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

DEPARTMENT OF THE AIR FORCE SACRAMENTO AIR LOGISTICS CENTER, McCLELLAN AIR FORCE BASE, CALIFORNIA Respondent	
and	Case No. 89-CA-90477
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1857, AFL-CIO Charging Party	

Stefanie Arthur, Esquire
For the General Counsel

Mark F. Commerford, Esquire
For the Respondent

Before: BURTON S. STERNBURG
Administrative Law Judge

DECISION

Statement of the Case

This is a proceeding under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the U.S. Code, 5 U.S.C. Section 7101, et seq., and the Rules and Regulations issued thereunder.

Pursuant to a charge filed on June 2, 1989 by the American Federation of Government Employees, Local 1857, AFL-CIO, (hereinafter called the Union), a Complaint and Notice of Hearing was issued on January 31, 1990, by the Regional Director for Region VIII, Federal Labor Relations Authority, Los Angeles, California. The Complaint alleges that the Department of the Air Force, Sacramento Air Logistics Center, McClellan Air Force Base, California (hereinafter called the Respondent), violated sections

7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute, (hereinafter called the Statute), by virtue of its actions in unilaterally changing the working conditions of certain unit employees by implementing a new mobility plan without first notifying the Union and providing it with an opportunity to bargain over the procedures to be used in implementing the mobility plan and appropriate arrangements for employees adversely affected by the new mobility plan.

A hearing was held in the captioned matter on May 21, 1990, in Sacramento, California. All parties were afforded the full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues involved herein. The Parties submitted post-hearing briefs on June 21, 1990, which have been duly considered.

Upon the basis of the entire record, including my observation of the witnesses and their demeanor, I make the following findings of fact, conclusions and recommendations.

Findings of Fact

At all times material herein, American Federation of Government Employees, (hereinafter called AFGE) has been certified as the exclusive representative of an appropriate nationwide consolidated unit of employees of the Air Force Logistics Command (AFLC) including, inter alia, non-professional employees at McClellan Air Force Base who are paid from appropriated funds and who are serviced by the AFLC Civilian Personnel Office. At all times material herein, the Union has been an affiliate of AFGE and an agent of AFGE for purposes of representing the unit employees at Respondent, the Air Logistics Center, McClellan AFB.

The Air Force Logistics Command and AFGE, through its National Council of Air Force Logistics Command Locals, AFGE Council 214 (Council), are parties to a Master Labor Agreement covering employees in the unit, including the employees at Respondent. Section 33.03 of the Master Labor Agreement specifically provides for notice and bargaining at the local level regarding changes implemented by the local activity.

McClellan Air Force Base has issued a Base Mobility Plan 28-4 which contains policies and procedures for moving military personnel and their equipment in times of national emergency. McClellan issued Base Mobility Plan 28-4 pursuant to Air Force Regulation 28-4 which require each base to have

such mobility plans. The Base Mobility Plan includes a Mobility Augmentation Program which provides for the utilization of civilians in support of military mobilization operations. In 1985, this Mobility Augmentation Program was identified as Mobility Operating Procedure (MOP) 29. Subsequently, at a later date it was renumbered to MOP 31. It is the issuance of MOP 31, without giving the Union appropriate notice and the opportunity to request impact and implementation (I&I) bargaining, which is the subject of the instant complaint.

Civilians appointed to participate in the mobility program fall into two categories: Tasked personnel, whose primary job assignment remains the same during mobility, and augmentees, individuals appointed to perform a mobility function complimentary to the mobility workcenter's manpower requirement but whose mobility duties are different or outside of their everyday occupational specialty. As evidenced by MOP 29 and MOP 31 and undisputed by Respondent, bargaining unit employees occupy a large number of the augmentee positions.

Mobility exercises are regularly conducted at McClellan AFB pursuant to Mobility Plan 28-4. When the exercises are conducted bargaining unit employees who have been designated as augmentees also participate. As a general rule the mobility exercises last from 36-48 hours, although some have lasted longer. The augmentee employees participating in the exercises work different shifts and perform different work than usual and may have different days off. In the past, employees involved in the mobility exercises received overtime. The record indicates that the payment of overtime is one of the reasons that a number of employees have volunteered for the program. Although most directorates have continued to pay overtime to the augmentees, during the two mobility exercises held in 1990, two shops appear to have discontinued the practice. The reasons for the alleged discontinuance do not appear in the record and there is no showing that the change in the mobility program which is the subject matter of this proceeding was the cause of such discontinuance.

