Office of Administrative Law Judges

WASHINGTON, D.C.

U.S. ARMY AVIATION CENTER
AND FORT RUCKER
FORT RUCKER, ALABAMA
Respondent

and Case No. AT-CA-80016

AMERICAN FEDERATION OF GOVERNMENT

EMPLOYEES, LOCAL 1815
Charging Party

Sherrod G. Patterson, Esquire — For the General Counsel
Capt. James Szymalak, Esquire — For the Respondent
James D. Storm, Union Steward — For the Charging Party
Before: SAMUEL A. CHAITOVITZ — Chief Administrative Law Judge

DECISION

Statement of the Case

This case arose under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the United States Code, 5 U.S.C. § 7101, *et seq.* (the Statute).

Based upon an unfair labor practice charge filed and amended by the Charging Party, the American Federation of Government Employees, Local 1815 (AFGE Local 1815/Union), a Complaint and Notice of Hearing was issued on behalf of the General Counsel (GC) of the Federal Labor Relations Authority (FLRA/Authority), by the Regional Director of the Atlanta Regional Office. The complaint alleges that the U.S. Army Aviation Center, Fort Rucker, Alabama (Fort Rucker/USAAC/ Respondent), violated section 7116(a)(1), (5) and (6) of the Statute by refusing to bargain over ground rules for negotiating concerning a change in the Compressed Work Schedule (CWS) and by terminating the CWS while the ground rules and the proposed termination of the CWS were pending before the Federal Service Impasses Panel (FSIP). Fort Rucker filed an answer denying it had violated the Statute.

A hearing was held in Dothan, Alabama, at which time all parties were afforded a full opportunity to be represented, to be heard, to examine and cross-examine witnesses, and to introduce evidence. USAAC and the GC of the FLRA filed timely post-hearing briefs which have been fully considered.

Based upon the entire record, including my observation of the witnesses and their demeanor, I make the following findings of fact, conclusions, and recommendations.

Findings of Fact

A. Background

AFGE Local 1815 is a labor organization within the meaning of section 7103(a)(4) of the Statute and the U.S. Army Aviation Center and Fort Rucker, Alabama, is an agency within the meaning of section 7103(a)(3) the Statute.

At all times material AFGE Local 1815 has been the exclusive collective bargaining representative for an appropriate unit of employees at USAAC. Employees in the Directorate of Information Management (DOIM) are in the unit represented by AFGE Local 1815.

B. The CWS Agreement

On July 18, 1994, USAAC and AFGE Local 1815 entered into an "Agreement" in which they agreed to "implement a Compressed Work Schedule (CWS) in organizations in which directors agree the mission can be accomplished without undue hardship" (the CWS Agreement). This was the parties' first and only agreement regarding a CWS.

Blaine J. King, Fort Rucker's Labor Counselor, negotiated the CWS Agreement on behalf of USAAC and Charlotte Corkion then President of AFGE Local 1815 negotiated on behalf of the Union.

The CWS Agreement contained the following material provisions:

> ALTERATIONS: Once the CWS is implemented, an employee's tour of duty may be changed, as conditions dictate, subject to appropriate statutory and contractual requirements.

> CANCELLATION: The Employer reserves the right to cancel the program, subject to statutory and contractual requirements, in any organization, directorate, division or office where the program becomes disruptive of operations, or if directed by higher headquarters.

During the negotiations that led to the CWS Agreement, Corkion understood that the word "statutory" referred to both the Statute and the Federal Employees Flexible and Compressed Work Schedules Act of 1982, 5 U.S.C. § 6101, *et seq.* (Federal Employees Flexible and Compressed Work Schedules Act of 1982, Pub. L. No. 97-221, 96 Stat. 227 (codified at 5 U.S.C. §§ 3401, 6101 and note, 6106, 6120-6133), which was made permanent in Pub. L. No. 99-196, 99 Stat. 1350 (1986))(the Act). King was not aware of the existence of the Act when he bargained over the CWS Agreement with the Union; however, he did believe that the word "statutory" referred to title 5 of the United States Code. King thought he was only agreeing to bargain about the impact and implementation of any decision to suspend or end the CWS.

