

F.E. WARREN AIR FORCE BASE CHEYENNE, WYOMING Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 2354 Charging Party	Case Nos. DE-CA-30519 DE-CA-30791

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 5 C.F.R. § 2423.26(b).

PLEASE BE ADVISED that the filing of exceptions to the attached Decision is governed by 5 C.F.R. §§ 2423.26(c) through 2423.29, 2429.21 through 2429.25 and 2429.27.

Any such exceptions must be filed on or before **May 1, 1995**, and addressed to:

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

ELI NASH, Jr.
Administrative Law Judge

Dated: March 30, 1995

Washington, DC

MEMORANDUM

DATE: March 30, 1995

TO: The Federal Labor Relations Authority

FROM: ELI NASH, JR.
Administrative Law Judge

SUBJECT: F.E. WARREN AIR FORCE BASE
CHEYENNE, WYOMING

Respondent

CA-30519

and

CA-30791

Case Nos. DE-

DE-

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 2354

Charging Party

Pursuant to section 2423.26(b) of the Rules and Regulations, 5 C.F.R. § 2423.26(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

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
OFFICE OF ADMINISTRATIVE LAW JUDGES
WASHINGTON, D.C. 20424-0001

F.E. WARREN AIR FORCE BASE CHEYENNE, WYOMING Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 2354 Charging Party	Case Nos. DE-CA-30519 DE-CA-30791

Hazel Hanley, Esq.
For the General Counsel

Capt. Jeffery A. Rockwell, Esq.
For the Respondent

Mr. Ronald R. Phelps
For the Charging Party

Before: ELI NASH, JR.
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 U.S. Code, 5 U.S.C. § 7101, et seq. (herein the Statute).

Pursuant to an unfair labor practice charge filed and amended by the captioned Charging Party (herein the Union) against the captioned Respondent, the General Counsel of the Federal Labor Relations Authority, by the Regional Director for the Denver Regional Office, issued a Complaint and Notice of Hearing alleging that the Respondent violated section 7116(a)(1) and (8) of the Statute in that it failed to comply with section 7114(a)(2)(A) by conducting formal

discussions without giving the Union an opportunity to be represented.¹

A hearing in this matter was conducted before the undersigned in Cheyenne, Wyoming. All parties were represented and afforded a full opportunity to be heard, to examine and cross examine witnesses, to introduce evidence and to argue orally. Briefs were filed by Respondent and the General Counsel and have been carefully considered.

Based upon the entire record in this matter, my observation of the witnesses and their demeanor, and my evaluation of the evidence, I make the following:

Findings of Fact

1. The Union represents between 350 to 400 unit employees at Respondent's facility in Cheyenne, Wyoming, including about 63 unit employees at the Rivet Mile 2010 Section (herein called Rivet Mile). The Rivet Mile activity originates from and is funded by Hill Air Force Base, Utah. The mission of Rivet Mile is the servicing of intercontinental ballistic missiles.

2. In March 1993², Michael Simmons was the General Manager and second-line supervisor at Rivet Mile. Simmons' office was located in Building 811, and outside his office was a larger office area. At all times relevant herein, Simmons supervised seven supervisors who, in turn, directly supervised the 63 unit employees in the various sections at

1

Respondent maintains that the Consolidated Complaint failed to give sufficient notice of the three RIF related meetings for which the General Counsel presented evidence at the hearing. The Consolidated Complaint alleged that meetings took place during March 1993, which would include a mock RIF meeting and small group meetings occurring within the March time frame and are all within the pleadings of the Complaint. Clearly, Respondent understood the issues in dispute and presented its evidence concerning the formal discussions stemming from a mock RIF run from February 22 through March 3, 1993 and the small group meetings. It thus appears that all parties understood the subject of the instant dispute and each presented evidence relevant to all issues in the matter. A mere ambiguity in the language of the complaint would not remove the issue from being encompassed by the complaint. *Health Care Financing Administration*, 35 FLRA 491, 494 (1990). It is found therefore, that Respondent had sufficient notice to prepare its defense in this matter.

2

All dates are 1993 unless otherwise stated.

Rivet Mile. Ron Duck was employed at Rivet Mile in March as a Power Systems Mechanic, in the Depot Support Activity (herein called DSA). He was supervised by Jim Krauer. Duck also worked in March as a janitor at the Rivet Mile Section. While Duck had janitorial duties, Simmons ordered him to post notices in Building 811 concerning a mock RIF meeting for Rivet Mile employees. Steve Gonsior was also employed by Rivet Mile as a Power Support Systems Mechanic. He worked in Building 1502 and was supervised by Rodney Ventureno. Duck and Gonsior were both union members, but neither held any office in the Union.

