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

DEPARTMENT OF THE AIR FORCE 343RD COMBAT SUPPORT GROUP, EIELSON AIR FORCE BASE, ALASKA Respondent and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1836, AFL-CIO Charging Party	Case No. 9-CA-90500

Phillip G. Tidmore, Esq.
For Respondent

Mr. Klaus Gumb
For Charging Party

R. Timothy Sheils, Esq.
For General Counsel of the FLRA

Before: SAMUEL A. CHAITOVITZ
Administrative Law Judge

DECISION

Statement of the Case

This is a proceeding under the Federal Service Labor-Management Relations Statute, 5 U.S.C. § 7101 et seq., hereinafter referred to as the Statute, and the Rules and Regulations of the Federal Labor Relations Authority (FLRA), 5 C.F.R. § 2410 et seq.

Pursuant to a charge filed by American Federation of Government Employees, Local 1836, AFL-CIO, (hereinafter referred to as AFGE Local 1836 and the Union), against Department of the Air Force, 343rd Combat Support Group,

Eielson Air Force Base, Alaska, (hereinafter referred to as the Agency and Eielson AFB), the General Counsel of the FLRA, by the Regional Director of Region IX of the FLRA, issued a Complaint and Notice of Hearing. The complaint alleges that the Agency violated section 7116(a)(1) and (5) of the Statute by instituting a unilateral change without notifying the Union and giving it an opportunity to bargain about the impact and implementation of the change. The Agency filed an Answer denying it had violated the Statute.

A hearing was held before the undersigned in Fairbanks, Alaska. The Agency, AFGE Local 1836, and General Counsel of the FLRA were represented and afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence and to argue orally. Briefs were filed and have been fully considered.

Based upon the entire record in this matter, my observation of the witnesses and their demeanor, and my evaluation of the evidence, I make the following:

Findings of Fact

At all material times AFGE Local 1836 has been the exclusive collective bargaining representative for a unit of employees of Eielson AFB. In 1983 the Union filed an unfair labor practice charge concerning Respondent's alleged failure to bargain over the policy to be used in enforcing the use of seat belts at Eielson AFB. In December 1983, the Union and the Agency settled the unfair labor practice case by entering into an agreement that provided the penalties for failing to wear a seat belt were a ten day suspension of on-base driving privileges for a first offense, a thirty day suspension for a second offense, and a six months suspension for a third offense. On January 26, 1986, these penalties were incorporated into the base's local supplement to Air Force Regulation (AFR) 125-14, Eielson AFB Supplement 1.

In May 1987, the Agency proposed changing the AFR 125-14 local supplement by making the disciplinary actions mandatory rather than discretionary. Union President Rosemary Metzger proposed that the commander consider mitigating or extenuating circumstances before imposing penalties. The 1987 change was modified to include the Union's proposal.

On June 22, 1987, the Agency's Chief of Civilian Personnel, Jesse L. Keith, sent a letter to Metzger advising her that Eielson AFB intended to increase the penalty for first time offenders of the seat belt policy from a ten day

to a thirty day suspension of on-base driving privileges, with an effective date of July 15, 1987, and requesting Union proposals by July 7. On June 26, 1987, Metzger requested to negotiate "on the wearing of seat belts" and that implementation be deferred until bargaining was completed. Metzger also requested that certain information be furnished.

On approximately October 30, 1987, Metzger received the information she had requested. On October 30, 1987, Keith and Metzger had a meeting to discuss the new seat belt policy. Keith presented Metzger with an "agreement" which stated that the new thirty day penalty for not wearing a seat belt would go into effect immediately. Metzger refused to sign it, insisting instead, to bargain about the substance of the decision to change the seat belt penalty. She stated that the Agency could not change the penalty because the Union had beaten the Agency on that once before in an unfair labor practice. She insisted upon bargaining about the substance of the change and did not discuss bargaining about the impact and implementation of the change and made no such proposals.

In evaluating the evidence with respect to the October 30, 1987, meeting I credit the testimony of Keith and discredit the testimony of Metzger, who denied any such meeting occurred. I find Keith to be a more forthcoming witness and his testimony is more consistent with the surrounding circumstances and events then is Metzger's testimony. The surrounding circumstances include Metzger"s letter of November 4, 1987, Keith's meeting on November 6, 1987 with the Base Commander, and the implementation of the change of the seat belt policy. I also base my conclusion upon my observation of the demeanor of the two witnesses.