C. Fort Rucker Proposes to Eliminate the CWS in DOIM and AFGE Local 1815 Requests to Bargain

After the CWS Agreement went into effect on July 18, 1994, Fort Rucker proceeded to implement a CWS in DOIM, among other directorates. On April 30, 1997, by letter, Floyd O. Leighton II, Director of DOIM, notified then Union President James D. Storm, that he intended to discontinue the CWS in DOIM effective the first pay period in September 1997.

Coincidentally, also on April 30, 1997, Fort Rucker's Employee Relations Specialist, Roslyn Taylor, issued an E-mail message, which stated in part:

> The CWS agreements between management and the unions state that the employer reserves the right to cancel the program, subject to statutory

> and contractual requirements, when the program becomes disruptive.
>
> Where there is a need to cancel the CWS program management must first contact the union in writing and advise of the reason(s) for terminating a bargaining unit employee from the CWS program. If the union wishes to negotiate the change, management is obligated to negotiate and not cancel the program until negotiations are complete.

On May 12, 1997, Storm told Leighton that Fort Rucker had to meet statutory and contractual requirements before it could discontinue the CWS. He also told Leighton that until he received a request to bargain over the elimination of the CWS in DOIM from the Commanding General, he would consider the matter "closed."

On June 2, 1997, James I. Winn, Fort Rucker's Labor Relations Counselor, wrote Storm, stating in pertinent part:

> As AFGE Local 1815 has been provided written notice of intention by DOIM to terminate CWS (as of the first pay period in September), and, as the Agency stands ready to negotiate in good faith with AFGE Local 1815 regarding impact and implementation and/or appropriate arrangements (if any) for affected DOIM employees, the Agency considers itself in full and complete compliance with the original negotiated CWS Agreement and all

other applicable law and regulations.

Please contact me within the next thirty (30) days should you conclude that AFGE Local 1815 will seek to negotiate matters of impact and implementation and/or appropriate arrangements regarding the proposed discontinuation of CWS within DOIM.

On July 1, 1997, Storm notified Winn that the Union "stands ready and willing at the earliest mutually agreeable date to enter into negotiations over his proposed termination of the Compressed Work Schedule within his Directorate." The Union was afraid it would waive its rights under the Act to bargain about the substance of the decision to eliminate the CWS in DOIM if it agreed to bargain about the impact and implementation of the decision.

D. Fort Rucker Refused to Bargain Over the Substance of its Decision to Eliminate the CWS and the Union's Proposed Ground Rules

In early July 1997, Storm told Winn, during the course of several conversations, that the parties needed to bargain over ground rules for the CWS negotiations, and that upon completion of these negotiations, to bargain over the substance of Fort Rucker's decision to eliminate the CWS in DOIM. However, Winn told Storm that ground rules were not necessary outside of contract negotiations, and that Fort Rucker was only willing to bargain over the impact and implementation of the proposed change. On July 2, 1997, Storm requested assistance from the Federal Mediation and Conciliation Service (FMCS) with regard to the issues of "Ground Rules and Compressed Work Schedule."

On July 10, 1997, Storm met with Leighton to begin bargaining over ground rules and the elimination of the CWS in DOIM. At this meeting, Storm provided Leighton with a copy of the Union's proposed ground rules, which were similar to those that the parties had used during recent contract negotiations, and a copy of the request for FMCS assistance. He also told Leighton that the Union had the right to bargain over the substance of USAAC's decision to eliminate the CWS in DOIM. Leighton told Storm that DOIM intended to terminate the CWS despite the Union's demand to bargain over the decision itself.(1)

After Storm gave Leighton copies of the Union's proposed ground rules and the request for FMCS assistance(2), Leighton terminated the meeting. Leighton told Storm that he "would have to research the matter."

This prompted a response dated July 14, 1997, from Winn to Storm, in which Winn summarized the events up to that date and set out Fort Rucker's position regarding further impact and implementation negotiations. Winn stated in pertinent part:

> This letter notifies you of management's position regarding negotiation of Impact and Implementation and/or appropriate arrangements associated with the discontinuation of the Compressed Work Schedule (CWS) for participating employees within the Directorate of Information Management (DOIM). The following summarizes events up to the present:
>
> * * *
>
> The following is the DOIM's position vis-a-vis further discussion/negotiation with AFGE Local 1815 regarding CWS: Per the Agency's negotiated CWS agreement with AFGE Local 1815 (dated 18 July 1994), the Agency expressly reserves the right to cancel any CWS program when the program "becomes disruptive of operations." DOIM has made such a determination and plans to terminate CWS within DOIM as of 13 September 1997.