According to the uncontroverted testimony of Union vice president Dora Solorio, when Mobility Plan 28-4, MOP 29 was issued in 1985, the Union was given the opportunity to, and did, bargain concerning MOP 29, which applies to civilian augmentees. On February 1, 1989, a new Mobility Plan 28-4 was issued which contained a new and revised MOP which was numbered MOP 31. Like its predecessor, MOP 29, MOP 31 also

governed civilian mobilization. However, unlike MOP 29, the Union, which did not receive a copy of MOP 31 until February 7, 1989, was not given any prior notice of MOP 31 nor the opportunity to bargain over the impact and manner of implementation of MOP 31 prior to its issuance.

Upon learning of the new MOP 31, the Union requested a copy and participated in a briefing on or about the latter part of March 1989. On April 3, 1989, the Union wrote a letter to Mr. Baddley, Respondent's Chief of Labor Relations and requested bargaining on the new mobility plan. The Union's demand for bargaining cited Article 33, Section 33.03 of the Master Labor Agreement which provides for local level bargaining when a change impacts only on one activity as opposed to the entire command. The letter went on ask for a further briefing meeting since the earlier meeting in March "left the Union unable to determine bargaining impact."

Subsequently, on April 24, 1989, Mr. John Salas, who was the president of the Local Union, wrote to Respondent's Labor Relations Office and demanded to bargain not only about MOP 31 but other exercises which have been conducted on the base. The letter submitted a number of proposals concerning the method of selecting employees for the exercises and, the length of the appointment, i.e. the Union wanted the appointment to last only 18 months rather than the 36 months set forth in MOP 31.

Subsequently, Respondent's Labor Relations' Office forwarded the Union's April 24, 1989 letter to the Air Force Logistics Command for resolution since the Union's demands appeared to have Command-wide implications.

On May 1, 1989, Ms. Sheila Hostler, the Labor Relations Officer at the Command level, wrote a letter to Mr. Paul Palacio, President of AFGE Council 214, wherein she advised him that negotiations on the Union's proposals would be handled at the Command level. A copy of this letter was also sent to the president of the Union. On the next day, May 2, 1989, Respondent wrote a letter to the president of the Union which was in reply to his April 24th proposals and requested time to determine the appropriate offices of Respondent to be involved in any local negotiations and counterproposed that the exercise procedures currently in effect continue.

On May 9, 1989, the Union submitted a request to the Federal Mediation and Conciliation Service concerning "Mid-term negotiations, Mobility". However, according to Union vice-president Dora Solorio, the matter was never

pursued by the Union due to the fact that the matter had been elevated to the Command level.

On May 13, 1989, Mr. Paul Palacio, President of Council 214, wrote a letter to the Command wherein he requested a meeting to discuss the matter. On May 30, 1989, McClellan AFB sent a letter to the Union advising that Council 214 and the Command were about to negotiate the Union's proposals and that McClellan AFB, "feeling caught in the middle" would get back to the Union when and if the Command informed McClellan AFB that the matters raised by the Union were appropriate for local negotiations. On February 14, 1990, Mr. Palacio on behalf of Council 214 submitted a proposed Memorandum of Agreement which would be Command-wide. The proposed Memorandum of Agreement contained the same mobility proposals set forth as an attachment to the Union's April 24, 1989 letter. Inasmuch as the proposed Memorandum of Agreement had Command-wide implications, the Command solicited reactions and suggestions on the proposals from all its bases on February 23, 1990.

The record indicates that the main differences between MOP 29 and MOP 31 appears to be the length of the obligation, i.e. 18 months vis-a-vis 36 months, and the certain language appearing in the Letter Of Appointment. In this latter connection the Letter Of Appointment in MOP 29 provided as follows:

> I acknowledge receipt and understanding of the above responsibilities and commitment. I also understand that a copy of this letter will be filed with my AF Form 971, Supervisor's Record of Employee (Civilians Only). My duties and responsibilities as a wartime, contingency or exercise participant will be included in my performance appraisal as a critical element (civilians) or in my overall efficiency rating, APR/OER (Military). My personnel and/or training records will also reflect any training/experience I receive in this capacity.

