

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

. . . . .  
DEPARTMENT OF THE AIR FORCE .  
NELLIS AIR FORCE BASE, NEVADA .  
Respondent .  
and . Case Nos. 9-CA-90054  
AMERICAN FEDERATION OF . 9-CA-90295  
GOVERNMENT EMPLOYEES, . 9-CA-90337  
LOCAL 1199, AFL-CIO . 9-CA-90356  
Charging Party .  
. . . . .

James A. Harper, Esquire  
For the Respondent

Susan E. Jelen, Esquire  
For the General Counsel

Before: WILLIAM NAIMARK  
Administrative Law Judge

DECISION

Statement of the Case

Pursuant to an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing issued on May 5, 1989 by the Acting Regional Director, Federal Labor Relations Authority, Region IX, a hearing was held before the undersigned on June 8, 1989 at Las Vegas, Nevada.

These cases arose under the Federal Service Labor-Management Relations Statute, 5 U.S.C. 7101 et seq. (herein called the Statute). They are based on charges filed on October 31, 1988 in Case No. 9-CA-90054, on March 6, 1989 in Case No. 9-CA-90295, on March 27, 1989 in Case No. 9-CA-90337 and on April 3, 1989 in Case No. 9-CA-90356 by American Federation of Government Employees, Local 1199, AFL-CIO (herein called the Union) against Department of Air Force, Nellis Air Force Base, Nevada (herein called the Respondent).

The Consolidated Complaint alleged, in substance, that Respondent changed working conditions by assigning unit employees, who were attached to the 57th Fighter Weapons Wing from the night or swing shift to the day shift without notifying the Union and affording it an opportunity to bargain concerning the impact and implementation of the change. Further, that the changes were made on September 8, 1988 in the Phase Branch;<sup>1/</sup> on March 6, 1989 in the Aircraft Phase Inspection Branch and in the Transit Alert Section; on March 13 and March 20, 1989 in the Repair and Reclamation Section - all in violation of section 7116(a)(1) and (5) of the Statute.

Respondent's Answer, dated May 24, 1989, denied the aforesaid allegations as well as the commission of any unfair labor practices.

All parties were represented at the hearing. Each was afforded full opportunity to be heard, to adduce evidence, and to examine as well as cross-examine witnesses. Thereafter, briefs were filed which have been duly considered.

Upon the entire record, from my observation of the witnesses and their demeanor, and from all of the testimony and evidence adduced at the hearing, I make the following findings and conclusions:

#### Findings of Fact

1. At all times material herein the Union has been, and still is, the exclusive bargaining representative of an appropriate unit of Air Force employees serviced by the Nellis Air Force Base Central Civilian Personnel Office.

2. At all times material herein the Union and Respondent have been parties to a collective bargaining agreement establishing terms and conditions of employment for employees in said appropriate unit.

3. Article 22 of the said agreement is entitled "HOURS OF WORK." Under 22.2 thereof it provides as follows:

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<sup>1/</sup> In respect to this particular change on September 8, 1988, it was also alleged that Respondent refused to negotiate on September 9, 1988 and September 22, 1988, regarding the impact and implementation of the change. The conclusions reached herein will embrace this allegation.

In order to minimize work disruption and the adverse impact on employees morale and productivity, changes in work schedules will be kept to an absolute minimum. Employees will be notified of their changes in tours of duties and hours of work as soon as possible when it is determined that a change will take place. Employees will be notified of changes not later than the end of the employees current workweek. Changes in hours of duty should be coordinated with 554 CSG/DPCE in advance to ensure labor agreement and pay implications are fully understood by the supervisor.

4. Article 4 of the bargaining agreement is entitled "MATTERS FOR CONSULTATION AND NEGOTIATION." Section 4.1 thereof provides, in pertinent part, as follows:

It is agreed that matters appropriate for consultation and negotiation between the parties shall include personnel policies and working conditions, including but not limited to such matters as . . . hours of work which are within the discretion of the employer. . . . (underscoring supplied)

5. Of the 1100 employees in the bargaining unit at Nellis Air Force Base, about 100 are employed at the Equipment Maintenance Squadron (EMS), 57th Fighter Weapons Wing. EMS is composed of several branches: Phase, Aerospace, Ground Equipment, Transit Alert, Maintenance, and Sheet Metal. Most EMS employees are aircraft maintenance technicians with some individuals having specialized tasks.