On November 4, 1987, Metzger sent a memorandum to Keith concerning the "Wear of Seatbelts". This memorandum stated, "It is the Union's position this is a violation of our previous agreement dated 15 December 1983, which became part of the collective bargaining agreement, which was conditioned on the withdrawl of two ULPs. If you proceed in attempting to change the provisions of this agreement we will file a ULP. However, to protect the Union's interests while the ULP is being considered, we will negotiate in good faith only because we feel we are being forced to do so because of your flagrant violation of the previously agreed to settlement."

Metzger testified that subsequent to sending this memorandum she received a call from Keith in which he stated the Agency was dropping its plans to change the seat belt regulations. Keith denied making any such call or statement. For the reasons set forth above I credit Keith's testimony and therefor find Keith made no such call and made no such statement.

After receiving the Union's memorandum on November 5, 1987, Keith held a meeting on November 6, 1987, with the Base Commander and other Agency officials during which the situation concerning the seat belt policy changes was discussed. The Base Commander stated that he considered the length of the penalty to be non-negotiable, he instructed Keith to break off negotiations and the Base Commander stated that the change in penalty for violating the seat belt requirement "has been implemented."

The Eielson AFB Supplement to AFR 125-14 was changed on April 14, 1988, to reflect the change in seat belt penalty. It increased the penalty for a first violation to a thirty day suspension of driving privileges and for a second violation to a sixty day suspension.

By memorandum dated April 28, 1989, the Agency advised the Union of some changes it intended to make to its supplement to AFR 125-14. The Union requested and received a copy of the then current Eielson AFB supplement to AFR 125-14, which it received during May 1989. This was the first time the Union became aware that the changes in the seat belt policy had been implemented.

At no time did the Union make any proposals dealing with the impact and implementation of the change in the penalties for violation of the seat belt requirements.

Loss of driving privileges at Eielson AFB involves having to take taxies for relatively long distances, arranging car pools or other ride sharing arrangements, or parking off the base and walking relatively long distances. Such off base parking involves parking in a place that does not provide a plug to keep the car motor warm. All of the above occurs in an area with very severe winter weather.

Discussion and Conclusions of Law

The subject case does not involve any allegation that the Agency refused to bargain about the subject of the change in the penalties for failing to wear seat belts.

Rather, the General Counsel of the FLRA alleges that the Agency failed and refused to bargain about the impact and implementation of the change. All parties seem to proceed assuming that the Agency had no obligation to bargain concerning the substantive changes, although not specifically conceded by the General Counsel of the FLRA and AFGE Local 1836. Accordingly, I will proceed as if the substantive changes were nonnegotiable. Cf. United States Air Force, Lowry Air Force Base, Denver, Colorado, 22 FLRA 171 (1986).

In the subject case there is no dispute the Agency was required to provide the Union with a reasonable opportunity to negotiate concerning the procedures to be used in implementing the change in penalties for failing to wear seatbelts and appropriate arrangements for adversely affected employees. See Mare Island Naval Shipyard, 32 FLRA 380 (1988), and Department of the Treasury, Internal Revenue Service, 19 FLRA 437 (1982).

In June of 1987 the Agency gave the Union notice that the Agency intended to increase the penalty for first time violators of the seat belt requirement. On October 30, 1987, Eielson AFB provided the Union with requested information and gave the Union notice that the Agency was going to implement the change of penalty for first time violators. AFGE Local 1836 throughout all its communications with the Agency made it clear the Union wanted to bargain about the substance of the change in the penalty, contending it had been resolved in the prior unfair labor practice matter and their agreement. AFGE Local 1836 never asked to bargain about the impact and implementation of the change in penalty for first time violators of the seat belt requirements. Even when Eielson AFB made it clear on October 30, 1987, that it would not bargain about the decision to increase the penalty for first offenders and reiterated that the change would be implemented, the Union repeated its demand to bargain about the substance of the change, which it repeated in its letter of November 4, 1987. At no time did the Union ask, or even indicate that it wished, to bargain about the impact and implementation of the change in penalty for first time violators. The fact that the Union also asked to bargain about negotiation ground rules, while requesting to bargain about the substance of the decision, did not, somehow, constitute a request to bargain about the impact and implementation of the decision.

