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

AIR FORCE ACCOUNTING AND FINANCE CENTER, LOWRY AIR FORCE BASE, DENVER, COLORADO Respondent	
and	Case No. 7-CA-90687
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO, LOCAL 2040 Charging Party	

Major Phillip G. Tidmore
Counsel for the Respondent

William Guidry
Representative of the Charging Party

Michael Farley, Esquire
Counsel for the General Counsel, FLRA

Before: GARVIN LEE OLIVER
Administrative Law Judge

DECISION

Statement of the Case

The issues in this unfair labor practice case are whether Respondent, Air Force Accounting and Finance Center (AFAFC) violated section 7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute, 5 U.S.C. § 7101 et seq. (the Statute) by (1) implementing a change in the alternate work schedule for employees assigned to Respondent's Office of the Staff Judge Advocate (SJA Office) without providing the Charging Party (the Union) with prior notice of the change and an opportunity to negotiate concerning the substance, impact, and implementation of the change, and (2) by dealing directly with bargaining unit employees concerning the change.

For the reasons set out below, I find that a preponderance of the evidence establishes that Respondent committed all of the unfair labor practices alleged except for the alleged violation for failure to bargain concerning the substance of the change.

A hearing was held in Denver, Colorado.1/ The Respondent, Charging Party, and the General Counsel were represented and afforded full opportunity to be heard, adduce relevant evidence, examine and cross-examine witnesses, and file post-hearing briefs. The Respondent and General Counsel filed helpful briefs, and the proposed findings have been adopted where found supported by the record as a whole. Based on the entire record, including my observation of the witnesses and their demeanor, I make the following findings of fact, conclusions of law, and recommendations.

Findings of Fact

The Union is the exclusive representative of an appropriate unit of Federal employees, including approximately 2200 AFAFC employees. Approximately 15-20 AFAFC bargaining unit employees are assigned to the office of primary concern here, the Office of the Staff Judge Advocate.

Respondent's duty hours were set as a result of an 1986 binding interest arbitration award. The hours were:

Flexible Arrival Time	0630-0830
Morning Core Time	0830-1100
Flexible Lunch Time	1100-1230
Afternoon Core Time	1230-1500
Flexible Departure Time	1500-1730

This schedule was implemented on January 4, 1987 and was subsequently listed in a revision of Respondent's 1984 regulation on work schedules, AFAFC Regulation 11-7, issued April 1, 1987. The only substantive change in the 1987 regulation over the 1984 regulation was the revision to the work schedule as ordered by the arbitrator. The Union was notified of the new AFAFC regulation, but did not submit a request to bargain on it. The regulation includes the following provisions:

1/ Counsel for the General Counsel's unopposed motion to correct the transcript is granted; the transcript is corrected as set forth therein.

3. Policies:

a. Participation in flexitime or compressed work schedules is encouraged to the maximum extent possible. All employees must understand and accept the increased responsibilities incurred with flexitime and compressed work schedules and must be willing to adjust their work schedules to meet job requirements (deadlines, conferences, meetings, and other required duties).

b. Alternate work schedules may be terminated by the AFAFC Commander if it is determined it has had or would have an adverse agency impact; that is, a reduction of productivity of the agency; a diminished level of services furnished to the public by the agency; or an increase in the cost of agency operations.

c. Supervisors will permit employees to schedule working hours to best meet the employees' individual needs to the extent permitted by working situations. For those employees on the compressed schedule, the scheduled day off will be negotiated between the supervisor and the employee 1 week prior to the pay period it will be taken. The supervisor makes the final determination.

. . . . .

g. Employees must notify their supervisor 1 week before the beginning of the pay period if they wish to select and begin a different work schedule. Established work schedule should be considered mandatory during that pay period. However, employees may be permitted to change from an established work plan or change their scheduled day off with the approval of the supervisor on a case-by-case basis. An employee who wishes to change must wait until the next selection period to reenter a different work schedule.