> AFGE Local 1815 has failed to provide notice of, or to negotiate, any specific matters related to Impact and Implementation and/or appropriate arrangement as of this date.
>
> As a reserved management right that was negotiated and approved in good faith by AFGE Local 1815, the Agency is not obligated to enter into broad-based "formal" (collective bargaining agreement type) negotiations with AFGE Local 1815 regarding the termination of CWS within DOIM.

In an informal meeting on July 15, 1997, Storm told Winn that the Union wanted to bargain over its proposed ground rules and over the substance of Fort Rucker's decision to terminate the CWS in DOIM. Winn did not agree to engage in any such bargaining.

On July 15, 1997, Storm told Winn that the Union expected Fort Rucker to comply with its statutory and contractual obligations prior to termination of the CWS, and that AFGE Local 1815 awaits the Agency's written counter-proposals to its proposed ground rules.

Winn responded on July 17, 1997, stating in pertinent part:

> The Agency will continue to make every reasonable effort to afford AFGE Local 1815 a good faith opportunity to negotiate substantive matters related to the proposed termination of CWS in DOIM. However, in light of the fact that AFGE Local 1815 has failed (since 30 April 1997) to submit any matters related to impact and

> implementation (I&I), appropriate arrangements, or any other negotiable matters, there does [sic] appear to be any need at this time for formal ground rules or for full-blown "collective bargaining agreement type" negotiations.
>
> In an informal meeting with you on 15 July 1997, the undersigned Agency Representative again urged AFGE Local 1815 to submit substantive issues or proposals related to CWS within the time period requested. The Agency remains prepared to negotiate in good faith any written proposals, or other substantive matters related to I&I or appropriate arrangements, submitted to and received at DOIM NLT 1630 Hours on 21 July 1997.(3)

E. AFGE Local 1815 Sought Assistance of the Federal Service Impasses Panel Before the CWS was Eliminated in DOIM

On at least two occasions during July 1997, Federal Mediator Charlie Parker attempted to mediate the dispute. However, after USAAC was unwilling to bargain over AFGE Local 1815's proposed ground rules or over the substance of its decision to eliminate the CWS in DOIM, Parker terminated his mediation efforts and released the parties to go the Federal Service Impasses Panel.

On August 7, 1997, some five weeks before Fort Rucker was planning to eliminate the CWS in DOIM, Storm submitted a "Request for Assistance" to FSIP. On August 11, 1997, Winn submitted Fort Rucker's response to the Union's Request for Assistance, stating, in pertinent part:

> AFGE Local 1815's failure (since 30 April 1997)

to submit any matters related to Impact and Implementation and/or Appropriate Arrangements;

* * *

AFGE Local 1815's present course of conduct manifests an apparent intent by that union to not take part in any negotiations with the Agency unless the Agency agrees in advance to full-blown (collective bargaining agreement type) negotiations with formalized ground rules, negotiation teams, subject matter "experts," union observers, and built-in delay prior to commencing "formal" negotiations. Even more egregious, the Agency must accept such a scheme before it receives even the most cursory notice as to what issues, interests, or appropriate arrangements the bargaining unit wishes to discuss.

* * *

A careful review of the Agency's prior correspondence with AFGE Local 1815 and FMCS clearly details the continuous good faith efforts of the Agency to allow AFGE Local 1815 a full and complete opportunity to negotiate impact and implementation and/or appropriate arrangements regarding CWS.

* * *

> [T]he Agency is unaware of any statutory or decisional authority mandating full-blown (formal) "contract type" negotiations (with formalized ground rules) to carry out "impact" bargaining; especially notice of what, if any, negotiable matters, concerns, or interests the union may assert. As indicated previously, Article 3 of the collective bargaining agreement between the Agency and the Union neither requires nor anticipates formal negotiations in matters affecting conditions of employment.
>
> Under the circumstances, the Agency has substantially and in absolute good faith fulfilled its obligation to provide AFGE Local 1815 an opportunity to negotiate impact and implementation and/or appropriate arrangements. AFGE Local 1815 has elected not to negotiate.

