UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C. 20424-0001

DEPARTMENT OF THE AIR FORCE AIR FORCE MATERIEL COMMAND WARNER ROBINS AIR LOGISTICS CENTER ROBINS AIR FORCE BASE, GEORGIA Respondent	Case No. AT-CA-80984
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 987 Charging Party	

NOTICE OF TRANSMITTAL OF DECISION

The above-entitled case having been heard before the undersigned Administrative Law Judge pursuant to the Statute and the Rules and Regulations of the Authority, the undersigned herein serves his Decision, a copy of which is attached hereto, on all parties to the proceeding on this date and this case is hereby transferred to the Federal Labor Relations Authority pursuant to pursuant to 5 C.F.R. § 2423.34(b).

PLEASE BE ADVISED that the filing of exceptions to the attached Decision is governed by 5 C.F.R. §§ 2423.40-2423.41, 2429.12, 2429.21-2429.22, 2429.24-2429.25, and 2429.27.

Any such exceptions must be filed on or before **OCTOBER 4, 1999**, and addressed to:

Federal Labor Relations Authority
Office of Case Control
607 14th Street, NW, 4th Floor
Washington, DC 20424-0001

JESSE ETELSON
Administrative Law Judge

Dated: September 2, 1999
Washington, DC

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C. 20424-0001

MEMORANDUM DATE: September 2, 1999

TO: The Federal Labor Relations Authority

FROM: JESSE ETELSON
Administrative Law Judge

SUBJECT: DEPARTMENT OF THE AIR FORCE
AIR FORCE MATERIEL COMMAND
WARNER ROBINS AIR LOGISTICS CENTER
ROBINS AIR FORCE BASE, GEORGIA

Respondent

and Case No. AT-CA-80984

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 987

Charging Party

Pursuant to section 2423.34(b) of the Rules and Regulations, 5 C.F.R. § 2423.34(b), I am hereby transferring the above case to the Authority. Enclosed are copies of my Decision, the service sheet, and the transmittal form sent to the parties. Also enclosed are the transcript, exhibits and any briefs filed by the parties.

Enclosures

FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges OALJ 99-37
WASHINGTON, D.C.

DEPARTMENT OF THE AIR FORCE AIR FORCE MATERIEL COMMAND WARNER ROBINS AIR LOGISTICS CENTER ROBINS AIR FORCE BASE, GEORGIA Respondent	Case No. AT-CA-80984
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 987 Charging Party	

Brent S. Hudspeth, Esquire
For the General Counsel

C.R. Swint, Jr., Esquire
For the Respondent

C.R. Benson
For the Charging Party

Before: JESSE ETELSON
Administrative Law Judge

DECISION

Statement of the Case

The complaint alleges that the Respondent committed an unfair labor practice in violation of sections 7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute (the Statute) by implementing a cooperative educational program with local vocational schools, in September 1998, whereby the students work alongside and under the guidance of bargaining unit employees represented by the Charging Party (the Union), without providing the Union the opportunity to negotiate to the extent required by the Statute.[1]

The answer denies that the cooperative educational program was implemented in September 1988, asserting that it

[1] While the complaint names the Respondent as shown in the above case caption, Counsel for Respondent refers to his client as Robins AFB. For convenience, I shall do likewise in this decision.

had been "in being for many decades as an aid to the employment process." The answer also asserts that no change occurred and that, therefore, there was no requirement to provide the Union notice and an opportunity to bargain. It asserts, further, that the program's use has a *de minimis* impact on bargaining unit employees already employed. In an amended answer, Robins AFB asserts that the use of the program is covered by the parties' collective bargaining agreement and therefore, even if a change occurred that was more than *de minimis* in nature, it had no further obligation to bargain with the Union.

A hearing on the complaint was held in Macon, Georgia, on July 1, 1999. Counsel for the General Counsel and for Robins AFB filed post-hearing briefs.

Findings of Fact[2]

Robins AFB has approximately 10,000 civilian employees, over 8,000 of whom are in a bargaining unit represented by the Union's parent organization, American Federation of Government Employees, AFL-CIO (AFGE) or its subdivision, AFGE Council 214. The number of bargaining unit employees had been decreasing in the period between about 1990 and 1996, when Robins AFB began to hire new employees. In 1998 it hired approximately one thousand new employees.