Under the established procedures, employees may elect a flexitime work schedule which permits employees to vary, within the set units, their starting and quitting times and the length of their lunch periods (30-90 minutes) for an eight hour day. They may also elect a compressed work schedule ("5-4-9" plan), which permits employees to work nine hours for eight days, eight hours for 1 day, and then take one day off in addition to weekends during the 80 hour, bi-weekly pay period.

On December 16, 1988, Mr. John P. Montgomery, Deputy Director of the SJA Office attended a meting of the heads of the 15 directorates within AFAFC. He was advised that, effective January 3, 1989, Major General Charles Metcalf, AFAFC Commander, expected all directorates to provide adequate office coverage from 6:30 a.m. to 5:30 p.m. to ensure that clients in the Western time zones received better service.

On January 3, 1989, General Metcalf sent a memorandum to all AFAFC employees informing them of the necessity for the coverage and that he had "tasked directors and supervisors to organize new work schedules to meet the 0630-1730 coverage." William Guidry, President of AFGE, Local 2040, received a copy of the memorandum in his capacity as an employee. Guidry did not believe the memorandum described a change in working conditions, because the AFAFC's work day was already 6:30 a.m. to 5:30 p.m. and any potential changes would not necessarily involve bargaining unit employees.

Guidry discussed Metcalf's memorandum with Edwin Mankey, Director of Management Services, who also serves as the AFAFC's chief management spokesman for labor relations, on January 3 or 4, 1989. Mankey assured Guidry that the memorandum did not describe a change in the working conditions of bargaining unit employees, and that there was nothing to negotiate. According to Mankey, due to the variety of ways in which each AFAFC directorate might handle providing late coverage, the Union would need to receive notice of any changes in a directorate's alternate work schedule from the particular directorate effecting the change.

In the SJA Office Mr. Montgomery arranged for coverage for the first two weeks after January 3, 1989 by securing two volunteers. He noted in a memorandum to the division chiefs:

> I think we can take care of this new requirement with a minimum of disruption to the non-supervisors/GM employees -- we will certainly try to keep it to a minimum -- but it does seem likely to me at this point that some employees might have to make some undesired adjustments.

Later Montgomery and Colonel DeRuyter, AFAFC Staff Judge Advocate, determined that late office coverage could be handled by one employee, and that this duty should be shared by members of the administrative staff (secretaries, typists, and clerks). One alternative considered was having one employee provide the coverage for a whole pay period. However, prior to arriving at a permanent arrangement to provide coverage, Montgomery was approached by Lisa Hughes, Legal Clerk, GS-5, who sought Montgomery's permission to meet with other members of the administrative staff to "come up with a proposed way" to provide late office coverage. Montgomery gave his approval, and Hughes met with her administrative coworkers on or about January 11, 1989.

Ms. Hughes and her coworkers discussed the obligation to provide late office coverage, and they determined that each employee could provide the late coverage approximately once every two weeks through use of a rotating schedule. The employees selected particular days of the week they preferred to work in connection with the rotating schedule. Lisa Hughes subsequently submitted to Montgomery during the second week of January 1989 a proposed rotating schedule with an attached memorandum which described its merits and detailed the procedures to be followed to implement the proposed schedule. She noted that the "schedule will help with morale, family, school, second jobs, car pools, and other off-duty activities." She stated, "The individuals who have agreed to this proposed schedule respectfully request your approval. Should you have any questions, please contact me."

Following receipt of Hughes' memorandum and the proposed schedule, Montgomery presented the proposal to Colonel DeRuyter. They discussed it and agreed to adopt it as the solution to providing late office coverage.

The rotating schedule to provide late coverage within the SJA Office was implemented on January 16, 1989. Prior to that date, bargaining unit employees assigned to the SJA Office had been free to select, during the week prior to each pay period, any particular flexitime and compressed

tour within the limitations set by the flexible and core time bands established through the 1987 regulation. As an example, employees had been permitted to begin their work-day at 6:30 a.m., take a half-hour lunch break, and end their work-day at 3:00 p.m. Since January 16, 1989, however, clerical employees assigned to the SJA Office who are employed at the GS-05 level and below have been obliged to participate in the rotating schedule which requires them to work until 5:30 p.m. once every two weeks. Approximately 10 bargaining unit employees must participate in this schedule.