In this and a subsequent September 11, 1997, letter to the FSIP, Fort Rucker contended that FSIP "intervention" was "not authorized."

On September 13, 1997, while the matter of ground rules and the elimination of the CWS was before the FSIP, Fort Rucker terminated the CWS in DOIM.

On October 6, 1997, Storm withdrew the Union's request for FSIP assistance so that the "underlying question involving the Employer's

bargaining obligation [could] be resolved in the unfair labor practice forum."

Discussion and Conclusions of Law

A. Statutory Provisions

1. The Statute

Section 7116(a) of the Statute provides in pertinent part:

> (a) For the purpose of this chapter, it shall be an unfair labor practice for an agency--
>
> (1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;
>
> * * *
>
> (5) to refuse to consult or negotiate in good faith with a labor organization as required by this chapter;
>
> (6) to fail or refuse to cooperate in impasse procedures and impasse decisions as required by this chapter[.]
>
> * * *

2. The Act

Section 6130 of the Act provides in pertinent part:

> (a)(1) In the case of employees in a unit represented by an exclusive representative, any flexible or compressed work schedule, and the establishment and termination of any such schedule, shall be subject to the provisions of this subchapter and the terms of a collective bargaining agreement between the agency and the exclusive representative.
>
> (a)(2) Employees within a unit represented by an exclusive representative shall not be included within any program under this subchapter except to the extent expressly provided under a collective bargaining agreement between the agency and the exclusive representative.

* * *

Section 6131 of the Act provides in pertinent part:

> (c)(1) This subsection shall apply in the case of any schedule covering employees in a unit represented by an exclusive representative.

* * *

(2)(A) If an agency and an exclusive representative reach an impasse in collective bargaining with respect to an agency determination under subsection(a)(1) not to establish a flexible or compressed schedule, the impasse shall be presented to the Federal Service Impasses Panel (hereinafter in this section referred to as the "Panel").

* * *

(3)(A) If an agency and an exclusive representative have entered into a collective bargaining agreement providing for use of a flexible or compressed schedule under this subchapter and the head of the agency determines under subsection (a)(2) to terminate a flexible or compressed schedule, the agency may reopen the agreement to seek termination of the schedule involved.

(3)(B) If the agency and exclusive representative reach an impasse in collective bargaining with respect to terminating such schedule, the impasse shall be presented to the Panel.

* * *

(D) Any such schedule may not be terminated until--

(i) the agreement covering such schedule is renegotiated or expires or terminates pursuant to the terms of that agreement; or

(ii) the date of the Panel's final decision, if an impasse arose in the reopening of the agreement under subparagraph (A) of this paragraph. . . .

B. Fort Rucker Refused to Bargain with AFGE Local 1815 Over the Substance of the Decision to Eliminate CWS in DOIM

The record herein establishes that after entering into the CWS Agreement in July 1994, a CWS was implemented at Fort Rucker, including in the DOIM. On April 30, 1997, Leighton notified AFGE Local 1815 that he intended to eliminate the CWS then in effect at DOIM. The Union repeatedly demanded and requested to bargain about the substance of the decision to eliminate the CWS in DOIM, and as part of that request, submitted proposed ground rules to be used in bargaining about the substance of the decision to eliminate the CWS.

Fort Rucker, in all of its many communications with the Union, made it quite clear that USAAC was willing to negotiate with the Union about only the impact and implementation of the decision to eliminate the CWS in DOIM, but it refused to negotiate about the substance of the decision to eliminate the CWS or about the ground rules to enable the parties to negotiate over the substance of the decision.

Thus, although the Union, on many occasions made it clear that it was requesting to bargain about the substance of the decision to eliminate the CWS, and the ground rules to facilitate such bargaining, USAAC made it equally clear that it refused to engage in such bargaining and would only bargain about the impact and implementation of the decision to eliminate the CWS in DOIM.

