

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

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DEPARTMENT OF THE ARMY, U.S. ARMY  
SOLDIER SUPPORT CENTER, FORT  
BENJAMIN HARRISON, OFFICE OF THE  
DIRECTOR OF FINANCE AND ACCOUNTING,  
INDIANAPOLIS, INDIANA

Respondent

and

Case No. 5-CA-80084

AMERICAN FEDERATION OF GOVERNMENT  
EMPLOYEES, LOCAL 1411, AFL-CIO

Charging Party

and

DEPARTMENT OF THE ARMY, DIRECTOR OF  
FINANCE AND ACCOUNTING, ASSISTANT  
SECRETARY OF THE ARMY (FINANCIAL  
MANAGEMENT), INDIANAPOLIS, INDIANA  
AND U.S. ARMY SOLDIER SUPPORT CENTER,  
FORT BENJAMIN HARRISON, INDIANA AND  
U.S. ARMY FINANCE AND ACCOUNTING  
CENTER, INDIANAPOLIS, INDIANA

Respondent

and

Case No. 5-CA-80148

AMERICAN FEDERATION OF GOVERNMENT  
EMPLOYEES, LOCAL 1411, AFL-CIO

Charging Party

and

. . . . .

DEPARTMENT OF THE ARMY, DIRECTOR OF  
FINANCE AND ACCOUNTING, ASSISTANT  
SECRETARY OF THE ARMY (FINANCIAL  
MANAGEMENT), INDIANAPOLIS, INDIANA  
AND U.S. ARMY FINANCE AND ACCOUNTING  
OFFICE, FORT SAM HOUSTON, TEXAS AND  
U.S. ARMY COMMISSARY, FORT BENJAMIN  
HARRISON, INDIANA

Respondent

and

AMERICAN FEDERATION OF GOVERNMENT  
EMPLOYEES, LOCAL 1411, AFL-CIO

Charging Party

and

DEPARTMENT OF THE ARMY, DIRECTOR OF  
FINANCE AND ACCOUNTING, ASSISTANT  
SECRETARY OF THE ARMY (FINANCIAL  
MANAGEMENT), INDIANAPOLIS, INDIANA  
AND U.S. ARMY SOLDIER SUPPORT CENTER,  
FORT BENJAMIN HARRISON, INDIANA AND  
HAWLEY U.S. ARMY COMMUNITY HOSPITAL,  
FORT BENJAMIN HARRISON, INDIANA

Respondent

and

AMERICAN FEDERATION OF GOVERNMENT  
EMPLOYEES, LOCAL 1411, AFL-CIO

Charging Party

and

Case No. 5-CA-80149

Case No. 5-CA-80150

. . . . .  
DEPARTMENT OF THE ARMY, DIRECTOR OF  
FINANCE AND ACCOUNTING, ASSISTANT  
SECRETARY OF THE ARMY (FINANCIAL  
MANAGEMENT), INDIANAPOLIS, INDIANA  
AND U.S. ARMY SOLDIER SUPPORT CENTER,  
FORT BENJAMIN HARRISON, INDIANA AND  
U.S. ARMY INFORMATION SYSTEMS  
COMMAND-FBH, FORT BENJAMIN HARRISON,  
INDIANA

Respondent

and

Case No. 5-CA-80152

AMERICAN FEDERATION OF GOVERNMENT  
EMPLOYEES, LOCAL 1411, AFL-CIO

Charging Party

Judith A. Ramey, Esquire  
For the General Counsel

Sam Horn, Esquire  
Michael C. Barry, Esquire  
Mr. William B. Shultz  
For the Respondents

Mr. Cornell Burris  
For the Charging Party

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 an amended charge first filed on November 17,  
1987 in Case No. 5-CA-80084 and amended charges first filed  
on January 27, 1988 in Case Nos. 5-CA-80148, 5-CA-80149,  
5-CA-80150 and 5-CA-80152 by the American Federation of  
Government Employees, Local 1411, AFL-CIO, (hereinafter  
called the Union or Charging Party), a Consolidated