The new work schedule, as applied to the particular employee obligated to work until 5:30 p.m. once every two weeks, expanded the afternoon core time from the previous period of 12:30 p.m. to 3:00 p.m. to 12:30 p.m. to 5:30 p.m. In addition to being required to work until 5:30 p.m., an employee was also required to report for work no later than 8:30 a.m. for the beginning of the morning core time. In order to work an 8-hour day, an employee would be obliged to take a 1-hour lunch period. This schedule represented the shortest possible 8-hour schedule for an employee required to work until 5:30 p.m., and also the loss of the previous opportunity to take a half-hour lunch period. Pursuant to a compressed work schedule, the shortest possible 9-hour work-day, in connection with the obligation to provide late office coverage, would begin at 8:00 a.m., involve a half-hour lunch period, and conclude at 5:30 p.m. Previously, an employee completing a 9-hour work day would have had the opportunity to begin work as early as 6:30 a.m., take a half-hour lunch period, and conclude the work-day at 4:00 p.m.

Other than this requirement to work until 5:30 p.m. once every two weeks the employee's regularly selected work schedule remained in effect. The hours were still within the hours set forth in AFAFC Regulation 11-7, although previously no one had been <u>required</u> to work until 5:30 p.m. on a regular or rotating basis. No overtime or loss of work was involved. Employees could endeavor to arrange their personal matters around the rotating schedule since they had notice of when their turn would occur. Employees were also free to switch days with each other without supervisory approval if they could find employees with whom to trade.

The introduction of the obligation to work until 5:30 p.m. created some parking difficulties and concomitant personal safety concerns for employees. Due to their late

arrival at the work-site between 8:00-8:30 a.m., the only available employee parking was in the overflow parking area at a great distance from the work site. During the winter, the trip to overflow parking at the end of the work day involved walking this distance in the dark. Distant parking remained a feature of working late for approximately 6 to 7 months. At that time, management provided a reserved parking space for use by the employee obligated to work late.

The obligation to work late also affected the ability of an employee to participate in a car pool on that particular day. Because participants in a car pool were not willing to remain at the worksite until 5:30 p.m. to wait for the SJA Office employee obliged to work late, the employee had to find other means of transportation. The employees' access to public transportation was also limited at 5:30 p.m. since the latest bus service directly to the AFAFC terminates at 4:30 p.m.

The scheduling of employees to work until 5:30 p.m. also interfered with the employees' ability to schedule and attend evening classes. Attending evening classes for an employee was difficult on those days that late office coverage was required, and at times scheduling evening classes was altogether impossible. Other afterwork activities by employees, such as participation in organized sports, were made difficult or impossible due to the obligation to work late. One employee, Margie Padgett, faced serious consequences as a result of her obligation to work until 5:30 p.m. Padgett's husband is a "brittle" diabetic who needs to have a shot of insulin administered at 5:00 p.m. each day. In the event Padgett is late administering a shot of insulin to her husband, her husband is likely to experience a "reaction."

In addition to the above, the potential impact on employees being obligated to work until 5:30 p.m. included possible interference with child care or family care arrangements and conflicts with part-time jobs on the days the employees were required to work late.

Respondent did not provide notice of the change in alternate work schedules within the SJA Office to the Union. Mr. Montgomery felt that notice to the Union was not required under the provision of AFAFC Regulation 11-7 in more serious situations and thus it was not required "for this relatively inconsequential adjustment to [employees'] schedule."

There was no Union official or representative assigned to the SJA Office. William Guidry, Union President, was the proper person to receive any required notice. Sometime during the January-February 1989 period, Guidry discussed several unfair labor practice charges with Edwin Mankey, Director of Management Services, including one concerning a work schedule change in the Directorate of Comptroller Support.2/

On August 28, 1989, for the first time, the Union, through William Guidry, became aware of the implementation of the revised alternate work schedule for employees assigned to the SJA Office which was first introduced on January 16, 1989. On August 28, 1989, Guidry received a call from an employee who complained that her friend, who worked in the SJA Office, was being obliged to work until 5:30 p.m. Later that day, this employee provided Guidry with copies of work schedules for several pay periods which set forth the practice within the SJA Office of scheduling employees to provide late office coverage on a rotating basis.