In light of the foregoing I conclude that, after giving the Union notice of the decision to increase the penalty for first time violators of the seat belt policy, AFGE Local 1836 did not ask to bargain about the impact and implementation of the change and thus the Agency did not fail or refuse to bargain about the impact and implementation of this change.

In reaching to foregoing conclusion, however, I reject that the unfair labor practice charge was untimely filed, within the requirements of section 7118(a)(4) of the Statute. Section 7118(a)(4) of the Statute provides that no complaint may be issued based on any alleged unfair labor practice that occurred more than 6 months before the filing of the charge.

It is not clear in the subject case exactly when the change was implemented since there is no evidence any employee was punished under the new penalty. Rather it appears it was decided by the Agency, that it was put in effect at the November 6, 1987, meeting of Agency officials. The Union, however, was never notified of this action. Further, even though the supplement to AFR 125-14 was issued on April 14, 1988, the record fails to establish that the Agency sent a copy of it until May 1989, in response to a Union request made in connection with another matter.

Thus, although the Agency determined to institute the change effective November 6, 1987, and reflected it in the supplement issued on April 14, 1988, the Union did not learn of the implementation of the change until during May 1989. The Agency, although it advised the Union that the change would be implemented, never actually advised the Union when the change was implemented and the Union first learned about the change when it received a copy of the supplement in May 1989. The Agency did not contend, and the record does not establish, that any copy of the supplement was provided to the Union before May 1989. The charge herein was filed on June 19, 1989. Accordingly, I conclude the first time that the Union learned of the implementation of the change was in May 1989, less than six months before the charge in this matter was filed, and the charge was filed timely within the requirements of section 7118(a)(4) of the Statute. See Department of the Interior, Washington, D.C., 31 FLRA 267 (1988).

Throughout the communications and discussions in 1987 the Agency mentioned only the change in the penalty for first time violators of the seat belt policy. The record fails to establish that the Agency ever suggested or notified

the Union that the Agency also intended to increase the penalty for second time violators. It could be argued that Eielson AFB did not notify the Union and give it an opportunity to bargain about the impact and implementation of the increase from 30 days to 60 days of the suspension of driving privileges on the base for second time violators.

Although the charge in the subject case is broad enough to encompass such an allegation, the complaint seems quite specific in referring in paragraph 6(a) to the Agency's June 22, 1987, notification of the change in penalties, which notice only mentioned first offenses, and then in paragraph 6(e) referring to the issuance of the supplement to AFR 125-14 on April 14, 1988 "which included the changes referenced in paragraph 6(a) above". Thus, I conclude that the complaint concerned itself solely with the change in penalties for first offenses. Further, at the hearing, although the April 14, 1988, supplement to AFR 125-14 was placed in evidence and it set forth the change in penalties for second offences, there was no statement or indication that the General Counsel of the FLRA was alleging any separate violation involving the Agency's failure to bargain about the change in penalties for second offenses of the seat belt policy. The issue of whether the Agency violated the Statute with respect to a failure to give notice or bargain about the change in penalties for second offenses was not litigated at the hearing. Accordingly, I do not find any violation of the Statute with respect to this matter.

In the brief of the General Counsel of the FLRA it is argued that the June 22, 1987, notice was inadequate and not complete because it omitted reference to the change in penalties for second offenders. I note that the agreement proposed by the Agency also omitted such reference. I conclude that the changes in penalties for first and second offenders are not so intertwined as to be inseparable. In fact the Agency could have decided to make the change with respect to second offenders after it had made the change as to first offenders. Rather, although related, the two issues are separate and one can be changed without necessarily changing the other. Thus, the failure to include notice of change as to second offenders did not taint or nullify the June 22 notice to the Union concerning the change in penalties for first offenders.

In light of all of the foregoing, I conclude that Eielson AFB did not fail and refuse to bargain with AFGE Local 1836 concerning the impact and implementation of the change of penalties for first offenders of seat belt policy and thus did not violate section 7116(a)(1) and (5) of the Statute. Accordingly, I recommend that the Authority issue the following Order:

ORDER

The Complaint in Case No. 9-CA-90500 is hereby DISMISSED.

Issued, Washington, D.C., May 11, 1990.

Samuel A. Chaitovitz

SAMUEL A. CHAITOVITZ
Administrative Law Judge