Complaint and Notice of Hearing was issued on March 18, 1988 by the Regional Director for Region V, Federal Labor Relations Authority, Chicago, Illinois. The Consolidated Complaint alleges that the Department of the Army, U.S. Army Support Center, Fort Benjamin Harrison, Indiana and Department of the Army, Office of the Director of Finance and Accounting, Indianapolis, Indiana; the Department of the Army, Director of Finance and Accounting, Assistant Secretary of the Army (Financial Management), Indianapolis, Indiana, and U.S. Army Soldier Support Center, Fort Benjamin Harrison, Indiana and U.S. Army Finance and Accounting Center, Indianapolis, Indiana; the Department of the Army, Director of Finance and Accounting, Assistant Secretary of the Army (Financial Management), Indianapolis, Indiana and U.S. Army Finance and Accounting Office, Fort Sam Houston, Texas and U.S. Army Commissary, Fort Benjamin Harrison, Indiana; the Department of the Army, Director of Finance and Accounting, Assistant Secretary of the Army (Financial Management), Indianapolis, Indiana and U.S. Army Soldier Support Center, Fort Benjamin Harrison, Indiana and Hawley U.S. Army Community Hospital, Fort Benjamin Harrison, Indiana; and the Department of the Army, Director of Finance and Accounting, Assistant Secretary of the Army (Financial Management), Indianapolis, Indiana and U.S. Army Soldier Support Center, Fort Benjamin Harrison, Indiana and U.S. Army Information Systems Command, Fort Benjamin Harrison, Indiana, (herein called collectively the Respondent), have violated Sections 7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute, (hereinafter called the Statute), by virtue of their actions in implementing changes in pay procedures at various installations without first giving the Union prior notice of the change and/or failing and refusing to bargain with the Union over the substance, impact and manner of implementation of the changes and/or interfering with the bargaining relationship between the Union and various named Activities.

A hearing was held in the captioned matter on May 24, 1988 in Indianapolis, Indiana. 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 General Counsel and the Respondent filed post-hearing briefs on July 25, 1988, which have been duly considered.<sup>1/</sup>

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<sup>1/</sup> At the opening of the hearing Counsel for Respondent moved for dismissal of that portion of the Complaint which alleged that Respondent failed and/or refused to bargain over the substance of the change in pay procedures since such change was mandated by an agency-wide regulation for which no determination as to a compelling need for the

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.

#### Statement of Facts

The Union is the exclusive representative of a number of separate units of civilian employees working within various Activities located at Ft. Benjamin Harrison, Indiana. These Activities include the U.S. Army Soldier Support Center (SSC), U.S. Army Finance and Accounting Center (USAFAC), U.S. Army Commissary (AC), Hawley U.S. Army Community Hospital (AH), and the U.S. Army Information Systems Command (ISC). The Union and Respondents are parties to a single collective bargaining agreement covering all the above units of employees.

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1/ (footnote continued)

regulation had been made by the authority. In support of its motion Respondent relied on the Supreme Court's decision in Federal Labor Relations Authority v. Aberdeen Proving Grounds, 108 S. Ct. 1261 (1988). Inasmuch as the Authority at the time had not stated its position thereon, General Counsel opposed Respondents' motion. However, in his post hearing brief the General Counsel acknowledged that since the hearing the Authority has issued a decision in Federal Emergency Management Agency, (FEMA) 32 FLRA No. 73, wherein it adopted the Supreme Court's decision, namely, that "issues concerning whether a compelling need exists for an agency regulation may not be resolved in an unfair labor practice proceeding." Accordingly, and since the record evidence discloses that Respondent did raise the issue of compelling need before the FSIP, General Counsel now acknowledges that absent a determination of the compelling need issue by the Authority, the allegation concerning Respondent's refusal to bargain over the substance of the change "is no longer a proper issue for resolution in this forum." In view of the foregoing, and since both parties now acknowledge that the recent decisions of the Supreme Court and the Authority make it clear that the matter of bargaining on the substance of the change in pay procedures may not be considered until a determination on the compelling need for the underlying regulation is made by the Authority, Respondent's motion for dismissal of that portion of the complaint dealing with the alleged refusal of the Respondent to bargain over the Union's substantive proposal, should be, and hereby is granted. Accordingly, only those allegations of the complaint dealing with impact and implementation bargaining on the change in pay procedures will be considered in this decision.

The Collective Bargaining Agreement provides for changes therein only upon the mutual consent of the parties. It further provides that any additions thereto "by supplemental agreements" will also be done only upon the mutual consent of the parties. In this latter connection the parties did in fact negotiate a supplemental agreement concerning the delivery of pay checks. This agreement dated 10/8/82, provided, absent the showing of "genuine hardship", that checks would be mailed to a designated address or credited to an account at a financial institution.

With the exception of AC, the four other activities, namely SSC, USAFAC, AH and ISC are serviced by the Finance and Accounting Office (F&AO) of the SSC located at Fort Benjamin Harrison, which prepares and issues paychecks to all the employees of the aforementioned Activities. Payroll for the AC is handled by the F&AO at Fort Sam Houston, Texas. Both of the F&AO's report to the Director of Finance and Accounting, Assistant Secretary of the Army (Financial Management). This latter office is located in Indianapolis and at all material times was headed by Mr. Clyde E. Jeffcoat. Each of the above mentioned F&AOs also reports to their respective Installation Commands at Fort Benjamin Harrison and Fort Sam Houston.