After reviewing the work schedules, Guidry went directly to the SJA Office and spoke to Kent McDonald, an attorney-supervisor in the SJA Office, and questioned him concerning the scheduling of employees. McDonald confirmed that employees were being obliged to stay at work until 5:30 p.m., and Guidry indicated that the Union wanted to negotiate over the change. Guidry asked McDonald if management planned on negotiating with the Union, and McDonald responded that he didn't see the need to negotiate. Mr. Montgomery testified that he or the Staff Judge Advocate were the proper contacts for Mr. Guidry, but if Guidry had come to him rather than McDonald, he also would have refused to negotiate over the changes to the alternate work schedule. Respondent has continued to refuse to negotiate with the Union over this matter.

The unfair labor practice charge was filed on September 19, 1989.

2/ Mankey testified that Guidry advised him "he had heard the [S]JA had issued some sort of work schedule that would be similar to what had been done in [Comptroller Support]" and asked Mankey whether he knew anything about it. Mankey replied that he did not. Mankey testified that Guidry indicated he was going to talk to Mr. Montgomery. Guidry denied that he talked with Mankey about rumors of a schedule change in SJA. I credit Guidry's testimony on this point.

Issues Presented

1. Whether requiring employees to work until 5:30 p.m. once every two weeks constituted a change in conditions of employment.

2. If so, whether Respondent was required to notify the Union and bargain on the decision to make the proposed change.

3. If not, whether the change had an impact or reasonably foreseeable impact so as to give rise to Respondent's obligation to notify the Union and bargain over the impact and implementation of the proposed change.

4. If so, whether the Union waived any notification requirements when it failed to request to bargain over AFAFC Regulation 11-7.

5. Whether the charge was timely filed under section 7118(a)(4) of the Statute.

Discussion, Conclusion, and Recommendations

The Change

The record establishes that prior to January 16, 1989 and during the previous several years employees assigned to the SJA Office relied upon the work schedules established by the 1984 and 1987 alternate work schedule regulations to structure their own flexitime and compressed work schedules for each pay period. Employees were not required to work until 5:30 p.m. on a regular, rotating basis. On January 16, 1989 Respondent changed the established alternate work schedule by requiring approximately 10 bargaining unit employees to work until 5:30 p.m. once every two weeks. The obligation to work until 5:30 p.m. on a rotating basis resulted in the loss of the opportunity to work a flexitime schedule once every two weeks. This represented a change in an established condition of employment for employees within the SJA Office.

The Duty to Bargain Over the Decision to Change

The recent case of Air Force Accounting and Finance Center, Denver, Colorado, Case No. 7-CA-90220 (Judge Etelson, August 7, 1990), involved the same parties and a similar change in a different directorate. There, in order to

effectuate General Metcalf's instructions to maintain adequate office coverage, employees were required to adjust their normal working days for approximately one week out of twelve on the early side by up to two hours and on the late side by up to 2 1/2 hours. Judge Etelson held that management's decision to change the duty rosters was not subject to an additional duty to bargain under the Work Schedules Act and was consistent with the parties' negotiated agreement, as evidenced by AFAFC Regulation 11-7, which contemplated supervisory adjustments in alternate work schedules to meet job requirements. Judge Etelson stated, in part, as follows:

