserts that there was a misunderstanding on the part of the Union as to what occurred. Respondent also maintains that, even if there was a change, it had no obligation to bargain since there were no written negotiation proposals submitted, as is required by the collective bargaining agreement. Lastly, Respondent contends, in rather summary fashion, that there was no substantial change in the rotation system by these assignments and thus no adverse impact on bargaining unit employees.

The record demonstrates that around December 8, 1985, Respondent created and filled a new special assignment for a GS-11 Senior Inspector as the Designated Intelligence Officer. Intelligence Officer duties had formerly been a collateral responsibility for a GS-11 Senior Inspector. As already noted, documentary evidence reveals that Respondent removed Woo and his Designated Intelligence Officer assignment from the basic rotation on December 8, 1986 and included it among other special assignments such as CET, CAT, Duty Officer and Terrorist Team, supporting a conclusion that a change had occurred. In further support of a change of assignment around December 8, Wilson testified that Woo's primary responsibility was his Designated

Intelligence Officer duties, that he had originally assigned intelligence officer duties to a GS-11 Senior Inspector based, in part, on his intentions for the position in the future, and that he was attempting in December 1986 to justify to his superiors the need for another GS-11 position to fill the Designated Intelligence Officer assignment. Both documentary evidence and the testimony of Respondent's own witness seems to support the conclusion that a new special assignment was created. In addition the record reveals that on or about March 1, 1987, Respondent unilaterally terminated the special assignment of Designated Intelligence Officer and that neither the GS-11 Senior Inspector nor any GS-9 Inspectors performed these duties which were reassigned to the new Operations Enforcement Analyst position.

Contrary to Respondent's arguments that no new position was created and that there was a misunderstanding as to what occurred, the record supports a finding that the position was created and subsequently terminated and that the effect or reasonably foreseeable effect of these changes on bargaining unit employees was more than de minimis. Initially, Woo was removed from the basic rotation and placed on a regular Monday - Friday, 8-5 shift. In addition, it is obvious that Woo no longer performed the full range of duties performed by an inspector in the basic rotation since his primary responsibility became the Designated Intelligence Officer duties. Even more importantly, however, is the effect of the changes on employee's opportunities for advancement since the evidence established that experience on special assignments is a significant factor in promotion actions involving bargaining unit employees. Thus, the record disclosed that the last two employees who either served in the Designated Intelligence Officer assignment or performed intelligence officer duties, Woo and Somers, were both promoted to GS-12 positions. Therefore, it is certain that once an employee is selected for the Designated Intelligence Officer special assignment, all employees who were not selected are deprived of an opportunity for exposure to different and potentially career enhancing duties - a deprivation which is now permanent as a result of the Respondent's determination to abolish the Designated Intelligence Officer as a special assignment for GS-11 Senior Inspector and to reassign those duties to the newly-created Operations Enforcement Analysis position.

The record, in my view, established that the effect or reasonably foreseeable effect on bargaining unit employees of the Respondent's unilateral decisions to first create and fill a new Designated Intelligence Officer special assignment

and then terminate the assignment was more than de minimis. Thus, the record establishes a change of work hours, a change in the range of duties performed and exposure to a career enhancing position as witnessed by Woo's promotion and the promotions of others after serving in that position. Compare, Social Security Administration, supra, 24 FLRA 403 (reassignment of one employee from a position held less than three months to her former position not more than de minimis where no loss of pay or grade, no change in hours and where duties were essentially the same) with Veterans Administration Medical Center, Muskogee, Oklahoma, 25 FLRA 875, 25 FLRA No. 71 (1986) (change in clinical privileges of two bargaining unit employees more than de minimis in view of effect on professional standing and potential for retention).

Based on the above, it is found that Respondent failed to provide the Union with notice of the changes in assignment or give it an opportunity to bargain regarding their impact and implementation, the General Counsel has shown that the Respondent unilaterally changed conditions of employment in violation of section 7116(a)(1) and (5) when it (1) unilaterally created and filled a new Designated Intelligence Officer special assignment for a GS-11 Senior Inspector on or about December 8, and (2) unilaterally terminated this special assignment on or about March 1, 1987 and determined to no longer assign intelligence officer duties to a GS-11 Senior Inspector, and instead to assign such duties to the newly created Operations Enforcement Analyst.9/

In light of all the foregoing, it is found that Respondent violated section 7116(a)(1) and (5) of the Statute by unilaterally implementing changes in conditions