Mr. William B. Shultz, Labor Relations Officer at Fort Benjamin Harrison, serves as the bargaining representative for all of the five above listed Activities in their dealings with the Union. Mr. Cornell Burris, who is the President of the Union, has been the bargaining representative for the Union.

On or about June 3, 1987 Mr. Clyde Jeffcoat distributed a memorandum to various activities, including those involved herein, wherein he informed them that there had been a change in Army Regulation 37-105, Chapter 2 - Pay Standards and Processing Requirements and in accordance with the change "all Army Civilian Personnel will be paid on the same day, using the same pay period and a standard 12-day pay lag beginning no later than January, 1988. Pay day for the pay period ending 2 January 1988 will be 12 days later, 14 January 1988." The memorandum made it clear that the substance of the change was nonnegotiable, but that the Activities affected could bargain with the Union over the impact and manner of implementation of the change.

By memorandum dated July 8, 1987, Mr. Shultz advised the Union that an amendment to Army Regulations 37-105 required that all Army civilian employees be paid with a lag-time of 12 days. The memorandum went on to set forth a schedule of implementation beginning in August 1987 and ending January 2,

1988. Attached to the memorandum was a copy of AR 37-105 showing the changes to the existing regulation. The memorandum further stated that it was "notification of local implementation affecting employees paid by the SSC F&AO." As noted above, this would encompass all Respondent Activities except the Commissary which was paid by the F&AO at Fort Sam Houston.

On July 24, 1987, Mr. Burriss submitted a request to bargain over the substance, impact and manner of implementation of the change in lag-time. Subsequently, on July 31, 1987 he submitted three bargaining proposals which read as follows:

Union Proposal No. 1

The Employers agree that they will mail/deliver employees paychecks no later than 4 workdays after the end of a particular pay period. Pay periods are to mean the current 26 pay periods per year.

Union Proposal No. 2

Section 1: Employees will not have to accept direct deposit of their pay as a condition of employment but will have one of the following options.

Section 2: Employees will have their paychecks hand delivered in the same manner as they currently receive Leave and Earnings statement, etc, if they desire.

Section 3: Employees may designate any address for the mail distribution of their paychecks, leave and earnings statement, etc.

Section 4: Employees may have their paychecks deposited and credited to their personal account in any financial institution.

Union Proposal No. 3

If the Agency alleges non-negotiability of any of the Union's proposal on the basis of "Agency rules or regulations" pursuant to 5 USC, Section 7117(a)(2), no implementation of any part of the Agency proposals will take place until a negotiability determination has been made by the FLRA. The Union will move promptly to request such a determination.

Thereafter, Respondents, represented by Mr. Shultz, and the Union, represented by Mr. Burris and another representative, met on August 10, 1987, in their one and only bargaining session on the subject. Mr. Shultz took the position that the Union's first proposal was outside the duty to bargain since it went to the substance of the change. The third proposal according to Mr. Shultz was outside the duty to bargain since it was a "ground rule" and therefore already covered in the existing collective bargaining agreement. Mr. Shultz stated that he was willing to bargain on proposal No. 2 if the Union would drop that part of the proposal which made hand delivery of paychecks available to the employees. This, the Union refused to do and the parties agreed that they were at impasse. According to the credited testimony of Mr. Burris, during the August 10, 1987 meeting the parties were only concerned with the four activities, namely, SSC, USAFAC, AH and ISC, which were paid by the SSC F&AO located at Fort Benjamin Harrison. No mention whatsoever was made of the Commissary employees during this meeting.

On August 13, 1987, Mr. Shultz advised the Union that the "SSC" would implement the change beginning September 18, 1987, and would so inform the employees. In response, Mr. Burris immediately submitted the matter of the bargaining impasse to the Federal Service Impasses Panel (FSIP).

The SSC F&AO did not implement on September 18, 1987 as announced. However, on October 26, 1987 Mr. Shultz directed a memorandum to the Union wherein he informed the Union that Respondents would begin implementing on November 13th with completion to be phased in by February 11, 1988. The plan was implemented as scheduled. Thus, the pay period ending November 7, 1987, which would normally have been paid for on November 13, 1987 was, according to the new schedule, paid on November 16, 1987.

In its reply to the FSIP inquiry as to Respondent's position, Respondent contended, among other things, that the substance of the change was non-negotiable since "this proposal concerns the methods, means, and technology of performing work and there is a compelling need for the Army's regulation to require a 12-day pay lag." On November 16, 1987, the FSIP declined to assert jurisdiction over the matter.