The Cooperative Education Program ("co-op program") is a program that Robins AFB had initiated in the 1980's to obtain skilled workers. Employees brought into the co-op program were students at post-secondary technical institutes in the Middle Georgia area. These student employees were hired on "excepted" appointments to work for an initial 6-month rotation, to return to school for six months, then to complete an equivalent set of rotations until two years after their initial hire. To qualify for the program a student employee first must have completed six months in the technical school. During their schooling rotations the co-op employees were placed in a non-pay status. While employed, they were in the AFGE bargaining unit. Within 120 days of their graduation, they had either to be converted to permanent full-time jobs or separated.

Co-op graduates are hired initially at the WG-3 level, are promoted to WG-5 upon conversion to permanent status and are normally promoted to WG-8 shortly after that. Co-op employees who have received permanent employment have been perceived as advancing more rapidly than some long-term career employees.

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2 These findings are based on the entire record, the briefs, my observation of the witnesses, and my evaluation of the evidence. The evidence as to actual events, as opposed to general estimates and speculations by various witnesses, is essentially undisputed.

Begun in the early 1980's, the co-op program was discontinued after 1983 or 1984 and was revived with a "class" of 50 co-op employees in 1990. No new co-op employees were hired again for several years, while Robins AFB was overstrength and had stopped hiring any new employees. In 1998, Robins AFB revived the co-op program again because it perceived an absence of an adequate pool of fully qualified potential applicants available for regular technical positions, after it had depleted the pool as a result of a surge of hiring in the previous year or two. Approximately 70 co-op employees had been hired from late 1998 to the date of the hearing in this case.

Co-op employees are issued tool kits that ordinarily contain the same tools as those of other employees. In late 1998, because of the large influx of new employees (both co-op employees and others), there was a temporary shortage of tool kits. During that period some new employees were issued smaller, "machinist type" tool boxes containing the basic hand tools. If one of these new employees needed a tool not included in this "machinist type" tool kit, or had not received a kit, he or she was usually able to obtain it from the tool crib. Nevertheless, employees tended to borrow tools from one another. If a tool is lost, the employee to whom it was assigned is responsible, and could be subject to discipline or held financially responsible, but would not be disciplined if he or she reports the loss immediately.

The co-op employees are generally provided the same safety training, geared to the employee's job assignment, as any employee newly assigned to the organizational units in which the co-op employees work. Such other employees may have had more extensive prior experience with the kind of operation involved than the co-op employees.

Upon initial entry into the workplace, co-op employees are assigned to work with "mechanics" who are "qualified or certified" to perform certain tasks. Among the "Duties and Responsibilities" on the mechanics' official job description is to ". . . instruct lower grade workers" and "[render] technical assistance as needed." The mechanics demonstrate how a job should be done while performing the task. There was evidence that, in the early 1980's, a mechanic might spend two or three hours a day training a co-op employee during the co-ops' first six month work rotation. However, there was no evidence that, in any later period, the amount of training time for a mechanic, aside from performing his or her normal duties, was more than minimal or that it was different when the trainee was a co-op employee than when the trainee was any other newly assigned employee.

The mechanics, who are also bargaining unit employees, certify the work product of lower-grade employees, including co-op employees. Each mechanic must place his or her "production acceptance certification" (PAC) stamp on the

part being certified and is thus responsible for the quality of that part.

Robins AFB did not notify the Union that it was reviving the co-op program in 1998. The Union first heard about the resumption of the program in September 1998 and filed the unfair labor practice charge that initiated this proceeding.
Union officials feared certain adverse impact on bargaining unit employees as a result of the resumption of the program, including possible loss of overtime opportunities, mandatory overtime, transfers or denial of transfers, and potential safety hazards.

Because of his experience as a co-op employee in the 1980's, Harvey Burnett, a full-time Union steward until shortly before the hearing, remembered the absence of tools for new employees, resulting in the mechanics' having to share their tools with trainees who might lose them. There was also concern that the mechanics' "mentoring" activities and other additional responsibilities attributable to the program could interfere with their productivity or cause them to be held responsible for the trainees' errors. Further, the opportunities given to co-op students might diminish the opportunities of other lower-grade employees for advancement. There was no evidence, however, that the presence of the groups of co-op employees hired since September 1998 had actually created any of the feared consequences, nor, in fact, had any impact on other employees that would not have occurred upon the hiring of more employees through the traditional hiring process.

