FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
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U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT RESPONDENT AND AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1568 CHARGING PARTY	Case No. AT-CA-13-0274

Brian R. Locke
For the General Counsel

Fanta K.R. Cowans
For the Respondent

Antonio Gaines
For the Charging Party

Before: CHARLES R. CENTER
Chief Administrative Law Judge

DECISION

STATEMENT OF THE CASE

This is an unfair labor practice proceeding under the Federal Service Labor-Management Relations Statute, 5 U.S.C. §§ 7101-7135 (Statute), and the Rules and Regulations of the Federal Labor Relations Authority (Authority), 5 C.F.R. Part 2423.

On March 7, 2013, the American Federation of Government Employees, Local 1568 (Union) filed an unfair labor practice (ULP) charge against the U.S. Department of Housing and Urban Development, Atlanta, Georgia (Respondent). G.C. Ex. 1(a). After investigating the charge, the Regional Director of the Atlanta Region issued a Complaint on September 23, 2013, alleging that the Respondent violated § 7116(a)(1) and (5) of the Statute by assigning new duties and responsibilities to employees without completing bargaining with the Union

to the extent required by the Statute. G.C. Ex. 1(b). In its answer to the complaint, the Respondent admitted some of the factual allegations but denied that it committed the alleged unfair labor practice. G.C. Ex. 1(e).

A hearing upon the matter was conducted on December 5, 2013, in Atlanta, Georgia. At the hearing, all parties were represented and afforded an opportunity to be heard, to introduce evidence, and to examine witnesses. The General Counsel and Respondent filed post-hearing briefs, which I have fully considered.

Based on the entire record, including my observation of the witnesses and their demeanor, I find that the Respondent changed conditions of employment for bargaining unit employees by assigning new duties without completing bargaining with the Union. Therefore, the Respondent violated § 7116(a)(1) and (5) of the Statute. In support of these determinations, I make the following findings of fact, conclusions of law, and recommendations.

FINDINGS OF FACT

The Respondent is an agency within the meaning of § 7103(a)(3) of the Statute. G.C. Exs. 1(b), 1(e). The American Federation of Government Employees, Local 1568, (AFGE) is a labor organization within the meaning of § 7103(a)(4) of the Statute, and it is the exclusive representative of a unit of employees that is appropriate for collective bargaining at the Respondent's office in Atlanta, Georgia. G.C. Exs. 1(b), 1(e).

The Office of Public and Indian Housing (PIH) operates programs to ensure affordable, decent housing for the poor, disabled, elderly, and veterans. Tr. 35. Public Housing Authorities (PHAs) are responsible for implementing these programs. *Id.* PIH employees provide guidance and oversight to the PHAs and their tenants. Tr. 132.

Before October 1, 2012, the PIH office in Atlanta was divided into two divisions: Operations and Technical. Tr. 35. Employees in the Operations division were responsible for management and operations of the PHAs. Tr. 36. Operations employees provided guidance to PHAs on how to comply with housing regulations and on proper administration of federal housing programs. Tr. 45. They also monitored how PHAs utilized their properties to ensure they were properly administered. Tr. 46, 65. Lastly, operations employees responded to congressional inquiries and concerns raised by tenants. Tr. 36, 46, 65.

Technical division positions included facilities managers and financial analysts. Tr. 35. Facilities managers provided guidance to PHAs regarding their physical property and capital funds for maintenance and improvements to property. Tr. 111-12, 149. They also made sure that amounts expended by PHAs on capital projects added up properly and were allowable expenses. Tr. 112. Financial analysts were responsible for all financial matters, including the operational subsidy provided to PHAs. Tr. 49-50. The Operations and Technical divisions each had their own director. Tr. 35, 55.

Before October 1, 2012, PIH employees in each division were specialists with specific areas for which they were responsible. Tr. 35, 65, 133. Operations employees were not responsible for performing financial analyst or facilities management duties. Tr. 38. Facilities management employees did not perform operations or financial analyst functions. Tr. 112.

In September 2012, the Respondent decided to redistribute work among employees in the PIH office so work was more evenly divided among the staff as there was a decrease in the number of staff available to service PHAs due to retirements. Tr. 133. The recently retired employees worked primarily in financial analysis and facilities management. *Id.* Following their retirements, the remaining employees that specialized in these areas complained to management because their workload had increased as a result of the loss of personnel. Tr. 133-34.