The Letter Of Appointment in MOP 31 provides as follows:

> I acknowledge receipt and understanding of the above responsibilities and commitment. I also understand that a copy of this letter will be filed with my

> AF Form 971, Supervisor's Record of Employee (Civilians Only). My personnel and/or training records will also reflect any training/experience I receive in this capacity. This civilian personnel record update will be accomplished by my filling out an SF 172 to be verified by my mobility workcenter supervisor.

The difference in the two letters appears to be that the responsibility for filling out the requisite papers reflecting the MOP training is shifted from the supervisor to the employee.

According to the uncontroverted testimony of Master Sergeant Charles Baldwin, who has been the mobility superintendent since August 1986, under the 1985 version of MOP 29 (Mobility Operating Procedure), civilian employees were assigned to MOP 29 for a period of 18 months. Under MOP 31 the assignment would be for 36 months. Both plans entertained requests for release prior to the expiration of 18 or 36 months as the case may be. However, admittedly, most if not all of the early releases were predicated upon some sort of medical condition. Unless there was a request for release the employees would generally remain in the MOPs after the expiration of the minimum time, i.e. 18 or 36 months, respectively. Moreover, following an employee's release from a MOP after the expiration of the minimum period required, the Respondent could, if a shortage of personnel occurred, immediately include the employee in a MOP for another period of time. In calculating the 36 month period under MOP 31 Respondent gave the employee credit for the period of time that was spent under MOP 29. Thus, the 36 month period was counted from the first day that the employee began the original 18 month period under MOP 29.

With respect to the reasons for the change from 18 months to 36 months, Sgt. Baldwin explained that exercises under the prior version were held eight or nine times a year. It took three or four exercises to get employees trained. Once they were trained, they would have about another year before completing their minimum appointment period. However, due to budgetary restraints, the maximum number of exercises was reduced to four per year. For fiscal year 1990 there will only be three exercises. With the reduced frequency of exercises, it would impair government efficiency and military readiness to release appointees after eighteen months. With fewer exercises each year, it takes longer to get personnel trained. The training period

is further lengthened because the exercises are used to train not only appointees but also alternates. There are two appointees to cover twelve hour shifts, thus providing twenty-hour hour coverage, with an alternate if one of the appointees should be unavailable. In actual practice, employees appointed as augmentees do not necessarily attend each exercise, even when they are supposed to. They may have excuses, reasons or alibis. If this happens frequently enough, their supervisor would be contacted to encourage them to attend the exercises. It may take five exercises before the two appointees and alternate are trained for a position. Thus, in actual practice, under the 36 month appointment, an appointee may only be completing his training period at the end of the first eighteen months.

Discussion and Conclusions

The General Counsel takes the position that the Respondent violated Sections 7116(a)(1) and (5) of the Statute by failing to give the Union appropriate notice of the change from MOP 29 to MOP 31 and an opportunity to bargain over the impact of the change from MOP 29 to MOP 31 prior to its implementation. Contrary to the contention of the Respondent the General Counsel would find that doubling the period of time that the employees would be subject to participation in mobility exercises created more than a de minimis impact on the working conditions of the unit employees. Similarly, General Counsel would also find that changing the manner in which employees received credit for participation in the mobility exercises had more that de minimis impact on unit employees. Finally, the General Counsel, who only requests a cease and desist order and not a return to the status quo, takes the position that the fact that the AFGE and the Command are currently conducting mid-term bargaining on mobility exercises at the higher level does not constitute a defense to Respondent's action in failing to give appropriate notice and the opportunity to bargain on the impact of the change at the lower level.

Respondent, on the other hand, takes the position that it was under no obligation to bargain either substance or impact with the Union. In this latter connection Respondent takes the position that inasmuch as there was no actual or foreseeable impact upon the working conditions of the unit employees, it was under no obligation to give the Union prior notice and the opportunity to bargain over the mobility exercise change from 18 to 36 months. Additionally, if there was any obligation to bargain, Respondent takes the position that it has complied with such duty at the Command level.