---

9/ Respondent's Motion to Dismiss based on section 7116(d) is without merit and therefore, denied. Although both the unfair labor practice charge and earlier filed grievance relate to the Designated Intelligence Officer position, any similarity of issues ends there. The grievance involved the Union's attempt to have Inspector Somer's removed from a detail to that position while the unfair labor practice charge relates to a unilateral change by adding the position as an assignment to the rotational schedule without negotiations. Clearly the issues are not related. Immigration and Naturalization Service, U.S. Department of Justice, 18 FLRA 412 (1985); see also, Department of Defense Dependents Schools, Pacific Region, 17 FLRA 1001 (1985).

of employment on March 4, 1985 after refusing to bargain over proposals subsequently found to be negotiable by the Authority; that Respondent violated section 7116(a)(1) and (5) of the Statute by unilaterally changing conditions of employment when it implemented the policy of cross-assigning employees from Airport Relief slots to Seaport locations, and vice versa, without having furnished the Union with notice of the change and an opportunity to bargain concerning the change (or, the alternative, concerning the impact and implementation of the change); and, that Respondent violated section 7116(a)(1) and (5) of the Statute by unilaterally changing conditions of employment by (1) creating and filling a new special assignment for a GS-11 Senior Inspector as Designated Intelligence Officer and (2) terminating this special assignment and determining to no longer assign intelligence officer duties to GS-11 Senior Inspectors or GS-9 Inspectors, without having provided the Union with notice of these changes or an opportunity to bargain concerning their impact and implementation.10/

The Remedy

Having found that Respondent did engage in conduct violative of the Statute it is recommended that the Authority issue an Order requiring Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Statute.

A status quo ante remedy concerning the cross-assignment policy and the termination of the Designated Intelligence Officer special assignment appear to be both necessary and appropriate. Concerning the cross-assignment policy, a status quo restoration is necessary because that change was substantively negotiable, and no special circumstances which would render such relief inappropriate was shown. Veterans Administration, West Los Angeles Medical Center, Los Angeles, California, 23 FLRA 278, 281, 23 FLRA No. 37 (1986).

With regard to the termination of the Designated Intelligence Officer special assignment, a status quo ante remedy is warranted based on an evaluation of the factors set forth by the Authority in Federal Correctional Institution, 8 FLRA 604, 606, 8 FLRA No. 111 (1982). Thus, the Respondent herein failed to notify the Union of either

---

10/ The General Counsel's uncontested Motion to Correct Transcript granted and the Corrections are attached as Appendix "B".

the creation of termination of the assignment and it refused to bargain after the Union requested negotiations regarding the creation of the assignment; the demonstrated adverse effect or reasonably foreseeable effect on affected employees in terms of lost work and opportunities for exposure to career enhancing responsibilities is significant, and there has been no showing that a restoration of the status quo, requiring the Respondent to return to a practice which it had previously voluntarily followed, would prove disruptive. c.f. Federal Aviation Administration, 19 FLRA 482, 486, 19 FLRA No. 62 (1985) (status quo ante appropriate where agency unilaterally changed holiday staffing practice) and Immigration and Naturalization Service, 21 FLRA 359, 361-362, 21 FLRA No. 47 (1986) ordered where agency unilaterally removed blackjacks from detention officers).

Based on the foregoing, 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 U.S. Customs Service (Washington, D.C.) and U.S. Customs Service, Northeast Region (Boston, Massachusetts) shall:

1. Cease and desist from:

(a) Unilaterally implementing changes concerning the rotation schedule, assignments, staffing and proposals 1, 2, 3, 13 and 14 which proposals were subsequently found by the Federal Labor Relations Authority to be negotiable in National Treasury Employees Union, and U.S. Customs Service, Northeast Region, 25 FLRA 731, 25 FLRA No. 61 (1987), after refusing to bargain with National Treasury Employees Union and National Treasury Employees Union, Chapter 133 the exclusive representative of certain of its employees.

(b) Unilaterally changing conditions of employment by implementing a policy of cross-assignment of employees from Airport Relief slots to Seaport locations, and vice versa, without having furnished the National Treasury Employees Union and National Treasury Employees Union, Chapter 133, the exclusive representative of certain of its employees with notice and an opportunity to bargain concerning the change or, the impact and implementation of the change.