6. The employees at EMS work two shifts. The day shift is from 6:00 a.m. to 3:00 p.m. The swing or night shift runs from 2:45 p.m. to 11:15 p.m. The shifts have been in existence for over 10 years. Three times as many individuals have been working the day shift contrasted with the night shift.

7. Record facts show that over the past years EMS employees have transferred back and forth between these two shifts. Some employees started on one shift but then changed later and remained on a particular shift. On occasion employees volunteer for, or request, a change. Supervisor Laurence Coop testified that he made about 50

changes from one shift to another since 1984; that all employees in his Inspection Section of EMS, about 80 individuals, are subject to shift changes. The position description for the aircraft mechanics reflect that they work "shift work, work on day or swing shift and uncommon tour of duty."<sup>2/</sup>

8. The usual practice in respect to changing employees from one shift to another has been for Supervisor Coop to notify the employee verbally and then give him written notification with the effective date of the change. When a supervisor initiates a change he sends the necessary papers to John McHugh, Chief of Employee and Labor Relations, who either approves or disapproves the action. No notification is given to the Union nor does it have any involvement in the change.<sup>3/</sup>

9. On September 9, 1988 Supervisor Coop called Eleanor Mickelson, an employee and President of the Union, and notified her that Colonel Young, Squadron Commander, ordered him to take all EMS personnel on the swing shift and put them on the day shift. He stated that Colonel Richardson, Deputy Commander of the EMS had concluded it would save money and he decided to do it. Mickelson replied that the matter was negotiable, but Coop said that management had already negotiated the matter.

10. Mickelson then called Fred Hamlin, Civilian Personnel Officer for Respondent, and told him the contemplated action to move the employees to the day shift was a change in working conditions and had not been negotiated. Hamlin said it was not negotiable since it was covered under Article 22.2 of the bargaining agreement. He stated that if she wanted to send in some proposals he would look at them. Mickelson replied she wanted to see the proposed change in writing.

11. During a meeting that day Colonel Young told Mickelson that Respondent would be taking nine (9) employees off the swing shift and transferring them to the day shift.

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<sup>2/</sup> An uncommon tour of duty is one outside the normal base hours.

<sup>3/</sup> McHugh, who was a member of the negotiating team during contract negotiations, testified the purpose of Article 22.2 in the agreement was to provide management with a procedure to notify employees of a change in shifts.

Young stated that Respondent could save \$20,000 per year. Mickelson called his attention to the consequences for employees such as less pay, babysitting problems, and transportation difficulties. Young said he might delay it.

12. Under date of September 9, 1988 Coop sent a written notice to nine (9) aircraft mechanics in the Phase Section that they were being transferred from the swing shift to the day shift. The transfer was to become effective on September 12, 1988, and the notice stated "Provisions of Article 22 of the Negotiated Agreement have been complied with."<sup>4/</sup> These mechanics were transferred on September 12 to the day shift.

13. On September 16, 1988 Mickelson wrote Hamlin that, as per their September 9 conversation, the Union requests that Respondent cease the swing shift change until it negotiated the matter.

14. Under date of March 2, 1989 Respondent sent out a memorandum stating that four more named aircraft mechanics in the Phase Section on the swing shift would be assigned to the day shift effective March 6, 1989.<sup>5/</sup> A copy of this was not sent to the Union. Upon learning beforehand of this proposed action, Mickelson wrote Hamlin on March 1, 1989 that the change to the day shift of these employees was a change in working conditions and the Union demanded impact and implementation bargaining.

15. Under date of March 2, 1989 Hamlin again replied that the changes were made in accordance with Article 22 of the agreement.

16. On March 3, 1989 two named employees in the Transit Alert Section were notified they would be assigned on March 6 from the swing shift to the day shift. No notification was given to the Union, and the employees were transferred as proposed.

17. Three named employees in the Repair and Reclamation Section were advised on February 28, 1989 that they would be

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<sup>4/</sup> The Union did not receive a copy of the notice.

<sup>5/</sup> These mechanics were informed by a supervisor on February 28, 1989 that the change would be made to the day shift on March 6, 1989.

assigned to the day shift from the swing shift on March 13. Two were so assigned and the third transferred a week later. The Union did not received notification.