The change which was implemented in the manner described above affected the civilian employees paid by the SSC F&AO, namely those employed by the SSC, USAFAC, AH, and ISC. The change increased the lag time between the end of the pay period and pay day from 6 to 12 days.

The U.S. Army Commissary (AC) employees were not affected by the above change since they were paid by a different payroll office, namely, F&AO at Fort Sam Houston. With respect to them, the record discloses that they experienced a change in their pay lag from 10 to 12 days in November and December 1987.

According to the credited testimony of Mr. Burriss, the first time that the Union became aware of the change at the Commissary was when two stewards informed the Union about it. Upon learning of the change Mr. Burriss on December 21, 1987 submitted an information request to Mr. Shultz. Among the questions asked by Mr. Burriss was the date that notice of the change had been forwarded to the Union, the name and address of the Army official that directed the change, and the name and address of the Army officials implementing the change. Mr. Shultz replied that the date of the notice was January 11, 1988, that Mr. Jeffcoat ordered the change, and that F&AO at Fort Sam Houston implemented the change. Thereafter, Mr. Burriss took no further action regarding the change in pay lag at the Commissary.

According to the testimony of Mr. Dickey from the F&AO at Fort Sam Houston, whose office is responsible for paying approximately 5800 employees, 69 of which work in the Commissary, the present automated system does not have the capability of paying employees under two different pay days. If they were required to go back to the old system for the employees at the Commissary they would be forced to hire a number of additional employees and work many overtime hours. Similarly, reinstating the old system for all the 5800 employees would entail the hiring of additional employees and also a lot of overtime. However, his testimony is not clear with respect to what the effect of returning to the old system would be if they also reverted to the use of pre-certified time cards.

Mr. Dickey further testified that the Commissary had no authority to tell his office not to comply with the Army Regulation regarding the new pay lag.

Major Wotring who is with the F&AO at Fort Benjamin Harrison and whose office is responsible for issuing pay checks to the employees working in the SSC, USAFAC, AH and ISC testified that since the change in pay lag there has been a significant cut in the amount of computer time allotted to his office which would prevent it from processing the employees checks with a pay lag of less than

12 days. According to the uncontested testimony of Mr. Wotring the commanders of the various Activities involved herein had no authority to instruct his office not to comply with the Army regulation concerning the increase in the pay lag.

The record indicates that all employees currently receive their pay checks every other week and that if a change in the pay lag was ordered by the Authority the employees would again suffer a change in pay days.

Finally, the parties stipulated that the change in pay-lag did have more than a de minimis impact on the unit employees. In this connection the employees testified that the change in pay days occasioned by the change in the pay lag resulted in their checking accounts having insufficient funds to cover a number of outstanding checks. This deficiency forced them to use the automatic loan service attached to their checking accounts and resulted in unplanned interest payments for such loans.

#### Discussion and Conclusions

The General Counsel takes the position that all the named Respondents violated the Statute by virtue of their respective actions in instituting pay-lag changes at a time when the matter was before the Impasses Panel and/or with respect to the Commissary, making the change without first giving the Union notice of the change and an opportunity to bargain over the impact and manner of implementation. Specifically, the General Counsel contends that the Union's proposals for (1) hand delivery of the pay checks and (2) for withholding the implementation of the change pending a negotiability determination by the FLRA, are both negotiable and that Respondent Activities' refusal to negotiate thereon violated 7116(a)(1) and (5) of the Statute. It is further contended that the implementation of the change while the matter was before the Impasses Panel was also a violation of 7116(a)(1) and (5) of the Statute. Further, according to the General Counsel, the F&AO at Fort Houston and the SSC F&AO at Fort Benjamin Harrison violated Section 7116(a)(1) of the Statute by implementing the changes while negotiations were still pending between the Union and the Activities. According to the General Counsel this latter action interfered with the bargaining relationship between the respective Activities and the Union in violation of the Statute.

Respondent on the other hand denies that it violated the Statute and takes the position that the Union's impact and implementation proposals were non-negotiable since they conflicted with various provisions of the collective bargaining agreement. They further contend that they did give the Union appropriate notice of the change in pay-lag at the Commissary and that the Union never requested to bargain over the change at the Commissary. Additionally, Respondent takes the position that neither the respective Activities nor the F&AO violated the Statute since they had no discretion over the pay-lag and were merely following Department of the Army instructions. Respondent also contends that since there is a dispute as to whether the Union's proposals conflict with the collective bargaining agreement the matter is one of contract interpretation that should be resolved through the grievance procedure. Finally, Respondent, contrary to the General Counsel, takes the position that if a violation is found by the undersigned Administrative Law Judge a status quo remedy is not in order since it would "contravene a Federal law or Government-wide regulation" and would entail substantial expense and disrupt or impair the efficiency and effectiveness of the Respondent's operations.