On September 6, 2012, Ada Holloway, the Director of the PIH office in Atlanta, Georgia, met with Antonio Gaines, the Union president, to discuss changes to employees' duties in the PIH Department. Tr. 21, 137. Holloway told Gaines during the meeting that the Respondent was going to implement a redistribution of work among employees. Tr. 137. Gaines asserted he was told during the meeting that the change in duties taking place was part of implementing an Asset Management Program. Tr. 22. Holloway testified that the Asset Management Program was inadvertently brought up during the meeting but she claimed she told Gaines that the redistribution of work was not related to the implementation of an Asset Management Program. Tr. 138-141. The Asset Management Program was a model being used by the Respondent's Office of Multi-Family Housing and not by PIH. Tr. 139. On September 14, Gaines sent an email to Holloway summarizing the meeting and attached a demand to bargain. Tr. 23; G.C. Ex. 2. The demand to bargain specifically requested that the Respondent not implement the change until negotiations with the Union were completed. G.C. Ex. 2. The demand to bargain contained 20 different proposals, including proposals regarding initial and on-going training and requests for new position descriptions. *Id.*

The Respondent acknowledged receipt of the proposals and requested to meet with Gaines on October 3, 2012. Tr. 23-24. Gaines was not available on that date, but he did meet with the Respondent on October 9. Tr. 24. During the October 9 meeting, Holloway told Gaines that the Respondent was not implementing the Asset Management Program and was instead implementing a redistribution of work. Tr. 25, 141. Holloway testified that she informed Gaines during the meeting that if Gaines would submit proposals and could show the impact of the redistribution was more than de minimis, then the Respondent would be open to impact and implementation bargaining. Tr. 141. Holloway asserted the Agency expressed that it remained willing to bargain with the Union. *Id.* Gaines testified that Holloway did not give any indication that the Agency was willing to bargain with the Union concerning the change. Tr. 25.

The Respondent implemented its plan to redistribute work among employees on October 1, 2012. Tr. 35, 65, 80, 112-13, 134. PIH employees in Atlanta became responsible for performing duties related to operations, facilities management and financial analyst duties, essentially melding the three specialties into a single position. Tr. 38, 83, 114. There was conflicting testimony as to whether the Respondent provided training to employees

before the reassignment of duties not previously required of them. Susan Brooke and Carla Alston were public housing revitalization specialists at the PIH office in Atlanta. Tr. 34, 111. Alice Ford and Michelle Dow-Williams were program analysts. Tr. 64, 80. Brooke, Dow-Williams and Ford testified that they did not receive training related to their newly assigned duties before the reassignment. Tr. 39-40, 68, 85. Brooke testified that she received training before the reassignment but it was not like the training she received after the reassignment, which was compressed and focused on making employees into generalists. Tr. 40. Dow-Williams said she considered the training she received before the reassignment to be more like meetings to inform employees of upcoming events. Tr. 68. Holloway and Clamentine Melvin, the Operations Division Director at the Respondent, testified that employees received training before the reassignment. Tr. 141-42, 177. Holloway testified that employees had been receiving training in all the specialties since 2010. Tr. 141-42.

After October 1, 2012, facilities management and operations employees became responsible for financial duties. The financial duties involved processing operating fund and capital fund subsidies each year. Tr. 49-50. In order to process the operating funds subsidy, employees had to evaluate information provided by PHAs, including the amount spent by PHAs on operations, and determine if they were requesting the correct amount and whether it was appropriate to release funds. Tr. 50. For the capital funds subsidy, employees were required to review Annual Action Plans and Five-Year Action Plans submitted by PHAs and determine whether the PHA assigned each expense to an appropriate line item and whether the money could be requested at that time. Tr. 50. After processing the operating and capital fund subsidies, the employee had to divide the expenditures into different categories and release the funds to the PHAs. Tr. 67. Dow-Williams and Ford testified that they were now responsible for releasing millions of dollars in federal funds to PHAs, which was not part of their job prior to the work redistribution. Tr. 77, 84.

The employees testifying for the General Counsel stated that they had particular trouble with the new financial analyst duties assigned to them. Brooke testified that she was uncomfortable processing financial documents because she had no background in finance and did not receive training before she was assigned the new financial duties. Tr. 38-39. Brooke believed the training she received for the new financial duties was not effective because she had no background in finance or accounting and the four to five hours of training she received was not sufficient for her to be able to perform the new duties. Tr. 41. Dow-Williams testified that she needed the help of Lee Clark, a financial analyst who has since retired, in order to perform her new financial duties. Tr. 69. Ford testified that she did not know how to perform the financial duties assigned to her because she did not receive enough training. Tr. 83. Ford also maintained the training she received for her new duties was difficult to understand because the instructor did not speak English as a first language. Tr. 86-87. Alston similarly testified that she did not receive adequate training to perform the financial duties assigned to her after October 1. Tr. 115. Brooke and Alston both testified that their new duties occupied around 50% of their work time. Tr. 39, 115. Ford testified that she spent 80-90% of her work time on her new duties. Tr. 85.

Holloway testified that PIH employees received ongoing training in all areas before and after the redistribution of work. Tr. 142. Management received feedback from employees indicating they preferred to have training in specific areas around the time employees actually had to perform work in those areas, and not in advance. *Id.* The Respondent thus decided to schedule tailored training sessions around tasks that had to be performed at that time. Tr. 142, 177. The Respondent also received feedback from employees that the training sessions were held too frequently for employees to be able to perform their work so management responded by scheduling training sessions bi-weekly or monthly, instead of weekly. Tr. 178-79. The Respondent offered small group training as well as one-on-one training when requested. Tr. 162, 185-86. In addition to training sessions, the Respondent had Subject Matter Experts (SMEs) available within the office to answer questions on different topics including finance, management and occupancy. Tr. 136-38, 166, 173-74. The financial work performed by employees was subject to supervisor review before processing. Tr. 164-65, 198. Holloway and Melvin both testified that employees have been able to perform their new duties based on the work that management has reviewed. Tr. 158, 166, 198.