18. The remaining swing shift employee, who was in the Phase Section, was notified on March 14 of the plan to assign him to the day shift, and he was so assigned on May 29. No notice was given to the Union.

19. Record facts show the shift differential in pay was about seven and one-half per cent or about \$1.11 an hour, and caused a loss of \$40. per week individually. As a result of the change some employees were obliged to obtain babysitters which caused additional expenditures.<sup>6/</sup> Further, transportation problems arose by virtue of the assignment to the day shift. The employees also had different supervisors on the day shift.

20. The record reflects that in 1985 the parties negotiated shift schedules for telephone operators in the Information Systems Squadron. That involved a rotational shift, which was a new shift, and was then discontinued. Under a rotational shift an employee would be on a day shift during one week and on a night shift the following week.

21. The record further indicates that in 1986 the parties negotiated work hours for employees at Respondent's Indian Springs location which is about 49 miles away from the Las Vegas operation. The negotiated change thereat involved a tour which was not a normal one - a summer tour required a change due to the summer heat. Those people who worked outside would start a little earlier so as to be working during the cooler part of the day.

#### Conclusions

It is contended by Respondent that, both in accordance with past practice and the job description of the mechanics, these employees were subject to shift changes. No notification had been given to the Union, nor was one required since a change of this nature was to an existing tour of duty. Management agrees that a new tour of duty would call for notification to the Union.

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<sup>6/</sup> Aircraft Pneudraulic Specialist Johnie Williams testified he spent several hundred dollars more per month for babysitters as a result of the change to the day shift.

Respondent insists that moving the mechanics from the night to the day shift was not a change in working conditions. It had been done in the past and was nothing new. Further, management notified employees of the prospective change in accordance with Article 22.2 of the agreement. Thus, it argues, there was no duty to bargain concerning the assignment of the mechanics to the day shift.<sup>7/</sup>

Thus, the central issue herein is whether the transfer by Respondent of 19 mechanics in the Equipment Maintenance Squadron from the swing or night shift to the day shift was a change in working conditions which obligated Respondent to bargain concerning its impact and implementation.

In 1988 the Authority had occasion to clarify the bargaining obligations of an agency with respect to changes in employees' hours of work. See Department of the Air Force, Scott Air Force Base, Illinois, 33 FLRA 532. It declared that a tour of duty consists of hours worked by an employee, from the time the employee starts work until he or she ends work. Further, where an agency changes an employee's hours that change results in a new tour of duty for the employee. Changing the employees' starting and quitting times effects a change in their tours of duty.

In the cited case the Authority also stated that when an agency changes a tour of duty by moving employees from a day shift to a night shift, it affects the numbers of employees assigned to both tours of duty. The decision to make such change is negotiable only at the election of the agency. However, the Authority recognized that the agency still is obliged to bargain over the procedures to be observed in exercising its authority as well as the appropriate arrangements for employees adversely affected thereby.<sup>8/</sup>

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<sup>7/</sup> In respect to the change in tours re the telephone operations and the Indian Springs location, Respondent concedes it bargained over them in the past. However, it maintains those changes involved something different than existing tours.

<sup>8/</sup> While the Authority in the Scott Air Force case, supra, concluded that the agency was obligated to bargain re the effect of the change from the night to the day shift, it held that the agency had bargained to impasse concerning the matter and provided the union with an opportunity to invoke the services of the Impasses Panel.

Applying the principle enunciated by the Authority, it is clear that the transfer by Respondent herein of the 19 mechanics involved their tours of duty. The hours of starting and quitting work for these employees were changed and, as expressed in the cited case, such change resulted in a new tour of duty. Moving the employees in such a manner has an effect upon both shifts. It is also clear, as concluded by the Authority, that a change of this nature is negotiable only at the election of the agency. Nevertheless, the employer would still be obliged to bargain with a union re the impact and implementation of such a change. Thus, unless otherwise excused, Respondent herein was required to negotiate the effects of this change, and its failure to do so would be violative of the Statute.

Respondent maintains that a change from days to nights did not oblige it to notify the Union since the change was to an existing tour of duty; that such action merely called for notification to the employee under Article 22.2 of the agreement. This contention flies in the face of the conclusions reached in the Scott Air Force case, supra. The change herein did change the hours of employment for the mechanics and constituted a new tour of duty. Further, the contractual clause relied upon by Respondent does not relieve the agency of its obligation to notify the Union. This obligation is imposed upon it by the Statute and the language in Article 22.2 of the agreement contains no waiver by the Union of its right to notification.