C. Fort Rucker was Required to Bargain Over the Substance

of the Decision to Eliminate the CWS in DOIM

The CWS Agreement provided for the establishment of a CWS in various areas of Fort Rucker, including the DOIM. Where an agency "seeks to terminate an alternate work schedule established under a collective bargaining agreement, the agency must reopen the agreement and bargain with the exclusive representative concerning the decision. . . If this bargaining reaches an impasse, the parties must present the impasse to the FSIP." *AFGE, Local 1557 and U.S. Department of Veterans Affairs, Regional Office, Denver, Colorado*, 54 FLRA 121, 124 (1998) (*DVA Denver);* and 5 U.S.C. § 6131(c)(3)(A) Congress intended CWS to be a fully negotiable subject only to the provisions of the Act itself. *NTEU and U.S. Department of the Treasury, InternalRevenue Service*, 50 FLRA 330 (1995); and 5 U.S.C. § 6130(a)(1). The Act requires that substantive negotiations be held concerning the establishment and termination of CWS and that any impasses reached concerning the establishment and termination of CWS be presented to the FSIP in accordance with section 6131(c)(2) and (3) and part 2472 of the FSIP's Rules and Regulations. *SeeAFGE, Local 1934 and Department of the Air Force, 3415 ABG, Lowry AFB, Colorado*, 23 FLRA 872, 873-74 (1986).

Under the Act, where there is an exclusive representative, a CWS may be terminated only if it has had an adverse agency impact. If there is disagreement as to the existence of adverse agency impact, the agency may not terminate the schedule until the FSIP determines whether the agency's findings, on which its determination to terminate the CWS was based, are supported by evidence. An agency must establish, and provide a union with substantive evidence that, the CWS creates "adverse agency impact." *United States Department of Education and National Council of Department of Education Locals, Council 252, AFGE, Local 2607*, 45 FLRA 1144, 1150 (1992).[(4)] The Act clearly prohibits termination of a CWS until the date of the Panel's final decision (5 U.S.C. § 6131(c)(3)(D)(ii)).

In light of the foregoing, it is clear that Fort Rucker was obligated by the Act to bargain about the substance of its decision to terminate the CWS at DOIM and, if impasse was reached, the matter was to be presented to FSIP. According to the Act, Fort Rucker was not permitted to terminate the CWS in DOIM until the entire process was completed.

The CWS Agreement did not by its terms constitute clear and unmistakable agreement that the terms of the Act for terminating the CWS at Fort Rucker would not apply. *Cf. Department of the Army, Fort Carson, Evans Army Community Hospital, Fort Carson, Colorado and AFGE, Local 1345, AFL-CIO*, Case No. 96 FSIP 53 at p.4 (1996).

The CWS Agreement provides, with respect to cancellation, that the agency reserved the right to cancel the CWS "subject to statutory and contractual requirements, in any organization, directorate. . . ." During the negotiations of this agreement the Union representative made it clear that she thought this language ensured that Fort Rucker did not have the unconditional right to terminate the CWS and she received assurance to that effect from the agency representative. The agency representative felt, but apparently did not express, that this agreement would require that the agency would only have to bargain about the impact and implementation of the decision to terminate the CWS.

I find the terms of the CWS Agreement, with respect to cancellation, to be quite clear on their face. By its very terms, without any limitation or exclusions, the CWS Agreement provides that in order to terminate the CWS in any directorateall statutory requirements must be complied with. I conclude that these statutory requirements include the requirements of the Act. *See Department of Health and Human Services, Social Security Administration,* 47 FLRA 1206, 1210-11 (1993).(5) There is nothing in the CWS Agreement to indicate that the parties agreed that the requirements of the Act would not apply. Thus, before USAAC could terminate the CWS in DOIM, it was obliged to bargain with the Union about the substantive decision to terminate the CWS, and, if no agreement is reached, the matter was to be referred to FSIP.

D. Respondent Violated Section 7116(a)(1) and (5) of the

Statute

All of the foregoing establishes that Fort Rucker was obligated to negotiate with AFGE Local 1815 about the substance of USAAC's determination to eliminate the CWS in DOIM and to submit the matter to the FSIP, if necessary, before any action could be taken; that the Union repeatedly requested to bargain about the substance of the decision, and submitted proposed ground rules to be used in such bargaining; that Fort Rucker refused to bargain with the Union about the substance of the decision and the ground rules to be followed, insisting that Fort Rucker would only bargain about the impact and implementation of the decision to eliminate the CWS in DOIM(6); and that Fort Rucker eliminated the CWS without ever bargaining with AFGE Local 1815.