> The Work Schedules Act authorizes the establishment of both types of AWS, [alternate work schedules] with which this case is concerned, flexible schedules and compressed schedules. The Authority has interpreted the Act to require collective bargaining not only over the establishment and termination of such AWS programs, as specifically mandated by the Act, 5 U.S.C. §§ 6130 and 6131, but also over their implementation and administration. National Association of Government Employees, Local R12-167 and Office of the Adjutant General, State of California, 27 FLRA 349, 352, 354 (1987). On the other hand, the Authority has recognized an agency's right under 5 U.S.C. § 6122(a) to adjust the arrival and departure times that employees have elected, in order to ensure that the duties of their positions are fulfilled. National Federation of Federal Employees, Local 642, and Bureau of Land Management, Lakeview District Office, Lakeview, Oregon, 27 FLRA 862, 867-68 (1987).
>
> Weinberg's act of changing employees' duty hours constituted no more than this kind of adjustment. It effectuated General Metcalf's memorandum requiring the manning of sufficient positions between 0630 and 1730 hours "to conduct routine business and provide functional information and assistance." The change in the duty rosters did limit the employees' right to elect their hours under the negotiated AWS program, but it did not impinge on the program itself except to the extent that the Authority has recognized as the agency's right. Id. Accord, Bureau of Land Management v. FLRA, supra, at 93.

Nothing in the negotiated agreement, evidenced here by AFAFC Regulation 11-7, gave employees a vested right in the arrival and departure times they selected. Weinberg specifically relied on paragraph 3 of the regulation, which provides, in part, that "[s]upervisors will permit employees to schedule working hours to best meet the employees' individual needs to the extent permitted by working situations," and other language corroborates that AWS schedules are subject to job requirements. A dispute over the validity of a supervisor's application of these provisions is presumably subject to the parties' negotiated grievance procedure, but is not, short of a repudiation of the agreement, the stuff that unfair labor practices are made of. See, e.g., Immigration and Naturalization Service and Immigration and Naturalization Service, Newark District, 30 FLRA 486, 489-90 (1987). I conclude, therefore, that AFAFC did not change the AWS program in a manner that required negotiations over the decision.2/ Absent any asserted basis other than the requirements of the Work Schedules Act for a duty to bargain over the substance of the decision, I shall recommend dismissal of the allegations of the complaint concerning AFAFC's refusal to bargain over the substance.

2/ I do not rely on any provisions of the regulation that permit AFAFC to designate employees as exempt from participation in the AWS program or to terminate the program. The change effected here does not fit within those provisions.

For the reasons given by Judge Etelson, I also conclude that Respondent did not change the AWS program in the SJA in a manner that required negotiations over the decision and shall recommend dismissal of that allegation in the complaint.

The Duty to Bargain over Impact and Implementation

As Judge Etelson also held in Case No. 7-CA-90220, aside from questions arising out of the applicability of the Work Schedules Act, an agency's decision to change employees'

tours of duty (hours of work) is negotiable only at its election under section 7106(b)(1) of the Statute. But where the agency exercises its right not to bargain over the change itself, it still has an obligation to bargain over the matters set forth in section 7106(b)(2) and (3) of the Statute. Department of the Air Force, Scott Air Force Base, Illinois, 33 FLRA 532, 542-43 (1988).

The statutory duty to negotiate under section 7106(b)(2) and (3) comes into play if the change results in an impact upon unit employees or such impact was reasonably foreseeable. U.S. Government Printing Office, 13 FLRA 203 (1983). In order to determine whether the change in conditions of employment required bargaining, it is necessary to carefully examine the facts and circumstances, placing principal emphasis on such general areas of consideration as the nature and extent of the effect or reasonably foreseeable effect of the change on conditions of employment of bargaining unit employees. Department of Health and Human Services, Social Security Administration, 24 FLRA 403 (1986). The appropriate inquiry involves an analysis of the reasonably foreseeable effect of the change in conditions of employment at the time the change was proposed and implemented, including temporary and transitory effects. U.S. Customs Service, (Washington D.C.) and U.S. Customs Service, Northeast Region (Boston, Massachusetts), 29 FLRA 891, 899 (1987).