It is obvious from a reading of the respective position of the parties set forth above that basic to a resolution of the instant controversy are findings as to (1) the negotiability of the Union's two impact and implementation proposals concerning the announced pay-lag change at SSC, USAFAC, AH and ISC and (2) whether the Union was given prior notice of, and the opportunity to bargain on, the change in pay lag at AC before such change was implemented at the installation.

With respect to AC (Army Commissary) I find, contrary to the contention of the Respondent and in agreement with the General Counsel, that the Union was never given any prior notice of the change and only became aware of same after the F&AO at Fort Houston implemented the change in the pay-lag from 10 to 12 days for the Commissary employees. In this connection I have credited Mr. Burris' testimony that the first time he heard of the change in pay-lag at the Commissary was when he was informed by the union stewards at the Commissary that the change in pay-lag had been implemented. To the extent that Respondent relies on the July 8, 1987 memorandum informing the Union of the change in Army Regulation 37-105 for a contrary conclusion, I note that such memorandum specifically stated that it was notice

of "local implementation affecting employees paid by the SSC F&AO." Inasmuch as SSC F&AO did not pay the Commissary employees the memorandum did not constitute notice to the Union that there was an impending change in the pay-lag at the Commissary.

Accordingly, having failed to give the Union notice of the impending change and an opportunity to bargain impact and implementation at the Commissary, I find that the U.S. Army Commissary, Fort Benjamin Harrison by such action violated Sections 7116(a)(1) and (5) of the Statute. Cf. Veterans Administration, Veterans Administration Medical Center, Muskogee, Oklahoma & AFGE, AFL-CIO, Local 2250, 25 FLRA 875; Department of the Treasury, U.S. Customs Service and NTEU, 19 FLRA 1155. 2/

I further find that the U.S. Army Finance and Accounting Office, Fort Sam Houston, Texas interfered with the bargaining relationship existing between the Union and the U.S. Army Commissary by effecting the change in pay-lag at a time when the Union had not been given notice of the impending change and the opportunity to bargain on the impact and manner of implementation of the change. Having so interfered with the bargaining relationship between the Union and the Commissary the Army Finance and Accounting Office, Fort Sam Houston, violated Section 7116(a)(1) of the Statute. Cf. Headquarters, Defense Logistics Agency, Washington, D.C. and AFGE, Local 2449, AFL-CIO, 22 FLRA 875. In the aforesaid case the Authority concluded that entities of the same agency, not in the same chain of command as the entity at the level of exclusive recognition, violate Section 7116(a)(1) of the Statute if they interfere with the protected rights of employees other than their own by taking action which conflicts with the bargaining relationship between the parties at the level of exclusive recognition.

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2/ As noted in the factual portion of the instant decision, the parties stipulated that the change in pay-lag had a more than de minimis impact on the unit employees. Inasmuch as the record evidence discloses that the pay-lag change resulted in interest penalties to a number of the unit employees, absent such stipulation, I would in any event find that the change in pay-lag had more than a de minimis impact on the unit employees.

Turning now to the pay-lag changes implemented at the other four activities, namely, SSC, USAFAC, AH and ISC, it is clear that the changes were implemented at a time when the Union's bargaining proposals were before the Impasses Panel. It is also clear that Respondent had refused to bargain over the Union's proposals, i.e. that pay checks be hand delivered to the employees and that if any proposal was declared non-negotiable that implementation of the pay-lag change be delayed pending a negotiability determination by the Authority, on the ground that such proposals were contrary to provisions included in the current collective bargaining agreement. Further, inasmuch as the collective bargaining agreement provides for changes therein only upon the mutual consent of the parties, it is Respondent's contention that it is under no obligation to bargain on the Union's two impact and implementation proposals.

While it is true that the parties had executed a supplemental agreement to the collective bargaining contract which provided for the mailing of pay checks to a designated address or deposit to a financial institution, in the circumstances present herein, I do not believe that such supplemental agreement is a bar to negotiations on the Union's current proposal to have the pay checks hand delivered.