It is well settled, and acknowledged by all parties, that an agency, prior to instituting a change in a condition of employment, is under an obligation to give the exclusive representative of its employees appropriate notice of the impending change and an opportunity to request bargaining over such change to the extent that the change has more than a de minimis impact on the conditions of employment of the unit employees. Department of Health and Human Services, Social Security Administration, 24 FLRA 403. As noted by the General Counsel, in determining whether a change in a condition of employment has more that a de minimis impact on the unit employees, one must look not only to the actual impact at the time the change was implemented but also to the reasonably foreseeable effect of the change on the conditions of employment of the unit employees. U.S. Customs Service (Washington, D.C.) and the U.S. Customs Service Northeast Region, 29 FLRA 891.

Inasmuch as the parties agree that Respondent was not under any obligation to bargain over the substance of its decision to substitute MOP 31 for MOP 29, the only issue to be determined is whether Respondent's action in making such substitution, which admittedly occurred without giving the Union prior notice and the opportunity to request bargaining, had more than a de minimis impact on the working conditions of the unit employees. Of course, to the extent that the change resulted in only a de minimis impact on the working conditions then Respondent was under no obligation to give the Union prior notice and an opportunity to request bargaining. Cf. U.S. Government Printing Office, 13 FLRA 203, Footnote 4.

As noted above, the General Counsel takes the position that MOP 31 impacted upon the conditions of the unit employees in two ways, i.e. doubled the time that an employee was obligated to participate in mobility exercises and made the employee responsible for "filling out an SF 172" in order to insure that his participation in the mobility exercises was recorded in his civilian personnel record.

With respect to the doubling of the obligation for participation in mobility exercises from 18 to 36 months it is Respondent's position that such change had a de minimis impact on the working conditions of the unit employees. In support of its position, Respondent points out that while the employees obligation to participate in the exercises was extended from 18 to 36 months, the actual number of exercises that an employee was obligated to participate in during a given year was reduced from seven or eight to three per

year. Thus, over a thirty-six month period the employee would participate in approximately the same number of exercises that had been previously held during an eighteen month period. Additionally, while MOP 31 provided for a thirty-six month period of obligation, in practice the obligation period was less since Respondent started counting the thirty-six months from the date the employee began serving the eighteen month period called for under MOP 29. Finally, Respondent points out that employees under MOP 29 were not automatically relieved of their mobility exercise obligation upon the expiration of eighteen months, but rather had to file an appropriate request. Absent a request, the employee remained in the program. To the extent that an employee upon his own request was excused from the mobility exercise obligation, Respondent retained the right under MOP 29 to immediately draft him into the program should there be a shortage of personnel.

General Counsel on the other hand contends that the doubling of the time that an employee is subject to mobility exercises clearly has more than a de minimis impact on the employees working conditions. Since the longer period of time an employee is subject to the mobility exercises "the less certainty can be attached to its conditions. Additionally, both benefits and burdens may change over a period of time affecting volunteer and non-volunteer augmentees alike."

In agreement with the General Counsel I find that the doubling of the period that employees would be subject to mobility exercises does have more than a de minimis reasonably foreseeable impact on the employees working conditions.

In the Authority's decision in U.S. Customs Service, supra, the Authority made it clear that in order to determine whether a change in conditions of employment requires bargaining, one must carefully examine the facts and circumstances, placing principal emphasis on such general areas of consideration as the nature and extent of the effect or reasonably foreseeable effect of the change on conditions of employment of bargaining unit employees. Respondent's position, set forth above, is confined solely to the nature and extent of the current or immediate effect of the change and ignores the reasonably foreseeable effect of the change on the conditions of employment of unit employees.