In its brief Respondent avers that it "offered to impact bargain" although not required to do so. This contention is predicated upon a remark by Colonel Young to Union official Mickelson that he might delay it, as well as Hamlin's comment to Mickelson that if she wanted to send in some proposals he would look at them. Without more, such statements by management might constitute a tenable argument of an offer to bargain. However, record facts belie my intention on Respondent's part to either comply with notification of such a change or to negotiate its impact and implementation. This becomes evident from the following: (a) Supervisor Coop's statement to Mickelson on September 9, 1988, after she said that the movement of personnel from the night shift to the day shift were negotiable, that management had already negotiated the matter; (b) Hamlin's comment to Mickelson that the change was not negotiable and had been covered under Article 22.2 of the agreement; (c) the announcements made by management to the employees in September 1988 and March 1989, that the assignments to the day shift would take place, with no notice to the Union; (d) the repeated request to bargain

by the Union, made on March 2, 1989, and Hamlin's response that the changes were made in accordance with the agreement.

The foregoing is persuasive that Respondent had no intention of negotiating any aspect of the change since it proceeded to take the action notwithstanding any protest from the Union. While Respondent adverts to the Union's failure to submit proposals, management made it clear to Mickelson that the matter was not negotiable in any respect under the agreement. Thus, a submission of proposals under such circumstances would have been a futile act. Accordingly, I conclude Respondent did not agree to bargain re the impact and implementation of the change.

With respect to an obligation to bargain on such matters, the Authority has not required it where the impact has been de minimis in nature. The standard to follow was set forth by it in Department of Health and Human Services, Social Security Administration, 24 FLRA 403. It determined therein that principal emphasis would be placed upon the nature and extent of the effect or reasonably foreseeable effect of the change on conditions of employment of bargaining unit employees. Further, equitable considerations will be taken into account in balancing various interests, and the number of employees involved would not be a controlling consideration.

The record herein reflects that the change of the tour of duty assigned to the 19 employees resulted in a shift differential of about seven and one-half per cent, or about \$1.11 per hour, and a substantial loss of pay each week for the employees. Transportation problems arose by reason of changing from the night shift to the day shift. Some employees were required to obtain babysitters, at considerable expense in view of the change. In addition, the employees had new supervisors when assigned to the day shift. These factors persuade me that there existed a reasonably foreseeable effect on the condition of the mechanics so transferred which was more than de minimis.

In view of the foregoing, I conclude that Respondent's failure to notify the Union and bargain, upon request, concerning the procedures for implementation of the change, as well as the appropriate arrangements for employees adversely affected, was violative of section 7116(a)(1) and (5) of the Statute.

#### Remedy

General Counsel seeks a status quo ante remedy as well as one which would make whole to the employees the monies

lost by reason of the change to the day shift. While Respondent maintains that a return to the night shift would be disruptive of operations, it presented no evidence in support thereof except that the change would result in a savings of \$20,000 per year to it. Respondent stresses the fact that employees are now adjusted to the day shift. Further, that many have now made arrangements for baby-sitters or transportation since their change to the day shift.

While these contentions may be true, they do not bear on the disruption of management's operations, but dwell on the possible inconvenience to the mechanics who were transferred. I conclude that the status quo ante remedy is appropriate where management has unilaterally changed a condition of employment. This remedy is also warranted even though the decision itself was not negotiable. See Federal Correctional Institution, 8 FLRA 604. Effectuation of the purposes and policies of the Statute would be rendered meaningless if such a remedy were not ordered after a change in conditions has taken place. Department of Health and Human Services, Public Health Service, Health Resources and Services Administration, et al., 31 FLRA 498.

Despite the foregoing, it is recognized by the undersigned that since the transfer to the day shift the mechanics so transferred might prefer to remain on that shift and not return to a night shift. As the Union may not desire to compel the employees to return to the night shift, the status quo ante remedy invoking a rescission of the transfer of the mechanics from the night to the day shift will be ordered upon request of the Union along with a directive to bargain in good faith.<sup>9/</sup> See Veterans Administration, et al., 32 FLRA 855.