At the time the supplemental agreement was negotiated there was a specific time-lag between the end of the pay period and the delivery of the employees' pay checks. It was on the basis of that time-lag which had checks being available on a day certain that the Union agreed to have the pay checks delivered in a certain manner, i.e. mail or direct deposit.<sup>3/</sup> Having unilaterally decided to change the day upon which checks would be available to the detriment of the unit employees, I conclude that Respondent is estopped from relying on the terms of the supplemental agreement as a defense. To allow Respondent to claim that the manner of delivery of pay checks is non-negotiable since it is covered by the supplemental agreement which, accordingly to the terms of the Master Agreement, cannot be modified absent the mutual consent of both parties would

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<sup>3/</sup> If the Union had been aware that there was a possibility that there would be a six day delay on the receipt of their pay checks, it might well have proposed and/or signed a different agreement concerning the delivery of pay checks.

destroy the equality of the bargaining relationship between the Union and the Respondent envisioned by the Statute. Thus, Respondent would have the best of all worlds being allowed to effect changes in conditions of employment and thereafter refuse to entertain legitimate Union proposals thereon upon the basis of a prior contractual commitment which was executed at a time when the changes were not contemplated. Accordingly, I find that when an agency utilizes its rights under the Statute to effectuate changes in conditions of employment it is under an obligation to bargain on any and all legitimate union proposals which bear a substantial relationship to the change irrespective of any prior existing contractual provisions and/or agreements involving similar subject matter. Cf. Social Security Administration and American Federation of Government Employees, AFL-CIO, Local 1760, 19 FLRA No. 47 and 21 FLRA No. 72.

In view of the foregoing and since the Authority has found that proposals dealing with the manner in which employees receive their pay checks to be negotiable, I find that the Activities, namely SSC, USAFAC, AH and ISC, violated Sections 7116(a)(1) and (5) of the Statute when they refused to bargain on the Union's proposal to have the pay checks hand delivered. Federal Employees Metal Trades Council, AFL-CIO, et al, 25 FLRA 465.

I further find that the Finance and Accounting Office of the Soldier Support Center, Fort Benjamin Harrison, Indiana interfered with the bargaining relationship between the Union and the Activities by affecting the change in pay-lag at a time when the Union and the Activities had not completed bargaining on the impact and manner of implementation of the change. By so interfering with the bargaining relationship between the Union and the Activities the Finance and Accounting Office of the Soldier Support Center, Fort Benjamin Harrison, Indiana violated Section 7116(a)(1) of the Statute. Cf. Headquarters, Defense Logistics Agency, Washington, D.C. and AFGE, Local 2449, AFL-CIO, supra.

With respect to the Union's proposal to delay the implementation of the change in the pay-lag pending a determination by the FLRA of any non-negotiability contentions raised by Respondent to any Union proposal, I find, based upon the Authority's decision in Overseas Education Association, Inc., et al, 29 FLRA No. 61 that such proposal is negotiable. I further find, contrary to the contention of the Respondent, that bargaining on this proposal is not precluded by the ground rule provisions of

the collective bargaining agreement. The proposal goes to the manner of implementation of the change and does not in any way conflict with the ground rule provisions of the contract which provide, that in event that the Union files a formal negotiability appeal with the FLRA it, the Union, will serve a copy of its appeal the same day on three specified representatives of the Respondent. The ground rules are silent with respect to the status of the proposed change while the matter is before the FLRA.

In such circumstances it cannot be said that the Union's proposal conflicts with the terms of the collective bargaining agreement.

Accordingly, I find, based upon the above considerations as well as the rationale set forth supra with respect to the Union's other proposal dealing with the delivery of pay checks, that Respondent Activities, namely SSC, USAFAC, AH and ISC, violated Sections 7116(a)(1) and (5) of the Statute when they refused to bargain with the Union on the Union's proposal to delay implementation of the change pending completion of the Authority's action on the negotiability appeal. I further find that the Finance and Accounting Office of the Soldier Support Center, Fort Benjamin Harrison, Indiana interfered with the bargaining relationship between the Union and the Activities by effecting the change in pay-lag at a time when the Union and the Activities had not completed bargaining on the impact and manner of implementation of the change. By so interfering the Finance and Accounting Office of the Soldier Support Center Fort Benjamin Harrison, Indiana violated Section 7116(a)(1) of the Statute.

With respect to the remedy, the record indicates that Finance and Accounting Offices do not now have available the computer time and the personnel to reinstitute the original time lag. Additionally, the record indicates that all the employees are currently receiving their respective pay checks on a day certain every week and that reinstatement of the old pay day would seriously disrupt the Respondent's operations and provide no benefit to the unit employees. Accordingly, in view of the foregoing I find that a return to the status quo would serve no useful purpose and disrupt Respondent's operation.

However, inasmuch as the record indicates that a number of employees suffered financial hardships because of the Respondent's action in changing the pay lag, I shall order Respondents' Finance Office to make those employees whole for any monies lost due to the change in pay lag.