Although PIH employees were assigned new duties effective October 1, the number of PHAs over which they had oversight was reduced. Tr. 42, 66, 82, 113-14, 177. Holloway and Melvin both testified that the workload has decreased for PIH employees as a result of the reorganization. Tr. 146-47, 180. Employees have come to management asking for more work. *Id.* Melvin testified that she had received complaints in the past from PHAs before the redistribution of work because financial analysts were not available to deal with financial questions. Tr. 179. Since the redistribution of work, Holloway and Melvin have received positive feedback from the PHAs because they only had to contact one person at the PIH office if they had an issue instead of three specialists. Tr. 146, 179-80. Melvin testified that some of her employees told her they like their job more following the change because their workload has been reduced and they have more well-rounded skill sets. Tr. 182.

POSITIONS OF THE PARTIES

General Counsel

The General Counsel contends that the Respondent had an obligation to bargain with the Union because it made a change that had a greater than de minimis impact on bargaining unit employees' working conditions and the Union did not waive its right to bargain.

The General Counsel asserts that the Respondent changed conditions of employment by assigning new and unfamiliar duties to bargaining unit employees on October 1. Employees at the PIH office were specialists before October 1 but were converted to generalists after that date. The General Counsel rejects the Respondent's contention that there was no change because the new duties were included in the employees' position descriptions. The Authority has held that agencies must negotiate over changes in duties even if the duties are contained in the position description. *U.S. Dep't of the Air Force, AFMC, Space & Missile Sys. Ctr., Detachment 12, Kirtland AFB, N.M.*, 64 FLRA 166, 174-75 (2009). The General Counsel reasons that if agencies could use broad language in position descriptions to avoid bargaining, a union would be faced with the impossible task of

trying to guess what tasks the agency might eventually require the employee to perform every time a position description was given to the union. The union then would have to "sufficiently tailor" proposals to address any potential adverse impact of the possible duties that the agency may not have contemplated when it created the position description. *NFFE, Local 2192*, 59 FLRA 868, 870-71 (2004). The agency and union would be forced to waste valuable time and resources negotiating over potential duties that the agency may never have intended to assign to employees.

The General Counsel argues that the change in duties had a greater than de minimis impact on employees' working conditions. The General Counsel frames the issue as whether the assignment of new duties, including releasing a substantial amount of federal funds, is so trivial that negotiations would be a "'pointless expenditures of effort,'" since "Congress is always presumed to intend that 'pointless expenditures of effort' be avoided. *Assoc. of Admin. Law Judges v. FLRA*, 397 F.3d 957, 962 (D.C. Cir. 2005) (quoting *Ala. Power Co. v. Costle*, 636 F.2d 323, 360 (D.C. Cir. 1979)).

The General Counsel points out that the Respondent's decision to convert bargaining unit employees from specialists to generalists was a significant change because: (1) employees spent fifty to ninety percent of their time on the new duties; (2) the employees were assigned new financial responsibilities and had little to no experience in finance; (3) two of the employees testified that they feared losing their jobs if they improperly released federal funds and; (4) it was reasonably foreseeable that employees' performance evaluations would suffer because they were not adequately prepared for their new responsibilities.

The General Counsel contends that the Respondent's attempt to train employees for their new duties was inadequate. The Respondent did not provide training to employees until after it assigned the new duties even though the employees had no background in finance. The employees testified that the training provided was too advanced and they were not able to understand the terminology used by the instructors. The General Counsel asserts that subsequent training provided by the Respondent suffered from the same problems as the initial training sessions provided to employees. The employees testified that they still do not know how to perform the new duties assigned to them.

The General Counsel also avers that the Union did not waive its right to bargain because the Respondent implemented the change in duties even though the Union had presented negotiable proposals. The General Counsel points out that the Union sent a demand to bargain along with negotiable proposals to the Respondent eight days after learning of the proposed change. The Respondent did not request to meet with the Union until October 3, 2012, two days after the employees were assigned the new duties. Holloway admitted in her testimony that the Respondent had an obligation to bargain over the impact and implementation of the change and that impact and implementation bargaining included proposals related to training. The General Counsel refutes the Respondent's assertion that the Union's demand to bargain was incorrect because it referred to the Asset Management Program. The General Counsel points out that the Union used this term because the Respondent referenced it in the initial meeting. The General Counsel asserts it is extremely

unlikely that the Union would have referred to the Asset Management Program if the Respondent had told the Union that it was not implementing such a program. The General Counsel also points out that one of the other witnesses confirmed the Union president's assertion that management had referenced the Asset Management Program while discussing the change with employees.

