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

DEPARTMENT OF DEFENSE WARNER ROBINS AIR LOGISTICS CENTER, ROBINS AIR FORCE BASE, GEORGIA Respondent	
and	Case No. 4-CA-80513
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 987 Charging Party	

C. R. Swint, Jr., Esquire
For the Respondent

Ms. Nedra T. Bradley
For the Charging Party

Richard S. Jones, Esquire
For the General Counsel

Before: WILLIAM B. DEVANEY
Administrative Law Judge

DECISION

Statement of the Case

This proceeding, under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the States Code, 5 U.S.C. § 7101, et seq.1/, and the Rules and

1/ For conveniences of reference, sections of the Statute hereinafter are, also, referred to without inclusion of the initial "71" of the statutory reference, e.g., Section 7116(b)(5) will be referred to, simply, as "§ 16(a)(5)".

Regulations issued thereunder, 5 C.F.R. § 2423.1, et seq., concerns whether Respondent committed an unfair labor practice when it refused to assign a member of the Union's negotiating team to the dayshift during contract negotiations. For reasons more fully set forth hereinafter, I conclude that Respondent's breach of contract did not rise to the level of an unfair labor practice.

This case was initiated by a charge filed on March 10, 1988 (G.C. Exh. (a)) and the Complaint and Notice of Hearing issued on May 25, 1988 (G.C. Exh. 1(c)). The hearing was set for August 1, 1988, but by Order dated August 2, 1988 (G.C. Exh. 1(e)) was rescheduled for October 18, 1988; and, on Motions of the Charging Party, to which the other parties did not object, for good cause shown, was subsequently by Order dated August 23, 1988 (G.C. Exh. 1(g)) further rescheduled for November 2, 1988, pursuant to which a hearing was duly held on November 2, 1988, in Warner Robins, Georgia, before the undersigned. All parties were represented at the hearing, were afforded full opportunity to be heard, to introduce evidence bearing on the issues involved, and were afforded the opportunity to present oral argument which each party waived. At the conclusion of the hearing, December 2, 1988, was fixed as the date for mailing post-hearing briefs, which time was subsequently extended, on motion of Respondent, to which the other parties did not object, for good cause shown, to January 9, 1989. Respondent and General Counsel each timely mailed a brief, received on January 12, 1989, which have been carefully considered. Upon the basis of the entire record, I make the following findings and conclusions:

Findings

1. American Federation of Government Employees, Local 987 (hereinafter referred to as the "Union") is the agent of the exclusive representative for purposes of representation of Respondent's employees at Robins Air Force Base, Georgia (G.C. Exhs. 1(c) and 1(d), Par. 5).

2. On April 22, 1987, Respondent and the Union entered into an agreement establishing ground rules for negotiation of a local supplement agreement (Jt. Exh. 1; G.C. Exhs. 1(c) and 1(d), Par. 6). The ground rules agreement provides, in pertinent part, as follows:

> "3. Negotiation Team
> "A . . . Official time may be used only by employees who are otherwise in a duty

status. Unless otherwise requested, the union negotiators will be changed to dayshift for the duration of negotiations to allow union negotiators to use official time. The employer will not pay for overtime relative to these negotiations.

"B. As the employer's team will consist of four (4) members, the Union team may consist of no more than four (4) persons, including the chief spokesperson. The union will furnish to the employer a list of not to exceed 10 members and alternates to serve as union negotiators. Thereafter, when an alternate is to replace a regular team member, the union will notify the employer no later than Monday for a Thursday session and no later than Thursday for a Tuesday session if an alternate is to replace a regular team member. . . .

"F. . . . If the union plans to change the composition of its negotiating team, the employer's chief spokesperson will be notified at least seven (7) days in advance. . . ." (Jt. Exh. 1). (Emphasis supplied).

3. By letter dated April 27, 1987, the Union designated ten individuals who, ". . . will be subject to official time as negotiators" and "From the pool of ten. . . ." named: Raleigh Gibbs, Monteen Purser, Debra Dorough and Andy Ford as its four negotiators for May 1, 1987 (Res. Exh. 3).