### Summary

Having found that Respondents' were not obligated to bargain with the Union over the substance of the change in pay procedures since the matter of compelling need for such change had not been determined by the Federal Labor Relations Authority and that Respondents' motion to dismiss certain allegations of the Complaint on such ground had merit, it is hereby recommended that the allegations of the Complaint dealing with Respondents' <sup>4</sup>/ failure to bargain over the substance of the decision to institute changes in the pay procedure be dismissed.

Having found that the U.S. Army Soldier Support Center (SSC), U.S. Army Finance and Accounting Center (USAFAC), U.S. Army Commissary (AC), Hawley U.S. Army Hospital (AH) and the U.S. Army Information Systems Command (ISC), all of which are located at Ft. Benjamin Harrison, Indiana, violated Sections 7116(a)(1) and (5) of the Statute by failing and/or refusing in various ways to bargain with the Union over the impact and manner of implementation of the change in pay procedures it is hereby recommended that the Authority issue two separate orders applicable to these Respondents, as set forth below.

Having found that the Finance and Accounting Office (F&AO) of the SSC located at Ft. Benjamin Harrison and the Finance and Accounting Office (F&AO) located at Fort Sam Houston, Texas, each violated Section 7116(a)(1) of the Statute by interfering with the contractual relationship between the Union and various Activities of the Respondent, namely, SSC, USAFAC, AC, AH and ISC, it is hereby recommended that Authority issue only one order covering both Respondents, as set out below.

### ORDER

Pursuant to Section 2423.29 of the Federal Labor Relations Authority's Regulations and Section 7118 of the Federal Service Labor-Management Relations Statute, it hereby ordered that the U.S. Army Soldier Support Center, U.S. Army Finance and Accounting Center, Hawley U.S. Army Community Hospital and the U.S. Army Information Systems Command, all of which are located at Ft. Benjamin Harrison, Indiana, shall:

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<sup>4</sup>/ See Footnote 1/, supra.

1. Cease and desist from:

(a) Refusing to negotiate in good faith with the American Federation of Government Employees, Local 1411, AFL-CIO, the exclusive representative of a bargaining unit of employees at Fort Benjamin Harrison, Indiana concerning the impact and manner of implementation of the change in pay procedures.

(b) In any like or related manner interfering with, restraining, or coercing their respective employees in the exercise of their rights assured by the Statute.

2. Take the following affirmative action in order to effectuate the purposes and policies of the Statute:

(a) Upon request, meet and negotiate with the American Federation of Government Employees, Local 1411, AFL-CIO, concerning the impact and manner of implementation of the change in pay procedures.

(b) Post at all locations of the U.S. Army Soldier Support Center, U.S. Army Finance and Accounting Center, Hawley U.S. Army Community Hospital and the U.S. Army Information Systems Command, all of which are located at Fort Benjamin Harrison, Indiana, copies of the attached Notice marked Appendix A on forms to be furnished by the Federal Labor Relations Authority. Upon receipt of such forms, they shall be signed by an appropriate official, and be posted and maintained by him or her 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 Notice is 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 V, 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.

ORDER

Pursuant to Section 2423.29 of the Federal Labor Relations Authority's Regulations and Section 7118 of the Federal Service Labor-Management Relations Statute, it hereby ordered that the U.S. Army Commissary, Ft. Benjamin Harrison, Indiana, shall:

1. Cease and desist from:

(a) Failing to give the American Federation of Government Employees, Local 1411, AFL-CIO, the exclusive representative of a bargaining unit of employees at Fort Benjamin Harrison, Indiana, notice of, and an opportunity to bargain on, the impact and manner of implementation of any change in the pay procedures.

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

2. Take the following affirmative action in order to effectuate the purposes and policies of the Statute:

(a) Upon request, meet and negotiate with the American Federation of Government Employees, Local 1411, AFL-CIO, concerning the impact and manner of implementation of any change in pay procedures.

(b) Post at the U.S. Commissary, Fort Benjamin Harrison, Indiana, copies of the Notice marked Appendix B on forms to be furnished by the Federal Labor Relations Authority. Upon receipt of such forms they shall be signed by an appropriate official and be posted and maintained by him or her for 60 consecutive days thereafter, in conspicuous places, including bulletin boards and other places where notices are customarily posted. Reasonable steps shall be taken to ensure that such Notice is 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 V writing, within 30 days from the date of this Order as to what steps have been taken to comply herewith.

ORDER

Pursuant to Section 2423.29 of the Federal Labor Relations Authority's Regulations and Section 7118 of the Federal Service Labor-Management Relations Statute, it is hereby ordered that the Finance and Accounting Offices located at Fort Benjamin Harrison, Indiana and Fort Sam Houston, Texas, shall:

1. Cease and desist from:

(a) Interfering with the bargaining relationship between the American Federation of Government Employees,

Local 1411, AFL-CIO, and the U.S. Army Soldier Support Center, U.S. Army Finance and Accounting Center, Hawley U.S. Army Community Hospital, U.S. Army Information Systems Command and U.S. Army Commissary, all Activities located at Fort Benjamin Harrison, Indiana, by effecting changes in pay procedures at a time when the Activities and the Union had not completed bargaining on the impact and manner of implementation of the pending change in pay procedures.