The General Counsel emphasizes that the Respondent implemented its plan instead of making any attempt to clarify its plan to the Union or challenge the negotiability of the Union's proposals. The General Counsel points out that the Respondent waited over a week after it implemented the change to notify the Union that it was not implementing the Asset Management Program. The General Counsel contends that the Union's proposals were appropriate and negotiable whether or not the change in duties was implemented as part of an Asset Management Program or redistribution of work.

Further, the General Counsel argues that the Respondent cannot excuse its violation of the Statute by claiming that it met with the Union on October 9 because the Authority has clearly stated that agencies cannot rely on events that took place after a unilateral implementation to excuse its failure to bargain with the union. *Bureau of Engraving & Printing, Wash., D.C.*, 44 FLRA 575, 581-82 (1992) (*BEP*). The Authority has held that post-implementation events are irrelevant and may not be used as a defense or mitigation since the Respondent is required to bargain with the union before it implements a change. *Internal Revenue Serv., Wash., D.C.*, 4 FLRA 488, 497 (1980). Here, the Respondent rushed to implement new duties without adequately training its employees, which has resulted in employees releasing millions of dollars in federal funds even though the employees have admitted they do not know what they are doing. The General Counsel contends this problem could have been avoided if the Respondent had worked with the Union to create a training and implementation plan to prepare employees for their new duties.

The General Counsel asserts that the Union did not waive its right to bargain because Holloway declared at the beginning of the meeting that the Respondent was not implementing the Asset Management Program so bargaining would be unnecessary. Since the Union believed the purpose of the meeting was to negotiate implementation of the Asset Management Program, the Union reasonably assumed there was nothing to negotiate. The Respondent did not clarify that it planned on making other changes to employees' duties so the meeting ended. The General Counsel contends that the Respondent's assertion that it was willing to negotiate is not credible.

The General Counsel contends that a status quo ante remedy is warranted in this case because a status quo ante remedy is integral to the effectiveness of the Statute. One of the fundamental purposes of a union is to ensure employees have a voice when agencies make changes in their workplace. By implementing changes without negotiating with the union, agencies ignore the interests of those most affected by the changes when they occur. The Respondent will have little incentive to negotiate with the union over future changes if it is not required to return to status quo ante. *FDIC v. FLRA*, 977 F.2d 1493, 1498 (D.C. Cir.

1992). The General Counsel argues the Respondent may be encouraged to implement future changes without negotiating with the Union if it believes that, at worst, it may have to post a notice and negotiate with the Union in the future when the Union's proposals may not benefit employees.

The General Counsel asserts the Respondent acted in bad faith. The Respondent implemented the changes without giving the Union an opportunity to bargain. The General Counsel rejects the Respondent's assertion that it was willing to bargain because it implemented the new duties even though the Union had presented a timely request to bargain and proposals that the Respondent admitted were negotiable. The Respondent did not attempt to meet and discuss the Union's request to bargain until after the change had already been implemented and Holloway testified that she was directed by her supervisor to not negotiate with the Union.

The General Counsel contends that a status quo ante remedy is needed because the change in duties had a significant impact upon employees. All four employees testified that they were not adequately prepared to perform their new duties. The employees were concerned that they could lose their jobs or even go to jail because they were responsible for releasing millions of dollars in federal funds even though they did not know what they were doing. One of the employees testified that her performance evaluation was significantly lower after the new duties were assigned. All of the employees testified they were still having trouble performing their newly assigned duties after subsequent training sessions.

The General Counsel contends that the Respondent did not demonstrate that a status quo ante remedy would disrupt the efficiency of its operations. Respondent did not dispute that employees in other offices continue to have specialized positions, and even though two of the former financial analysts in the office retired, two remain in the office. The Respondent ignored the fact that the two remaining financial analysts have an increased workload because other employees are constantly going to them for help with their new financial responsibilities. The General Counsel points out the Respondent failed to offer any financial analysts to testify that they had been overworked before the change in duties despite the fact that it based its entire argument on such a claim.

Further, the General Counsel disputes the Respondent's contention that the new policy is more efficient and effective because PHAs and tenants like it, arguing that the Respondent's operations could not be more efficient when employees constantly need to ask for help from other employees because they were not adequately trained. The General Counsel suggests that a tenant does not benefit if he gets evicted because an employee is not trained to give the proper advice and a PHA does not benefit if employees are not able to give reliable guidance or its funds are delayed because the employee does not know what he or she is doing. Thus, the Respondent would not be disrupted by a status quo ante remedy. It would ensure the proper function of the Respondent's operations and protect the interests of the public. The General Counsel argues that after the Respondent negotiates with the Union and employees are properly trained, the Respondent will be free to re-implement this policy.

Finally, the General Counsel requests a notice posting on bulletin boards along with distribution by email to all bargaining unit employees, to be signed by the Regional Public Housing Director.

Respondent

The Respondent asserts that it did not violate § 7116(a)(1) and (5) because the changes to employees' working conditions were de minimis. There is no obligation for an agency to bargain over impact and implementation of a management right that has only a de minimis effect on conditions of employment. *Pension Benefit Guar. Corp.*, 59 FLRA 48 (2003).