The change of scheduling required approximately 10 employees to work until 5:30 p.m. once every two weeks, permanently eliminating their ability to, among other things, complete work by 3 or 4 p.m. under either the flexitime or compressed work schedule on those days. Since the designated employees came to work later than usual, they were initially required to park in remote areas and had concomitant personal safety concerns. The ability of employees to retain their car pools on those days or to obtain public transportation at the late hour was also affected. The change interfered with the employees' ability to schedule and attend evening classes, recreational events, and attend to family members. The change also had the potential of interfering with part-time employment schedules. The employees, in addressing the implementation of the change, noted that their own proposal would "help with morale, family, school, second jobs, car pools, and other off-duty activities."

It is noted that the Federal Service Impasses Panel has considered impasses over proposals relating to the procedures to be used in providing office coverage and has noted the

impact such procedures can have on office morale and productivity. See Department of the Treasury, U.S. Customs Service, District Office, San Francisco, California and National Treasury Employees Union, Case No. 90 FSIP 101 (1990), FSIP Release No. 296 (July 10, 1990).

Although employees were permitted to trade assignments with other employees, it was each employee's responsibility to find a trading partner. As Judge Etelson held in Case No. 7-CA-90220, this is still a potentially onerous burden. There, as here, Respondent made no showing that there was a broadly available pool of coworkers willing to trade.

The record establishes that the change had an impact or reasonably foreseeable impact on conditions of employment, particularly with respect to hours of work, parking, personal safety, and transportation, so as to give rise to a bargaining obligation. See U.S. Department of Health and Human Services, Social Security Administration, Baltimore, Maryland, 36 FLRA 655, 666-69 (1990).

The Alleged Waiver of the Obligation to Bargain

Respondent claims that the Union waived any notification requirements when it failed to request to bargain over AFAFC Regulation 11-7 in December 1986.

It is well established that an exclusive representative's waiver of the statutory right to bargain must be "clear and unmistakable." Department of the Air Force, Scott Air Force Base, Illinois, 5 FLRA 9 (1981). A waiver of a Union's statutory bargaining rights may be established in various ways, including an express agreement surrendering the entitlement, or bargaining history indicating such a surrender. See Internal Revenue Service, 29 FLRA 162 (1987).

The 1987 regulation established the work schedule for AFAFC including the flexible and core-time bands which could be selected by employees and were to be "considered mandatory during that pay period." Although adjustments by a supervisor due to job requirements in working situations were authorized, no language specifically authorized permanent changes. The change in issue permanently restricted some employees from following certain of their selected work schedules on one day during each pay period. The Union's failure to request bargaining on the 1987 regulation clearly was not a clear and unmistakable waiver of its right to bargain on the impact and implementation of such a permanent change.

The language of the regulation authorizing the termination of alternate work schedules in certain circumstances does not help Respondent. The change in issue represented an adjustment rather than a termination of alternate work schedules, as Judge Etelson also held in Case No. 7-CA-90220. The regulation's language authorizing the termination of alternate work schedules in certain circumstances simply mirrors the language found in the Work Schedules Act. There is no clear and unmistakable waiver of the agency's statutory duty in such circumstances to reopen the agreement to seek such termination. See 5 U.S.C. § 6131.

Accordingly, Respondent's failure to provide the Union with the necessary prior notice and opportunity to bargain concerning the impact and implementation of the change in the SJA Office's alternate work schedule is not excused by the presence of a waiver of bargaining rights by the Union.

The Applicability of Section 7118(a)(4)

Under section 7118(a)(4) of the Statute an unfair labor practice charge must be filed with the Authority within 6 months of the alleged unfair labor practice. The charge in this case was not filed until September 19, 1989, over eight months after the January 16, 1989 change in the SJA alternate work schedule.

The 6-month limitation period is, by express statutory language, inapplicable where "the person filing any charge was prevented from filing the charge during the 6-month period" by reason of "any failure of the agency . . . against which the charge is made to perform a duty owed to the person" or "any concealment which prevented discovery of the alleged unfair labor practice during the 6-month period." See Veterans Administration and Veterans Administration Medical Center, Lyons, New Jersey, 24 FLRA 255, 265-71 (1986). Here there was no concealment of the change in hours. There was, however, as found above, a duty to notify the Union of the change. Respondent's failure to do so prevented the Union from acting timely, whether it might have been to request bargaining or to file a charge during the 6-month period.