Having concluded that Respondent violated section 7116(a)(1) and (5) of the Statute, I recommend the Authority issue the following order designed to effectuate the purposes and policies thereof.

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<sup>9/</sup> Since the record discloses that the unilateral change resulted in loss of pay which would not have occurred but for Respondent's unjustified action, a make whole remedy is appropriate. Such a remedy has been sanctioned by the Authority in these instances. See Social Security Administration, et al., 32 FLRA 521; Federal Aviation Administration, Washington, D.C., 27 FLRA 230.

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 NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT unilaterally change our employees' tours of duty without first notifying the American Federation of Government Employees, Local 1199, AFL-CIO, the exclusive representative of our employees, and affording it the opportunity to bargain concerning the procedures to be observed in implementing such changes, and the appropriate arrangements for employees adversely affected by such changes.

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

WE WILL, upon request by the American Federation of Government Employees, Local 1199, AFL-CIO, the exclusive representative of our employees, rescind the changes in the tours of duty of those employees in the Equipment Maintenance Squadron which placed them on the day shift, and restore them to their former tours of duty on the night shift.

WE WILL make whole and provide backpay for all employees in the Equipment Maintenance Squadron who suffered a withdrawal or reduction in pay, allowances, or differentials because their tours of duty were changed from the night shift to the day shift, to the extent that such changes resulted in a withdrawal or reduction in the premium pay they would have received had they remained on the night shift.

WE WILL notify the American Federation of Government Employees, Local 1199, AFL-CIO, the exclusive representative of our employees, of any intention to change tours of duty of bargaining unit employees and, upon request, bargain with it concerning the procedures to be observed in making such changes and the appropriate arrangements for employees adversely affected by such changes.

ORDER

Pursuant to section 2423.29 of the Federal Labor Relations Authority's Rules and Regulations and section 7118 of the Statute, it is hereby ordered that the Department of the Air Force, Nellis Air Force Base, Nevada shall:

1. Cease and desist from:

(a) Unilaterally changing its employees' tours of duty without notifying the American Federation of Government Employees, Local 1199, AFL-CIO, the exclusive representative of its employees, and affording it the opportunity to bargain concerning the procedures to be observed in implementing such change, and the 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 Relations Statute:

(a) Upon request by the American Federation of Government Employees, Local 1199, AFL-CIO, the exclusive representative of its employees, rescind the new tour of duty of those employees in the Equipment Maintenance Squadron, which placed them on the day shift, and restore them to their former tour of duty on the night shift.

(b) Make whole and provide back pay for, all employees in the Equipment Maintenance Squadron whose new tour of duty placed them on the day shift, and who suffered a reduction in pay or differential because of the implementation of the new tour of duty.

(c) Notify the American Federation of Government Employees, Local 1199, AFL-CIO, the exclusive representative of its employees, of any intention to change a tour of duty and bargain with it concerning the procedures to be observed in making such change and the appropriate arrangements for employees adversely affected by such change.

(d) Post at its facilities in Las Vegas, Nevada, 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, Nellis Air

Force Base, 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.

(e) Pursuant to section 2423.30 of the Authority's Rules and Regulations, notify the Regional Director, Region IX, Federal Labor Relations Authority, 901 Market Street, Suite 220, San Francisco, CA 94103, 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., April 27, 1990.

  
WILLIAM NAIMARK  
Administrative Law Judge

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 unilaterally change employees' tours of duty without notifying the American Federation of Government Employees, Local 1199, AFL-CIO, the exclusive representative of its employees, and affording it the opportunity to bargain concerning the procedures and to be observed in implementing such change, and the appropriate arrangements for employees adversely affected by such change.

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

WE WILL, upon request by the American Federation of Government Employees, Local 1199, AFL-CIO, the exclusive representative of its employees, rescind the new tour of duty of those employees in the Equipment Maintenance Squadron, which placed them on the day shift, and restore them to their former tour of duty on the night shift.

WE WILL make whole and provide back pay for, all employees in the Equipment Maintenance Squadron whose new tour of duty placed them on the day shift, and who suffered a reduction in pay or differential because of the implementation of the new tour of duty.

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

\_\_\_\_\_  
(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, San Francisco, California Regional Office, Federal Labor Relations Authority, whose address is: 901 Market Street, Suite 220, San Francisco, CA 94103, and whose telephone number is: (415) 744-4000.