(c) Unilaterally changing a condition of employment by creating and filling a new special assignment for a GS-11 Senior Inspector as Designated Intelligence Officer and by terminating this special assignment and determined to no longer assign intelligence officer duties to GS-11 Senior Inspectors or GS-9 Inspectors, without having provided the National Treasury Employees Union and National Treasury Employees Union, Chapter 133, the exclusive representative of certain of its employees, with notice of the changes and an opportunity to bargain concerning the impact and implementation of the change.

(d) In any like or related manner interfering with, restraining, or coercing their employees 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 Statute:

(a) Upon request, negotiate with the National Treasury Employees Union and National Treasury Employees Union, Chapter 133, the exclusive representative of certain of our employees over changes concerning the rotation schedule assignments and staffing as well as its proposals 1, 2, 3, 13 and 14 which proposals were found by the Authority to be negotiable in National Treasury Employees Union, supra.

(b) Upon request of National Treasury Employees Union, National Treasury Employees Union, Chapter 133, the exclusive representative of certain of our employees, rescind the policy of cross assigning employees from Airport Relief slots to Seaport locations, and vice versa.

(c) Upon request of the National Treasury Employees Union, National Treasury Employees Union, Chapter 133 rescind the termination of the Designated Intelligence Officer special assignment for a GS-11 Senior Inspector.

(d) Upon request, bargain with the National Treasury Employees Union and the National Treasury Employees Union, Chapter 133, the exclusive representative of certain of our employees, concerning the implementation and effect on bargaining unit employees of the decision to create and to fill a special assignment for a GS-11 Senior Inspector as a Designated Intelligence Officer.

(e) Post at all its facilities where bargaining unit employees represented by the National Treasury Employees Union and the National Treasury Employees Union, Chapter 133, 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 Commissioner, 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.

(f) Pursuant to Section 2423.30 of the Authority's Rules and Regulations, notify the Regional Director, Region I, 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., August 18, 1988.

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 unilaterally implement changes concerning the rotation schedule, assignments, staffing and proposals 1, 2, 3, 13 and 14 which proposals were subsequently found by the Authority to be negotiable in National Treasury Employees Union, and U.S. Customs Service, Northeast Region, 25 FLRA 731, 25 FLRA No. 61 (1987), after refusing to bargain with National Treasury Employees Union and National Treasury Employees Union, Chapter 133 the exclusive representative of certain of our employees.

WE WILL NOT unilaterally change conditions of employment by implementing a policy of cross-assignment of employees from Airport Relief slots to Seaport locations, and vice versa, without having furnished the National Treasury Employees Union and National Treasury Employees Union, Chapter 133, the exclusive representative of certain of our employees with notice and an opportunity to bargain concerning the change or, the impact and implementation of the change.

WE WILL NOT unilaterally change conditions of employments by creating and filling a new special assignment for a GS-11 Senior Inspector as Designated Intelligence Officer and by terminating this special assignment and determined to no longer assign intelligence officer duties to GS-11 Senior Inspectors or GS-9 Inspectors, without having provided the National Treasury Employees Union and National Treasury Employees Union, Chapter 133, the exclusive representative of certain of our employees, with notice of the changes and an opportunity to bargain concerning the impact and implementation of the 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, upon request, negotiate with the National Treasury Employees Union and National Treasury Employees Union, Chapter 133, the exclusive representative of certain of our employees over changes in the rotation schedule, assignments, staffing and its proposals 1, 2, 3, 13 and 14 which proposals were found by the Authority to be negotiable in National Treasury Employees Union, supra.

WE WILL, upon request of National Treasury Employees Union, National Treasury Employees Union, Chapter 133, the exclusive representative of certain of our employees, rescind the policy of cross assigning employees from Airport Relief slots to Seaport locations, and vice versa.

WE WILL, upon request of the National Treasury Employees Union, National Treasury Employees Union, Chapter 133 rescind the termination of the Designated Intelligence Officer special assignment for a GS-11 Senior Inspector.

WE WILL, upon request bargain with the National Treasury Employees Union and the National Treasury Employees Union, Chapter 133, the exclusive representative of certain of our employees, concerning the implementation and effect on bargaining unit employees of the decision to create and to fill a special assignment for a GS-11 Senior Inspector as a Designated Intelligence Officer.

_____
(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 I, whose address is: 10 Causeway Street, Room 1017, Boston, MA 02222-1046, and whose telephone number is: (617) 565-7280.