Respondent's argument that the Union had timely knowledge of the matter is rejected. Management's chief spokesman for labor relations, Edwin Mankey, assured Union president Guidry in early January 1989 that General Metcalf's January 3, 1989 memorandum did not describe a change in working conditions. I have not credited Mankey's

testimony concerning a later conversation when Guidry reportedly stated "he had heard [of]" some sort of work schedule issuance in SJA and asked Mankey about it at a time when the two were dealing with a work schedule change in another Directorate. Mankey claims he replied that he knew nothing about it. Although I have credited Guidry's testimony that he did not have such a discussion with Mr. Mankey, even assuming Guidry had heard rumors of a schedule change, it is doubtful that this would have constituted sufficient notice to require Guidry to discover the alleged unfair labor practice, particularly if Mankey, management's chief spokesman for labor relations matters, upon specific inquiry, assured Guidry that he knew nothing about such an issuance in SJA.

The Union is responsible for representing a fairly large bargaining unit of 2200 bargaining unit employees. The alternate work schedule change within the SJA Office only affected approximately 10 bargaining unit employees, who did not complain to the Union concerning the change. There was no Union official or representative assigned to the SJA Office who could have discovered the change and relayed notice to Guidry, the Union's designated point of contact for receiving notice of changes in working conditions. In fact, the evidence does not suggest that there was any alternative to direct notice from the agency that either did, or might, result in the Union receiving actual notice of the change. Under the circumstances, the sole reason that the Union was prevented from filing the charge during the 6-month period following the alleged violative act was the agency's failure to provide the necessary notice of the change. Accordingly, the charge was timely filed.

It is concluded that Respondent violated section 7116(a)(1) and (5), as alleged, by implementing a flexible work schedule for employees assigned to the SJA Office, which obliged individual employees to remain on duty until 5:30 p.m. on a rotating basis, without providing the Union prior notice of the change and an opportunity to bargain over its impact and implementation.

The Alleged Bypass of the Union

The record reflects that John Montgomery, Deputy Director of the SJA Office, gave Lisa Hughes, a unit employee, permission to meet with unit employees to "come up with a proposed way" to provide late office coverage. Hughes subsequently met with her coworkers, and they developed a rotating schedule as a means of providing the desired

coverage. Hughes submitted the proposal, pointing out that it would "help with morale, family, school, second jobs, car pools, and other off-duty activities." The employees' proposal was approved and implemented by the Respondent.

A labor organization which has been accorded exclusive recognition is the exclusive representative of the employees in the unit and is entitled to act for all employees in the unit. § 7114(a)(1). On matters which are properly bargainable with the exclusive representative, the exclusive representative is the sole spokesman for the employees and any attempt by an agency to deal directly with employees concerning proposed changes in their conditions of employment, constitutes an unlawful bypass in violation of §§ 7116(a)(5) and (1) of the Statute. Department of Health and Human Services, Social Security Administration, Baltimore, Maryland, 28 FLRA 409, 431 (1987) (HHS). Such contacts serve to undermine and impair the status of the exclusive representative, the sole bargaining agent on behalf of unit employees. See Federal Aviation Administration, 15 FLRA 100 (1984) (FAA).

In this case, management was not merely attempting to gather information or opinions concerning its operations. Respondent, through its contacts with Hughes, sought the employees' opinions and proposals concerning the procedures which management would observe in providing late office coverage. It ultimately adopted the employees' proposal.

By its actions Respondent dealt directly with unit employees with regard to matters clearly bargainable with the Union and thereby bypassed the exclusive representative in violation of section 7116(a)(5) and (1) of the Statute. HHS and FAA, both supra; Department of Health and Human Services, Social Security Administration, 23 FLRA 807 (1986), Department of Health and Human Services, Social Security Administration, 22 FLRA 91, 114-15 (1986); Department of Transportation, Federal Aviation Administration, 19 FLRA 893 (985); U.S. Department of Treasury, Bureau of Alcohol, Tobacco, and Firearms, Washington, D.C., 16 FLRA 528 (1984).