Discussion and Conclusions

As a threshold matter, a conclusion that Robins AFB violated the Statute by refusing to bargain over the impact and implementation of the co-op program must be premised on a finding that its 1998 implementation of the program constituted a change in unit employees' conditions of employment. See *U.S. Immigration and Naturalization Service, Houston District, Houston, Texas*, 50 FLRA 140, 143

(1995)(*INS Houston*). The General Counsel has not demonstrated that any such change occurred.[3]

The 1998 implementation of the co-op program was essentially a reactivation of a program that Robins AFB had put into operation at least twice before. Although the circumstances leading to its use in the early 1980's have not been explained here, it appears that Robins AFB has reactivated the program whenever circumstances warranted it. While the record does not tell us directly what prompted its reactivation in 1990, I find it reasonable to infer that the reasons were similar to those obtaining in 1998, with respect to the relationship between Robins AFB's use of the co-op program and its regular hiring "off the street." Thus, use of the program has followed or accompanied a surge of hiring and has been discontinued when the need for new hires subsided. The program was renewed in 1998 after Robins AFB depleted the pool of available fully qualified applicants.

While I have no doubt that the co-op program affected conditions of employment of bargaining unit employees, this alone does not establish a legally cognizable change in such conditions. *See INS Houston*, 50 FLRA at 143-44. Where a practice alleged to constitute a change in conditions of employment has been put into effect previously, the Authority uses a case-by-case analysis to determine whether the allegedly unlawful implementation was a change in the nature of which required bargaining or was only the most recent reactivation of a practice that had become part of the employees' conditions of employment. See *Id.* at 144. When engaging in this analysis, the Authority does not regard as determinative, "standing alone," whether the

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[3] The General Counsel characterizes as an affirmative defense Robins AFB's position that no change in conditions of employment occurred, further characterizing that defense as resting on the existence of an established past practice of using the co-op program. I do not view Robins AFB's reliance on the history of the co-op program as the assertion of an affirmative defense. Rather, it is the General Counsel's burden to show that there was a change in conditions of employment. *Department of Veterans Affairs, Veterans Administration Medical Center, Veterans Canteen Service, Lexington, Kentucky*, 44 FLRA 179, 187 (1992). Here, evidence presented by the General Counsel establishes that the 1998 implementation of the co-op program was a renewal rather than a novelty. The burden remained with the General Counsel to show that the 1998 implementation nevertheless constituted what the Authority would recognize as a "change in unit employees' conditions of employment[.]" *Id.*

reactivated practice had been maintained consistently. *Id.* at n.3.[4]

I find reasonably inferable from this record a sufficient pattern of prior implementation and reactivation of the co-op program so as not to be persuaded that the 1998 implementation constituted a change in conditions of employment. There has been no showing that the circumstances of this implementation were different from those surrounding earlier implementations. Nor has it been shown that the program was implemented in 1998 in a manner that differed, in its effect on employees affected by the presence of the co-op employees, from the effect of the earlier implementations.

Concerning the conditions of employment of the co-op employees themselves, there was no change in the conditions under which they were hired. Thus, implementation of the program effected no change to which they had not agreed before becoming employees in the bargaining unit and therefore no bargaining with respect to them was required. *See U.S. Immigration and Naturalization Service, New York, New York*, 52 FLRA 582, 588 (1996). Accordingly, I recommend that the Authority issue the following Order.

ORDER

The complaint is dismissed.

Issued, Washington, DC, September 2, 1999.

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JESSE ETELSON
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of this **DECISION** issued by JESSE ETELSON, Administrative Law Judge, in Case No. AT-CA-80984, were sent to the following parties:

CERTIFIED MAIL & RETURN RECEIPT	**CERTIFIED NOS:**
Brent Hudspeth, Esquire Federal Labor Relations Authority Marquis Two Tower, Suite 701 285 Peachtree Center Avenue Atlanta, GA 30303	P168-059-661

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4 This statement tends to reaffirm the Authority's position that the burden to demonstrate a change is the General Counsel's, and that thus, as noted earlier, a respondent is not required to establish, as an affirmative defense, all the elements of what the Authority would otherwise consider to constitute an "established past practice."

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CATHERINE L. TURNER, LEGAL TECHNICIAN

DATED: SEPTEMBER 2, 1999
WASHINGTON, DC