The General Counsel's witnesses primarily testified about the effect of the financial analyst duties on their working conditions. The Respondent contends that the financial duties at issue were de minimis since employees spent less than one month out of the year performing these duties. The Respondent also points out that all of the work performed by employees is subject to supervisory review.

The Respondent argues that the caseload of PIH employees actually decreased after the redistribution of work. Employees were responsible for overseeing fewer PHAs following the redistribution of work, which was corroborated by each of the General Counsel's witnesses.

The Respondent asserts that the *FCI* factors do not support a status quo ante remedy in this case. *Fed. Corr. Inst.*, 8 FLRA 604, 606 (1982) (*FCI*). The Union was notified of the change at issue on September 6, 2012, well before the change occurred on October 1, 2012. The Respondent contends that although the Union requested to negotiate the change, the basis upon which the Union demanded to bargain was inaccurate. The Respondent did not implement an Asset Management Program as asserted by the Union; it only implemented a redistribution of work among employees. The Respondent asserts that it implemented the redistribution of work to help the PIH office and the PHAs in Georgia which it served. The redistribution of work was necessary because the PIH office had lost approximately ten employees over the prior five years. The redistribution of work allowed the Respondent to allocate work equally among employees. The Respondent asserts that it was always willing to bargain over impact and implementation of the redistribution of work if the Union submitted proposals noting that it believed the redistribution was more than a de minimis change. The Union did not submit any further proposals or demand to bargain over the redistribution of work.

The Respondent contends the impact of the redistribution on employees was de minimis, noting again that the new financial duties took less than a month to complete. The Respondent contends that a status quo ante remedy would impose substantial harm on the efficiency and effectiveness of its operations. A status quo ante remedy would make the PIH office inefficient and create an imbalance of work within the office. The Respondent argues that the redistribution of work has made employees more well-rounded and cites testimony by Melvin that some PIH employees enjoyed the change in duties and reduction in

workload. The Respondent concludes that a status quo ante remedy would not be helpful to the PIH office, the public housing authorities, or residents served by the PIH office on a daily basis.

ANALYSIS AND CONCLUSION

Before implementing a change in conditions of employment of bargaining unit employees, an agency is required to provide the exclusive representative with notice of the change and an opportunity to bargain over those aspects of the change that are within the duty to bargain. *Fed. BOP, FCI, Bastrop, Tex.*, 55 FLRA 848, 852 (1999). The determination of whether a change in conditions of employment occurred involves an inquiry into the facts and circumstances regarding the Respondent's conduct and employees' conditions of employment. *SSA, Office of Hearings & Appeals, Charleston, S.C.*, 59 FLRA 646, 649 (2004).

The Respondent in this case changed conditions of employment for employees at the PIH office. The Authority has long held that an agency has the obligation to bargain over the impact and implementation of any changes in job duties. *U.S. DOD, Dep't of the Army, Headquarters, Fort Sam Houston, Tex.*, 8 FLRA 623, 625, 638 (1982); *SSA, Malden Dist. Office, Malden, Mass.*, 54 FLRA 531 (1998). The Respondent changed employees' job duties at the PIH office when it converted them from specialists into generalists on October 1, 2012. Before October 1, employees were limited to specific areas of responsibility either, financial analysis, facilities management, or management of the Public Housing Information Center computer system. Tr. 35-36, 45-46, 81. After October 1, employees became responsible for performing all of the duties previously performed by operations employees, financial analysts, and facilities managers. Tr. 38, 83, 114. Employees were assigned duties in areas, especially financial analysis, in which they had little to no experience. Tr. 38, 65, 83, 112.

The Respondent argues that there was no change in conditions of employment because it asserts that the new duties assigned to PIH employees were contained in their position descriptions. However, even though duties are within an employee's position description does not prevent the assignment of those duties from constituting a change in conditions of employment, if the employee had not been performing those duties before a change. *See U.S. DOJ, INS, U.S. Border Patrol, San Diego Sector, San Diego, Cal.*, 35 FLRA 1039, 1040 (1990); *U.S. Dep't of HHS, SSA, Baltimore, Md.*, 41 FLRA 1309, 1310-14 (1991). After the Respondent instituted the redistribution of work in the PIH office, employees were assigned new duties that they had not previously performed; therefore, the fact that these new duties may have been contained in employees' position descriptions is not relevant to whether a change in conditions of employment occurred.

When an agency exercises a reserved management right and the substance of the decision is not itself subject to negotiation, the agency nonetheless has an obligation to give notice and bargain over procedures to implement that decision and appropriate arrangements for unit employees adversely affected by that decision, if the resulting change has more than a de minimis effect on the conditions of employment. *PBGC*, 59 FLRA at 50. In applying the

de minimis doctrine, the Authority looks to the nature and extent of either the effect, or the reasonably foreseeable effect, of the change on bargaining unit employees' conditions of employment. *U.S. Dep't of the Treasury, IRS*, 56 FLRA 906, 913 (2000).