The General Counsel seeks a status quo ante remedy. Applying the criteria set forth in Federal Correction Institution, 8 FLRA 604 (1982), a status quo ante remedy is warranted. Nothing in the record demonstrates that such a remedy would disrupt the efficiency and effectiveness of the Respondent's operations. The record reflects that an AFAFC directorate could provide late coverage in a variety of ways, including the use of nonbargaining unit employees.

Based on the foregoing findings and conclusions, it is recommended that the Authority issue the following Order:

ORDER

Pursuant to section 2423.29 of the Rules and Regulations of the Federal Labor Relations Authority and section 7118 of the Statute, it is hereby ordered that the Air Force Accounting and Finance Center shall:

1. Cease and desist from:

(a) Failing and refusing to give adequate notice to, and upon request, bargain with the American Federation of Government Employees, AFL-CIO, Local 2040, the exclusive representative of its employees, concerning procedures to be observed in implementing, and appropriate arrangements for any employees adversely affected by, changes in conditions of employment set forth in the alternate work schedule implemented within the Office of the Staff Judge Advocate on January 16, 1989, requiring bargaining unit employees to work until 5:30 p.m. on a rotating basis.

(b) Bypassing the American Federation of Government Employees, AFL-CIO, Local 2040, the exclusive representative of its employees, and dealing directly with bargaining unit employees regarding proposed changes in their conditions of employment.

(c) In any like or related manner interfering with, restraining or coercing 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, AFL-CIO, Local 2040, rescind the alternate work schedule implemented within the Office of the Staff Judge Advocate on January 16, 1989, to the extent it requires bargaining unit employees to work until 5:30 p.m. on a rotating basis, and revert to the practices which were in effect prior to its issuance.

(b) Notify the American Federation of Government Employees, AFL-CIO, Local 2040, the exclusive representative of its employees, of any intention to change employees' alternate work schedules and, upon request, negotiate to the extent consonant with law and regulation.

(c) Post at the Air Force Accounting and Finance Center, Lowry Air Force Base, Denver, Colorado, copies of the attached Notice on forms to be furnished by the Federal Labor Relations Authority. Upon receipt of the forms, they shall be signed by the Commander, Air Force Accounting and Finance Center, and shall be posted and maintained for 60 consecutive days in conspicuous places, including all bulletin boards and other places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that such Notices are not altered, defaced, or covered by any other material.

(d) Pursuant to section 2423.30 of the Authority's Rules and Regulations, notify the Regional Director, Denver Region, Federal Labor Relations Authority, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply.

The allegations of the complaint that Respondent violated the Statute by failing and refusing to bargain over the substance of the change in the alternate work schedule are dismissed.

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

GARVIN LEE OLIVER
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 fail and refuse to give adequate notice to, and upon request, bargain with the American Federation of Government Employees, AFL-CIO, Local 2040, the exclusive representative of our employees, concerning procedures to be observed in implementing, and appropriate arrangements for any employees adversely affected by, changes in conditions of employment set forth in the alternate work schedule implemented within the Office of the Staff Judge Advocate on January 16, 1989, requiring bargaining unit employees to work until 5:30 p.m. on a rotating basis.

WE WILL NOT bypass the American Federation of Government Employees, AFL-CIO, Local 2040, the exclusive representative of our employees, and deal directly with bargaining unit employees regarding proposed changes in their conditions of employment.

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, AFL-CIO, Local 2040, rescind the alternate work schedule implemented within the Office of the Staff Judge Advocate on January 16, 1989, to the extent it requires bargaining unit employees to work until 5:30 p.m. on a rotating basis, and revert to the practices which were in effect prior to its issuance.

WE WILL notify the American Federation of Government Employees, AFL-CIO, Local 2040, the exclusive representative of our employees, of any intention to change employees' alternate work schedules and, upon request, negotiate to the extent consonant with law and regulation.

_____
(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 7, whose address is: 535 16th Street, Suite 310, Denver, CO 80202, and whose telephone number is: (303) 844-5224.