4. Respondent, by memorandum dated April 28, 1987 (Res. Exh. 4) advised affected supervisors of the names of the Union's negotiating committee and further stated:

"While no more than four will participate on official time at any session, you should plan to release your employees as needed for the duration of the negotiations. You will be notified by the Labor Relations Office of the specific times your employee is to be released. We will normally give you at least 48 hours notice. In order to minimize disruption, with the exception of John Mohler, all of these employees must be kept on dayshift unless we notify you otherwise." (Res. Exh. 4; Tr. 70-71)

5. The Ground Rules Agreement (Jt. Exh. 1) is not a model of clarity. For example, not only is the meaning of Paragraph 3A, "Unless otherwise requested. . . ." subject to varying constructions[2/], but the parties disagreed totally on the meaning of Paragraph 3B. Thus, Ms. Nedra T. Bradley, President of the Union, testified that the agreement required only that the four active negotiators be on the dayshift, ". . . The other six names were like alternate names. That did not put all of those ten people on the dayshift . . . that was the purpose of giving management a notice of seven days in advance (Par. 3F). . . ." (Tr. 25; see, also, Tr. 43-44, 46). On the other hand, Ms. Patricia A. Boley, Labor Relations Officer (Tr. 69), testified that the, "whole team" of ten negotiators was to be on the dayshift (Tr. 71, 72).

6. By letter dated February 24, 1988, Mr. Raleigh J. Gibbs, Chairman of the Union negotiating team, advised Ms. Boley,

> ". . . that Ms. Hazel Marsh and Mr. Ralph McInvale will become members of the Union Negotiating Team, replacing Ms. Monteen Purser and Mr. John Mohler." (Jt. Exh. 2)

7. By letter dated February 26, 1988, Ms. Boley replied as follows:

> "This is to acknowledge your designation of Ralph McInvale and Hazel Marsh as members of the union negotiating team, however, it will be impossible to assign Mr. McInvale to dayshift for this purpose. Mr. McInvale's grade is based upon his

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2/ Each party assumes that Respondent's refusal to assign Mr. McInvale to the dayshift was a breach of contract. I do not construe the meaning of the agreement; but the phrase, "Unless otherwise requested, the union negotiations will be changed to dayshift. . . ." (Jt. Exh. 1, Par. 3A) does not, by its terms limit "requested" to individual employees. Had this been intended, it would have been simple, indeed, to have provided, "Unless otherwise requested by an employee", but, instead, the general, non specific, language, "Unless otherwise requested", was used which could well mean that employee, union, or employer could request that a particular employee not be changed to the dayshift.

assignment as a shift responsible operator or swing or owl shift or uncommon tour. There is no work commensurate with his grade available on the Mon-Fri dayshift in the Sewage Treatment Plant. Nor is there any other employee in the Sewage Treatment Plant of the appropriate grade available to assign to Mr. McInvale's shift responsible position in his absence. Based upon the situation, you may prefer to assign some other steward to the negotiating team instead. If so, please let me know." (Jt. Exh. 3).

8. Mr. McInvale was never designated as one of the Union's four active negotiators; the Union never responded to Ms. Boley's letter of February 24, 1988 (Tr. 79); and Mr. McInvale was never replaced on the list of ten by anyone else (Tr. 79-80).

9. Mr. Raleigh J. Gibbs, Chairman of the Union's negotiating team, was drafted for six weeks, "to pull" week end shift, or uncommon shift, for six weeks while serving as Chairman, although there was then a lull in negotiations awaiting the availability of a mediator (Tr. 21).

Conclusions

Not every breach of contract is an unfair labor practice, General Services Administration, Region 5, Public Buildings Service, Chicago Field Offices, A/SLMR No. 528, 5 A/SLMR 424 (1975); Non-Appropriated Fund Instrumentality, Billiting Office, Ellsworth Air Force Base, South Dakota, Case Nos. 7-CA-533, 733 and 878 (1982), ALJ Decision Reports, No. 10, p. 19 (May 14, 1982); Kaiserlautern American High School, Department of Defense Dependents Schools, Germany North Region, 9 FLRA 184 (1982); U.S. Customs Service, Region VII, Los Angeles, California, 10 FLRA 251, 254 (1982); Harry S. Truman Memorial Veterans Hospital, Columbia, Missouri, 11 FLRA 516 (1983).