Here the impact of the change on employees' working conditions was more than de minimis. The change in duties applied to all employees in the PIH department and was intended to be permanent. Tr. 132-33. The Respondent should have foreseen its employees would have difficulty with new job duties that were substantially different from the employees' prior experience. The employees were not provided training related to their new duties until after the duties were already assigned to them. Tr. 39-40, 85, 116. Furthermore, the employees had trouble understanding the training provided and were unprepared to perform their new financial duties, resulting in the employees having to ask their co-workers for help. Tr. 41, 68-69, 88, 115, 117. The Respondent acknowledged that its staff was having trouble with their new duties. Tr. 147, 158, 197-98. The Respondent knew that it needed to provide training for employees to be able to perform fulfil their new duties. Tr. 185-86. This fact by itself shows that the new duties differed significantly from the type of work employees had been doing before the change. Ford and Dow-Williams testified that they feared losing their jobs if they improperly released federal funds while performing their new duties. Tr. 67, 84-85. Brooke, Ford, Dow-Williams and Alston all testified that they had trouble performing their new duties. Tr. 38, 41, 73, 75, 84-85, 87-88, 114-15. Although the employees received mid-term evaluations after the change in duties that were not significantly different from past evaluations, it was reasonably foreseeable that their future evaluations could be affected if they continued to struggle with their new job duties.

The Respondent argues that the change to PIH employees' new duties were de minimis because the financial duties lasted one month out of the year. However, the Respondent understates the amount of time that employees spent performing their new duties. The initial processing of the operating funds subsidy and the capital funds subsidy each took a month to complete. Tr. 201. In addition to the initial processing of the subsidies, employees had to help prepare PHAs for "annual snapshots," which contain information about the PHAs needed by the Agency. Tr. 201-02. Employees also had to address requests by PHAs for budgetary revisions and ensure there were no budgetary amendments required or deviations from the approved budget. Tr. 202. Once the capital fund grants were expended, PIH employees had to ensure the funds were expended and close out the grant in an electronic system. Tr. 195. Brooke and Alston testified that they spent fifty percent of their work time on the new duties while Ford testified that she spent ninety percent of her work time on her newly assigned duties. Tr. 39, 85, 115. Although the Respondent is correct that employees were responsible for fewer PHAs overall, employees' total workload did not decrease because they now had more areas of responsibility (i.e. operations, facilities management, financial analysis) regarding each PHA and two of the three areas of responsibility were new and unfamiliar to employees. Tr. 42, 65-66, 82, 114, 203. The effect of the change in duties on PIH employees on conditions of employment was clearly more than de minimis.

Because the Respondent effected a change of change of conditions of employment that was greater than de minimis, it was obligated to give the Union notice and an opportunity to bargain regarding the impact and implementation of the change. *92 Bomb Wing, Fairchild AFB, Spokane, Wash.*, 50 FLRA 701, 704 (1995). Once a union is given timely notice of a change, it must timely request bargaining. *U.S. DHS, U.S. Customs & Border Prot.*, 62 FLRA 263, 265 (2007). An agency must respond to a union's bargaining request. *Army & Air Force Exch. Serv., McClellan Base Exch., McClellan AFB, Cal.*, 35 FLRA 764, 769 (1990). Here the Union was notified of the proposed change during a meeting on September 6, 2012. Tr. 21. During the September 6 meeting the Asset Management Program was referred to while discussing the proposed changes, although the parties dispute who referenced the Asset Management Program. The Union responded to the proposed changes with a demand to bargain and submitted proposals. Tr. 23. The demand to bargain requested that the Respondent not implement the change until after bargaining had been completed and contained proposals relating to initial and ongoing training for employees' new responsibility, in addition to other items. G.C. Ex. 2.

The Respondent requested to meet with the Union on October 3, 2012, two days after it implemented the reassignment of duties in the PIH office. Tr. 24. The Union president was not available on October 3 so the meeting occurred October 9, 2012, at which point the Union president was told that the Respondent was not implementing the Asset Management Program. Tr. 140-41. The Respondent contends it told the Union president during this meeting that he was welcome to submit proposals related to the reassignment of duties if he could show there was a more than de minimis change. Even if this conversation did occur as the Respondent claims, there is no explanation as to why the Respondent waited until more than a week after it had implemented the change to respond to the Union's demand to bargain and proposals. The Respondent gave no reason as to why it had to implement the new duties on October 1. The Authority has held that agencies cannot rely on events that take place after a unilateral implementation to excuse its failure to bargain with the union. *BEP*, 44 FLRA at 581-82. Further, the Respondent's only reply was that it was not implementing the Asset Management Program and was instead imposing a "reassignment of duties." It did not address the substance of the Union's proposals at all nor dispute their negotiability. Holloway admitted at the hearing that the Respondent was required to bargain over the impact and implementation of the reassignment of duties at the PIH office. Tr. 157. The Respondent was required to bargain over the change whether or not it was part of an "Asset Management Program" or a "reassignment of work." By implementing the change in work duties without bargaining with the Union, the Respondent violated § 7116(a)(1) and (5) of the Statute.