Thus, I find that the reasonably foreseeable effect of Respondent's action in doubling the time that an employee would be obligated to participate in mobility exercises might well be an intrusion on an employee's family, travel and/or educational plans, which were predicated on periods when the employee was not scheduled to be a participant in mobility exercises, to his detriment. Such reasonably foreseeable effects are sufficient, in my opinion, to give rise to a duty to bargain with the Union concerning the impact and implementation of MOP 31. Similarly, I find that Respondent's action in assigning unit employees the additional responsibility of insuring that their participation in mobility exercises was properly recorded in their respective personnel files constitutes a more than de minimis change in the employees working conditions since failure to perform the additional duty to the satisfaction of their respective supervisors might well result in criticism and/or discipline which could reflect on the employees' performance appraisals.

In view of the above, I further find that Respondent by failing to give the Union appropriate notice and an opportunity to request bargaining over the impact and manner of implementation of MOP 31 prior to putting the plan into effect violated Sections 7116(a)(1) and (5) of the Statute.

Based particularly on the fact that the AFGE and the Respondent have agreed to participate in mid-term bargaining on MOP 31 at the Command level,[1/] and since a status quo ante order would, given the existing budgetary constraints, disrupt or impair the efficiency and effectiveness of the Respondent's Mobility Augmentation Program, I find that a cease and desist order and the posting of an appropriate notice throughout the bargaining unit will fully effectuate the purposes and objectives of the Statute.[2/] Accordingly, it is recommended that the Authority adopt the following order.

1/ The fact that the matter has since been elevated to the Command level is not a defense to Respondent's action in instituting MOP 31 at McClellan AFB, without giving the Union prior notice and an opportunity to request impact and implementation bargaining at the Local Level pursuant to Article 33, Section 33.03 of the Master Labor Agreement.

2/ In this connection, I note that the General Counsel seeks only a cease and desist order and a posting, and not a status quo ante, as a remedy.

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, it is hereby ordered that the Department of the Air Force, Sacramento Air Force Logistics Center, McClellan Air Force Base, California, shall:

1. Cease and desist from:

(a) Implementing Mobility Plan 28-4, MOP 31, or any other mobility plan, without first notifying the American Federation of Government Employees, Local 1857, AFL-CIO, the employees' exclusive representative, and affording it the opportunity to bargain concerning the procedures which management will observe in effecting such change and appropriate arrangements for employees adversely affected by such change.

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

2. Take the following affirmative action in order to effectuate the purposes and policies of the Federal Service Labor-Management Statute:

(a) Notify the American Federation of Government Employees, Local 1857, AFL-CIO of any future mobility plan, and prior to implementation, afford it an opportunity to bargain concerning the procedures which management will observe in effecting such change and appropriate arrangements for employees adversely affected by such change.

(b) Post at its facilities where unit employees are located, copies of the attached Notice on forms to be furnished by the Federal Labor Relations Authority. Upon receipt of such forms, they shall be signed by the Commander of the Sacramento Air Logistics Center, McClellan Air Force Base, California, and shall be posted and maintained for 60 consecutive days thereafter, in conspicuous places, including all bulletin boards and other places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that such Notices are not altered, defaced, or covered by any other material.

(c) Pursuant to section 2423.30 of the Authority's Rules and Regulations, notify the Regional Director, Region

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 implement Mobility Plan 28-4, MOP 31, or any other mobility plan, without first notifying the American Federation of Government Employees, Local 1857, AFL-CIO, the exclusive representative of our employees, and affording it the opportunity to bargain concerning the procedures which management will observe in effecting such change and appropriate arrangements for employees adversely affected by such 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 notify the American Federation of Government Employees, Local 1857, AFL-CIO of any future mobility plan, and prior to implementation, afford it an opportunity to bargain concerning the procedures which management will observe in effecting such change and appropriate arrangements for employees adversely affected by such change.

_____
(Activity)

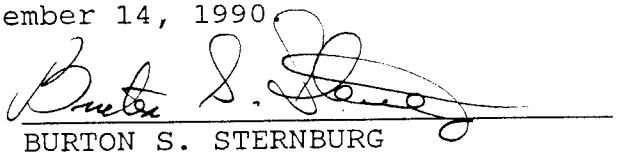
Dated: _____ By: _____
(Signature) (Title)

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 IX, whose address is: 901 Market Street, Suite 220, San Francisco, CA 94103, and whose telephone number is: (415) 744-4000.

IX, 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., December 14, 1990.



BURTON S. STERNBURG
Administrative Law Judge