Here, the Respondent did not place a designated member of the Union's negotiating team on the dayshift and it may thereby have violated its agreement with the Union, as General Counsel asserts and Respondent presumably agrees (Respondent's Brief, p. 5), although the agreement, as noted in Paragraph 5, above, is susceptible to varying and arguable interpretations. But, more important, the record shows that Respondent did not reject or repudiate its

agreement with the Union in any respect. Respondent, perhaps unnecessarily, assumed that the ground rules agreement contemplated that all ten members of the Union's negotiating team, and not just its four active negotiators as the Union's President asserted, were to be on the dayshift for the duration of the negotiations and it placed all members of the Union's negotiating team on the dayshift except Mr. McInvale with respect to whom it advised the Union:

> ". . . it will be impossible to assign Mr. McInvale to dayshift . . . Mr. McInvale's grade is based upon his assignment as a shift responsible operator on swing or owl shift or uncommon tour. There is no work commensurate with his grade available on the Mon-Fri dayshift . . . Nor is there any other employee . . . available to assign to Mr. McInvale's shift responsible position in his absence. Based upon the situation you may prefer to assign some other steward to the negotiating team instead . . ." (Jt. Exh. 3)

Thus, Respondent advised the Union that: (a) There was no work available for Mr. McInvale at his grade on the Monday-Friday dayshift; (b) There was no replacement available for Mr. McInvale; and (c) You may prefer to assign some other steward. Consequently, Respondent did not violate its agreement by refusing to assign Mr. McInvale to the dayshift but, rather, stated that it could not assign him in grade because there was no work available at his grade and, in addition, it stated that there was no replacement available for Mr. McInvale. Respondent told Mr. Gibbs, ". . . Based upon the situation, <u>you may prefer to assign some other steward to the negotiating team instead</u>. . . ." (Jt. Exh. 3). The Union never responded to Respondent's letter of February 24, 1988 (Jt. Exh. 3) and, certainly, the record does not indicate that Mr. McInvale had any desire to go to the dayshift at a reduced grade (see, Tr. 52-54), although Respondent's position, as stated in its letter of February 24, 1988, was abundantly clear, namely that, ". . . Mr. McInvale's grade is based upon his assignment as a shift responsible operator . . . there is no work commensurate with his grade available on the Mon-Fri dayshift. . . ." As the Union never replied, Respondent, notwithstanding that it did not want to reassign Mr. McInvale because of the absence of a replacement for him, never had to face the issue of replacing Mr. McInvale

on the midnight shift since the Union never indicated that Mr. McInvale was interested in being reassigned at a lower grade.

Respondent did not repudiate the ground rules agreement in violation as §§ 16(a)(1) and (5) of the Statute, cf. Department of Defense Dependents Schools System, 21 FLRA 1092, 1093 (1986), and if its failure to assign Mr. McInvale to the dayshift were a breach of contract, it was not a flagrant violation and did not rise to the level of an unfair labor practice. Indeed, as noted, while Respondent did not reassign Mr. McInvale to the dayshift, its failure to reassign him may not have constitutes a breach of contract. Moreover, as the existence of an unfair labor practice in this case depends on resolution of differing but arguable interpretations of a collective bargaining agreement, the Union's remedy more appropriately lies within the grievance machinery of the parties' agreements rather than through the unfair labor practice procedures. Aerospace Guidance and Metrology Center, Newark Air Force Station, Newark, Ohio, A/SLMR No. 677, 6 A/SLMR 361 (1976); 22nd Combat Support Group (SAC), March Air Force Base, California, 30 FLRA 331 (1987); Immigration and Naturalization Service and Immigration and Naturalization Service Newark District, 30 FLRA 486 (1987); United States Marine Corps, 33 FLRA No. 14, 33 FLRA 105 (1988).

Accordingly, it is recommended that the Authority adopt the following:

ORDER

The Complaint in Case No. 4-CA-80513 be, and the same is hereby, dismissed.

William B. Devaney

WILLIAM B. DEVANEY
Administrative Law Judge

Dated: October 27, 1989
Washington, D.C.