The ground rules proposed by the Union were part and parcel with its request to bargain about the substance of the decision to eliminate the CWS.(7)

I find, based on the record and evidence, that Fort Rucker violated section 7116(a)(1) and (5) of the Statute when it refused to bargain with

the Union over the ground rules for negotiating the substance of the decision to eliminate the CWS in DOIM, and when it unilaterally took the action of eliminating the CWS in DOIM.

E. Fort Rucker Violated Section 7116(a)(1) and (6) of the Statute

Pursuant to the terms of the Act, on August 7, 1997, AFGE Local 1815 sought to submit to FSIP the ground rules for bargaining about the substance of Fort Rucker's decision to eliminate the CWS in DOIM. This was specifically provided for in section 6131 of the Act. Section 6131(c)(3)(A)(ii) provides that the CWS cannot be terminated on a matter pending before the FSIP until the date of FSIP's final decision.

Fort Rucker terminated the CWS in DOIM while the matter was pending before FSIP and before any final decision had been issued. Accordingly, I conclude that Fort Rucker violated section 7116(a)(1) and (6) of the Statute. *DVA,* 54 FLRA at 124.

F. Remedy

I conclude that no mitigating circumstances have been presented to justify not granting a *status quo ante* remedy. Thus, a *status quo ante* remedy is appropriate in this case. *See Department of the Navy, Naval Aviation Depot,* 36 FLRA 509 (1990).

ORDER

Pursuant to section 2423.41(c) of the Authority's Rules and Regulations and Section 7118 of the Federal Service Labor-Management Relations Statute, the U.S. Army Aviation Center and Fort Rucker, Fort Rucker, Alabama, shall:

1. Cease and desist from:

(a) Terminating the existing compressed work schedule of employees in the Directorate of Information Management without providing the American Federation of Government Employees, Local 1815, the exclusive representative of its employees, with notice and an opportunity to negotiate to the extent required by the Federal Service Labor-Management

Relations Statute and the Flexible and Compressed Work Schedules Act of 1982.

(b) Refusing to bargain over ground rules proposed by the American Federation of Government Employees, Local 1815, the exclusive representative of its employees, concerning the negotiation of the proposed termination of the existing compressed work schedule of employees in the Directorate of Information Management.

(c) Failing and refusing to cooperate in impasse proceedings by unilaterally terminating the existing compressed work schedule of employees in the Directorate of Information Management while the issue concerning the termination of the CWS are still pending before the Federal Service Impasses Panel.

(d) 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 Statute:

(a) Reestablish the compressed work schedule for the employees in the Directorate of Information Management which was unilaterally terminated by Floyd O. Leighton II, Director of Information Management, on September 13, 1997.

(b) Notify the American Federation of Government Employees, Local 1815, of any intention to terminate or modify the compressed work schedule of employees in the Directorate of Information Management, and upon request, negotiate to the extent required by the Federal Service Labor-Management Relations Statute and the Flexible and Compressed Work Schedules Act of 1982.

(c) Upon request, bargain over ground rules proposed by the American Federation of Government Employees, Local 1815, the exclusive representative of its employees, concerning the negotiation of any proposed termination of the existing compressed work schedule of employees in the Directorate of Information Management.

(d) Cooperate in any impasse proceedings that are pending before the Federal Service Impasses Panel.

(e) Post at its Fort Rucker, Alabama, facility were bargaining unit employees represented by the American Federation of Government Employees, Local 1815, are located 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 Commanding General, U.S. Army Aviation Center and Fort Rucker, Fort Rucker, Alabama, 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 ensure that such Notices are not altered, defaced, or covered by any other material.

(f) Pursuant to section 2423.41(e) of the Authority's Regulations, notify the Regional Director of the Atlanta Region, Federal Labor Relations Authority, in writing, within 30 days of the date of this Order, as to what steps have been taken to comply.

Issued, Washington, DC, November 25, 1998.

_____

SAMUEL A. CHAITOVITZ

Chief Administrative Law Judge

NOTICE TO ALL EMPLOYEES

POSTED BY ORDER OF THE

FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the U.S. Army Aviation Center and Fort Rucker, Fort Rucker, Alabama, violated the Federal Service Labor-Management Relations Statute and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY OUR BARGAINING UNIT EMPLOYEES THAT:

WE WILL NOT terminate the existing compressed work schedule of employees in the Directorate of Information Management without providing the American Federation of Government Employees, Local 1815, the exclusive representative of our employees, with notice and an opportunity to negotiate to the extent required by the Federal Service Labor-Management Relations Statute and the Flexible and Compressed Work Schedules Act of 1982.