3. The Union also represented approximately nine Boiler Plant Operators at the Thermodynamics Center at Respondent's facility. Jim Hollingsworth was the immediate supervisor of these nine operators. Engineering manager Ron Kailey supervised Hollingsworth, and Stu Ziemen, in turn, supervised Kailey. The Boiler Plant contained a break room, located some fifteen to twenty feet from the employees' regular work area, where employees eat lunch. In May, Larry Cisler and Chris Poulton were unit employees who worked as boiler plant operators for Hollingsworth, Kailey, and Ziemen. Cisler and Poulton were both Union members, but neither held any union office.

4. At all material times, Kimberly Zakar, was the Chief of Employee and Labor Relations at the Civilian Personnel Office (hereinafter called CPO). At the time of the hearing, Ron Phelps, was president of the Union and had served in that position for approximately ten years. Normally, Zakar gives Phelps notice of formal meetings by telephone. Occasionally, Phelps dealt with another person in CPO, Terrie Prellwitz, Zakar's "subordinate". In late March or early April, Phelps learned from Gonsior and Duck about numerous meetings concerning a reduction in force (hereinafter called RIF) at Rivet Mile; however, no one in CPO gave Phelps timely prior notice or the opportunity to be represented at any of those March meetings.

5. In late winter of 1992 or the spring of 1993, Rivet Mile employees were "very restless and irritated about rumors and discussion" concerning a RIF of their section. Employees apparently wanted the Union to negotiate RIF procedures on their behalf. Duck and Gonsior, although union members, had not regularly attended Phelps' Union meetings until the RIF rumors and discussions at Rivet Mile began sometime in March. Needless to say, Phelps understood the concern of employees like Duck and Gonsior because a RIF is a bread-and-butter issue affecting the livelihood of employees, in that employees could be displaced through the bumping and retreat rights of other employees.

6. Sometime around February 10, Phelps learned that a RIF was possible at Rivet Mile later that year; therefore, on February 11, Phelps sent a written demand to bargain to Zakar. Thereafter, Zakar informed Phelps that his bargaining demand was premature.³

7. James Schaefer, Chief of Affirmative Employment, also part of CPO ran a mock RIF of employees at Rivet Mile between February 22 and March 3, in order to determine the relative positioning of the 63 Rivet Mile employees for the upcoming RIF. A mock RIF allows an agency to identify potentially affected employees in advance by simulating the actual RIF in accordance with applicable regulations. A mock RIF does not require the employees' presence nor does it require CPO to question any employee.

8. General Counsel's witnesses Gonsior and Duck testified that they attended a mock RIF meeting in March. Neither Duck nor Gonsior kept track of exact dates of meetings; in fact, Duck, when asked if the meeting could have occurred in April stated, "I am not sure, sir. We had so many, it is hard to keep them separate." Duck also testified that he did not know the exact date of the mock RIF meeting, but stated "I do know we had a mock RIF meeting." Expressed uncertainty such as this obviously detracts from his testimony. In any case, it is not disputed that sometime around the time of the mock RIF meeting, Simmons ordered Duck, who was then working as a janitor, to put up signs on the doors and bulletin boards in Building 811 for a meeting that was to be held in the large office area outside of Simmons' office. Gonsior, who honestly did not remember the exact date of the meeting, recalled that for that meeting, his then first-line supervisor in Building 1502, Rodney Ventureno, told employees while they were out in the field that they had to return to Building 811 for a meeting. Gonsior and Duck estimated that between 50 to 70 people attended that meeting. Duck and Gonsior remembered that people sat or stood wherever they could find a place.

9. The combined credited testimony of Duck and Gonsior reveals that Simmons opened the meeting by briefly stating that it was on the subject of a mock RIF, and Simmons then introduced several persons from CPO: Zakar, Prellwitz, and Schaefer. In addition to the Rivet Mile General Manager, Simmons, and CPO representatives, Duck recalled that various first-line supervisors, Rodney Ventureno, Jim Krauer, Bill

3

Around March 15, Zakar did notify Phelps that there was to be a RIF at Rivet Mile, effective on September 30, and the Union was to submit its proposals no later than March 24. On March 24, the Union did submit its RIF proposals.