REMEDY

Where an agency has changed a condition of employment without fulfilling its obligation to bargain over the impact and implementation of that decision, the Authority applies the criteria set forth in *FCI* to determine whether a status quo ante remedy is appropriate. *FCI*, 8 FLRA at 606. The purpose of a status quo ante remedy is to place parties, including employees, in the positions they would have been in had there been no unlawful conduct. *Dep't of VA Med. Ctr., Asheville, N.C.*, 51 FLRA 1572, 1580 (1996).

Other "traditional" remedies, including retroactive bargaining orders and cease and desist orders accompanied by the posting of a notice to employees, are also available. *See F.E. Warren AFB, Cheyenne, Wyo.*, 52 FLRA 161 (1996).

As the Authority explained in *FCI*, determining the appropriateness of status quo ante relief requires, "on a case-by-case basis, carefully balancing the nature and circumstances of the particular violation against the degree of disruption in government operations that would be caused by such a remedy." *FCI*, 8 FLRA at 606. In determining whether a status quo ante remedy would be appropriate in a case involving a violation of the duty to bargain over impact and implementation, the Authority considers, among other things: (1) whether, and when, notice was given to the union by the agency concerning the action or change decided upon; (2) whether, and when, the union requested bargaining on the procedures to be observed by the agency in implementing such action or change and/or concerning appropriate arrangements for employees adversely affected by such action or change; (3) the willfulness of the agency's conduct in failing to discharge its bargaining obligations under the Statute; (4) the nature and extent of the impact experienced by adversely affected employees; and (5) whether, and to what degree, a status quo ante remedy would disrupt or impair the efficiency and effectiveness of the agency's operations. *Id.*

The first factor does not support awarding a status quo ante remedy; the evidence establishes that the Respondent gave notice to the Union of the decision to reassign duties to employees within the PIH office. Tr. 21. The second and third factors however, favor returning to the status quo. Here the Union requested bargaining and submitted proposals eight days after learning of the proposed changes. Tr. 22-23; G.C. Ex. 2. The evidence further demonstrates that the Respondent's actions in failing to discharge its bargaining obligations were willful. The Respondent contends it was willing to negotiate over impact and implementation of the proposed change but its actions suggest otherwise. The Respondent implemented the changes to employees' job duties before attempting to meet with the Union to discuss its proposals. The Respondent did not give any reason as to why it did not attempt to meet with the Union to discuss its bargaining proposals before implementing the changes. Furthermore, Holloway admitted during her testimony that the Respondent was obligated to bargain over impact and implementation of the reassignment of duties. Tr. 157.

Although the fourth FCI factor supports awarding a status quo ante remedy since the impact upon bargaining unit employees was more than de minimis, the evidence presented is less convincing that such a remedy is appropriate. While it is apparent that the PIH employees who testified for the General Counsel were adversely affected by the reassignment of duties, and that such adverse effects were more than de minimis, there is evidence that some of the bargaining unit employees in the office benefitted from the reassignment. Prior to the reassignment, management received complaints from employees about increased workloads after the departure of several employees who had specialized in facilities management and finance. Tr. 133-34. Financial analysts in particular were assigned more than ninety PHAs each before the reassignment. Tr. 146. Following the reassignment, PIH employees were responsible for overseeing a much smaller number of PHAs, between five and twelve PHAs each. Tr. 48, 76, 82, 146, 176-77. A return to the previous practice of assigning PHAs to employees based on his or her specialty would thus have an adverse

impact on those employees who specialized in areas in which the Respondent is undermanned including financial analysis and facilities management. The adverse effects of the work reassignment on PIH employees can instead be remedied without a status quo ante order. *See Air Force Materiel Command, Warner Robins Air Logistics Ctr., Robins AFB, Ga.*, 53 FLRA 1092, 1108-09 (1998) (instead of ordering status quo ante remedy, adverse effects of work reassignment on bargaining unit employees could be remedied by requiring agency to provide proper training and equipment to employees). In this case PIH employees' legitimate concerns about the training provided relating to their new duties can be addressed with a prospective bargaining order.

As to the last factor, the Respondent has shown that a status quo ante remedy would disrupt the effectiveness and efficiency of its operations. Before the redistribution of duties at the PIH office, there was an imbalance of work among employees. Due to departures and retirements of staff in key areas including financial analysis and facilities management, the remaining employees specializing in those areas were responsible for overseeing a larger number of PHAs than other employees. Financial analysts were responsible for around ninety PHAs each while other staff were responsible for overseeing about thirty to forty PHAs. Tr. 47, 113, 146-47, 176-77. Management received complaints from employees regarding greater workloads as well as complaints from PHAs that financial analysts were not available to deal with financial issues. Tr. 133-34, 179. If the Respondent was forced to return employees to their previous duties before the reassignment, it would negatively impact the Respondent's ability to provide financial oversight and guidance to PHAs since the Respondent would be undermanned in that area. Furthermore, the Respondent has received positive feedback following the reassignment of duties from the PHAs that the Respondent serves. Management from various PHAs have told the Respondent that their interactions with the PIH office have improved since the reassignment of work because they only have to deal with one person regardless of the type of issue. Tr. 135, 179-80. If the Respondent returned employees to specialized positions, the interactions between the PIH office and PHAs would be less efficient because PHAs would have to interact with several points of contact.