(b) In any like or related manner interfering with, restraining or coercing employees of the above named Activities in the exercise of their rights assured by the Statute.

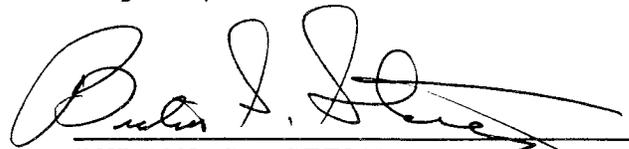
2. Take the followed affirmative action in order to effectuate the purposes and policies of the Statute:

(a) Reimburse the unit employees for all monies lost and/or interest charged as a result of the change in pay procedures at a time when negotiations on the impact and manner of implementation of the change had not been completed.

(b) Post at all locations where the unit employees employed by the above cited Activities are stationed, copies of the attached Notice marked Appendix C on forms to be furnished by the Federal Labor Relations Authority. Upon receipt of such forms they shall be signed by an appropriate official and be posted and maintained by him for 60 consecutive days thereafter, in conspicuous places, including all bulletin boards and other places where notices are customarily posted. Reasonable steps shall be taken to ensure that such Notice is 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 V, in writing within 30 days from the date of this Order as to what steps have been take to comply herewith.

Issued, January 30, 1989, Washington, D.C.



BURTON S. STERNBURG  
Administrative Law Judge

APPENDIX A

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, upon request, negotiate in good faith with the American Federation of Government Employees, Local 1411, AFL-CIO, the exclusive representative of a unit of our employees, concerning the impact of the change in pay procedures.

WE WILL NOT refuse to bargain with the American Federation of Government Employees, Local 1411, AFL-CIO, the exclusive representative of a unit of our employees concerning the impact and manner of implementation of any proposed change in pay procedures.

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.

U.S. Army Soldier Support  
Center, U.S. Army Finance and  
Accounting Center, U.S. Army  
Community Hospital, U.S. Army  
Information Systems Command,  
Fort Benjamin Harrison, Indiana  
(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 V, whose address is: 175 W. Jackson Blvd., Suite 1359-A, Chicago, IL 60604, and whose telephone number is: (312) 353-6306.

APPENDIX B

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, upon request, negotiate in good faith with the American Federation of Government Employees, Local 1411, AFL-CIO, the exclusive representative of a unit of our employees at Fort Benjamin Harrison, Indiana concerning the impact and manner of implementation of any proposed change in pay procedures.

WE WILL NOT fail to give the American Federation of Government Employees, Local 1411, AFL-CIO notice of, and an opportunity to bargain thereon, any contemplated changes in conditions of employment, including changes in pay procedures.

WE WILL NOT in any like or related manner, interfere with, restrain, or coerce our employees in the exercise of rights assured by the Federal Service Labor-Management Relations Statute.

U.S. Army Commissary, Fort  
Benjamin Harrison, Indiana  
(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 V, whose address is: 175 W. Jackson Blvd., Suite 1359-A, Chicago, IL 60604, and whose telephone number is: (312) 353-6306.

APPENDIX C

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 interfere with, restrain, or coerce employees in the exercise of their rights under the Federal Service Labor-Management Relations Statute by implementing a change in pay procedures in such a manner as to preclude American Federation of Government Employees, Local 1411, AFL-CIO, from exercising its statutory right to negotiate the impact and implementation of such change with the U.S. Army Soldier Support Center, the U.S. Army Finance and Accounting Center, the Hawley U.S. Army Community Hospital, the U.S. Army Information Systems Command and the U.S. Army Commissary, prior to such implementation.

WE WILL NOT in any like or related manner, interfere with, restrain, or coerce unit employees in the exercise of rights guaranteed under the Federal Service Labor-Management Relations Statute.

WE WILL reimburse the unit employees for all monies lost and/or interest charged as a result of the change in pay procedures at a time when negotiations on the impact and manner of implementation of the change had not been completed.

Finance and Accounting  
Office, Fort Benjamin  
Harrison, Indiana  
(Activity)

Finance and Accounting  
Office, Fort Sam Houston,  
Texas  
(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 V, whose address is: 175 W. Jackson Blvd., Suite 1359-A, Chicago, IL 60604, and whose telephone number is: (312) 353-6306.