WE WILL NOT refuse to bargain over ground rules proposed by the American Federation of Government Employees, Local 1815, the exclusive representative of our employees, concerning the negotiation of the proposed termination of the existing compressed work schedule of employees in the Directorate of Information Management.

WE WILL NOT fail and refuse to cooperate in impasse proceedings by unilaterally terminating the existing compressed work schedule of employees in the Directorate of Information Management while matters concerning that termination are pending before the Federal Service Impasses Panel.

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 reestablish the compressed work schedule for the employees in the Directorate of Information Management which was unilaterally terminated by Floyd O. Leighton II, Director of Information Management, on September 13, 1997.

WE WILL, upon request, bargain over ground rules proposed by the American Federation of Government Employees, Local 1815, the exclusive representative of our employees, concerning the negotiation of the proposed termination of the existing compressed work schedule of employees in the Directorate of Information Management.

WE WILL cooperate in any impasse proceedings that are pending before the Federal Service Impasses Panel.

WE WILL notify the American Federation of Government Employees, Local 1815, of any intention to terminate or modify the compressed work schedule of employees in the Directorate of Information Management, and

upon request, negotiate to the extent required by the Federal Service Labor-Management Relations Statute and the Flexible and Compressed Work Schedules Act of 1982.

_____

(Activity)

Date: _____ 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 its provisions, they may communicate directly with the Regional Director, Atlanta Regional Office, whose address is: Marquis Two Tower, Suite 701, 285 Peachtree Center Avenue, NE, Atlanta, GA 30303, and whose telephone number is: (404) 331-5212.

1. 1/ In the notes that he drafted after the completion of the meeting, Leighton stated:

The intent on my part was to entertain

union input regarding impact and implement-

ation (I&I) associated with my stated intent

in 30 Apr 97 letter to AFGE to discontinue

the [CWS].

* * *

The undersigned mentioned that his under-

standing of this issue was that only I&I need

occur to ensure the proper statutory/regulatory

notification procedures were considered.

2. 2/ Neither the Act nor FSIP's regulations implementing the Act, 5 C.F.R. part 2472, require affected parties to seek mediation assistance or mention the FMCS.

3. 3/ Despite Winn's use of the word "substantive," the record is clear that Fort Rucker intended to bargain only the impact and implementation of the change.

The material portion of Winn's subsequent July 26, 1997, letter to the FMCS supports this position with regard to Winn's use of the word "substantive:"

[T]he Agency respectfully asserts that

further impact negotiation is not required,

and, that intervention by the Federal

Mediation and Conciliation Service (FMCS)

and/or the Federal Services Impasse Panel

(FSIP) is not authorized.

* * *

Further, the Agency is unaware of any statutory

or decisional authority mandating full-blown

(formal) "contract type" negotiations (with

formalized ground rules) to carry out "impact"

type bargaining; especially without even the

most minimal notice as to what proposed negotiable matters, concerns, or interests the union may assert. Under the circumstances, the Agency has substantially and in absolute good faith fulfilled its obligation to provide AFGE Local 1815 an opportunity to negotiate Impact and Implementation and/or Appropriate Arrangements. AFGE Local 1815 has elected not to negotiate.

4. 4/ Fort Rucker never did provide the Union with any substantive proof that the CWS adversely impacted the ability of DOIM to perform its mission.

5. Even if my interpretation of the words of the CWS Agreement is wrong, the cancellation provision of the CWS Agreement does not constitute a waiver of the requirements of the Act. Accordingly, the Fort Rucker was required to comply with the requirement of the Act before it terminated the CWS in DOIM.

6. The refusal of the Union to bargain about the impact and implementation, because it was insisting on bargaining about the substance, did not constitute a waiver by the Union of its right to bargain about the substance of the decision. *CF. U.S. Department of Health and Human Services, Public Health Service, Indian Health Service, Indian Hospital, Rapid City, South Dakota,* 37 FLRA 972, 976 (1990).

7. The ground rules were not, on their face, unreasonable. The record does not contain any evidence that establishes that the Union was using these ground rules to delay the implementation of the elimination of the CWS in DOIM.