Thus, I conclude that the disruption to the efficiency and effectiveness of the Respondent's operations that would result from a status quo ante order outweighs the adverse impact of the change upon PIH employees. Therefore, a status quo ante order is not an appropriate remedy under the specific facts of this case.

The General Counsel requests a notice signed by the Regional Public Housing Director, to all bargaining unit employees at the PIH office in Atlanta, by e-mail and posted on bulletin boards. The General Counsel asserts that the notice should be signed by the Regional Public Housing Director because Holloway testified that she was directed by the Regional Public Housing Director not to bargain over the reassignment of duties. Typically, notices are posted at the location or organizational level where the violation occurred. *AFGE, Local 3937, AFL-CIO*, 64 FLRA 17, 23 (2009); *see also U.S. Dep't of Commerce, NOAA, Nat'l Ocean Serv., Coast & Geodetic Survey, Aeronautical Charting Div., Wash., D.C.*, 54 FLRA 987, 1022-23 (1998) (limiting posting to activity where violations took place, based in part on the fact that violations did not reflect policy at a higher organizational level). In this case Holloway testified that she was directed by the Regional

Public Housing Director not to bargain over the reassignment of duties, however she never testified that she was directed not to bargain over the impact and implementation of the reassignment. Tr. 167-69. Holloway testified that the Respondent was always willing to bargain over impact and implementation of the reassignment. Tr. 169. Since the evidence does not indicate that the Regional Public Housing Director had anything to do with the Respondent's failure to bargain over the impact and implementation of the reassignment, the notice should be signed by Holloway as the Director of Public Housing for the Atlanta Regional Office.

Based on the facts of this case, it is clear the Respondent must notify its employees that it will not implement changes in conditions of employment without providing advance notice to, and negotiating with, the Union. In accordance with the Authority's recent decision that unfair labor practice notices should, as a matter of course, be posted both on bulletin boards and electronically, such posting is ordered. *See U.S. DOJ, Fed. BOP, Fed. Transfer Ctr., Okla. City, Okla.*, 67 FLRA 221 (2014).

CONCLUSION

I find that the Respondent violated § 7116(a)(1) and (5) of the Statute when it reassigned duties among employees at the PIH office in Atlanta without providing the Union with an opportunity to bargain.

Accordingly, I recommend that the Authority adopt the following Order:

ORDER

Pursuant to § 2423.41(c) of the Rules and Regulations of the Authority and § 7118 of the Statute, the U.S. Department of Housing and Urban Development, Atlanta, Georgia, shall:

1. Cease and desist from:

(a) Failing to bargain with the American Federation of Government Employees, Local 1568 (Union) before reassigning duties among employees in the Public and Indian Housing (PIH) office in Atlanta, Georgia.

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

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

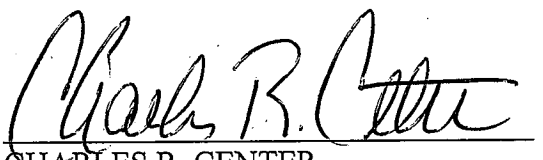
(a) Upon request, bargain in good faith with the Union to the extent required by the Statute, regarding the reassignment of duties among employees at the PIH office in Atlanta, Georgia.

(b) Post at its facilities where bargaining unit employees represented by the Union 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 Director of Public Housing, Atlanta Regional Office, and shall be posted and maintained for sixty (60) consecutive days thereafter, in conspicuous places, including all 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.

(c) In addition to physical posting of paper notices, disseminate a copy of the Notice through the Respondent's email system to all bargaining unit employees in the Atlanta Regional Office. This Notice will be sent out on the same day that the Notice is physically posted.

(d) Pursuant to § 2423.41(e) of the Rules and Regulations of the Authority, notify the Regional Director, Atlanta Region, Federal Labor Relations Authority, in writing, within thirty (30) days from the date of this Order, as to what steps have been taken to comply.

Issued, Washington, D.C., June 10, 2015



CHARLES R. CENTER
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. Department of Housing and Urban Development, Atlanta, Georgia, violated the Federal Service Labor-Management Relations Statute (Statute), and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT change the conditions of employment of bargaining unit employees without providing the American Federation of Government Employees, Local 1568 (Union) with an opportunity to bargain to the extent required by the Statute.

WE WILL NOT in any like or related manner, interfere with, restrain, or coerce bargaining unit employees in the exercise of their rights assured by the Statute.

WE WILL upon request, bargain in good faith with the Union to the extent required by the Statute, regarding the reassignment of duties among employees at the Public Indian Housing office in Atlanta, Georgia.

_____
(Agency/Respondent)

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 its provisions, they may communicate directly with the Regional Director, Atlanta Regional Office, Federal Labor Relations Authority, whose address is: 225 Peachtree Street, Suite 1950, Atlanta, GA 30303, and whose telephone number is: 404-331-5300.