McMillan, and Wayne Bratcher were also present. In addition, Gonsior also recalled that he saw other Rivet Mile first-line supervisors Ron Bullett and Bill Stryon present. Both Gonsior and Duck also said that Jim Schaefer conducted most of the meeting, and explained the mock RIF. Duck testified that Zakar and Prellwitz had documents of some kind with them, and he saw them take notes at the meeting. Gonsior and Duck remembered that when the meeting was opened to questions, several employees did ask questions, and Duck, in particular, remembered that Vic Secone and Bob Willson had questions. Duck also said that when employees' questions required further research, he saw the CPO representatives note down the question and the name of the employee, and Duck heard the CPO representatives tell employees that they would "check it out and try to get back to them." Both Gonsior and Duck estimated that the entire mock RIF meeting lasted from 45 minutes to one hour. Neither Phelps nor any other Union representative was present at the March mock RIF meeting. In contrast to the April RIF meeting when the Union was notified, Duck said that at the March mock RIF meeting no representative from CPO told employees that the Union had been notified but, had declined to attend. Duck was the only witness, for either side, who mentions more than one mock RIF meeting. Furthermore, Gonsior was uncertain when the meeting occurred. In these circumstances, it is my view that the preponderance of the evidence does not show that Respondent held a mock RIF meeting for Rivet Mile employees in March. Accordingly, it is found that only one mock RIF meeting with Rivet Mile employees occurred and that the meeting was held on April 8.

10. Around March 3, Krauer, supervisor of the DSA crew, told unit employees, including Duck, to meet with Simmons. Once there Simmons allegedly conducted a group meeting with Duck and his co-workers on the DSA crew in his personal office, adjacent to the large general office area. According to Duck, Simmons met with the DSA employees, Hurshel Wade, Roy Stewart, Leonard Douglas, and Ray Buresik. Simmons told the employees he was meeting with them concerning the RIF, and he was interested in learning about their military status and their years of service. When Simmons asked Duck for his military and federal service information, Duck saw Simmons write down that Duck was a veteran with more than ten years in grade, in a little note pad. Duck also recalled that Simmons went through the same procedure in asking information from the other DSA crew members, including Wade and Stewart. Duck remembered that the meeting Simmons conducted in his personal office with DSA crew employees lasted about 35 to 40 minutes. No Union representative was present, and Simmons never told the DSA

employees that the Union had been notified of this meeting but, had declined to attend.

11. Gonsior testified that a couple of weeks after the mock RIF meeting he was called into another RIF-related meeting. Gonsior's supervisor, in about late March or early April, informed him that Simmons wanted to see him at about 6:15 or 6:30 a.m. in Simmons' office, before he went out to the field. Gonsior said that about 12 to 13 employees attended this meeting, and there were not enough chairs in Simmons' personal office for everyone to sit down. Simmons told Gonsior and the other employees that in view of the mock RIF results, they were likely to be affected by the RIF, and they should watch their spending and avoid financial binds. Simmons explained that he was trying to get a response from Hill Air Force Base about his inquiries into incentive buyouts.⁴ Gonsior estimated that the meeting Simmons conducted with 12 to 13 employees, who were likely to be affected by the RIF, lasted 15 to 20 minutes, perhaps one half hour. There was no Union representative at the small group meeting in Simmons' office. Furthermore, Gonsior testified that Simmons conducted another meeting with him, individually, on a different occasion, and during that meeting Simmons asked Gonsior about his years of federal service and his veterans status. Simmons admitted conducting individual meetings with unit employees in his office on March 29 and 30. Phelps received no notice of the March group meetings concerning the Rivet Mile RIF until he heard from Gonsior and Duck at Union meetings that Simmons was meeting with employees concerning the mock RIF.

12. In addition to the mock RIF meeting conducted by Schaefer, where no mention was made by CPO about the Union's absence, Duck testified that a later RIF meeting took place around April 8, when Zakar and Prellwitz made a second presentation about the Rivet Mile RIF. Duck says, that employees asked Zakar why the Union was not present. Duck remembers that Zakar gestured by throwing back her head and throwing up her hands and telling all 63 unit employees that the Union had declined to attend. Phelps conceded that the Union had been notified of the April 8 meeting; however, Phelps could not attend himself, nor could he find alternate representatives. Phelps denied that the April 8 meeting was the subject of his allegations in this case; moreover, Phelps stressed that it was the other meetings that Simmons

4

Simmons testified: "I did have a meeting in March that discussed incentives from Hill . . . [because] Hill Air Force Base authorized incentives for people who wanted to separate from the Service." Simmons further explained that Rivet Mile was on Hill's unit manning document, and Hill paid Rivet Mile employees.

had conducted with groups of Rivet Mile employees that led him to file the charge in Case No. DE-CA-30519, docketed on April 24, 1992.

13. On May 12, shortly after Phelps filed the charge in Case No. DE-CA-30519, Zakar received a message from Headquarters Air Combat Command, Langley Air Force Base, Virginia, concerning the closure of Wurtsmith Air Force Base and identifying certain occupations and grades matching displaced Wurtsmith employees. Zakar's job was to check the list and find matching employees at F.E. Warren to find out if they were interested in separation incentives. Among the listed occupations were boiler plant operators. About two weeks after she was sent the May 12 message from Langley, Zakar, on the afternoon of May 25, informed Hollingsworth, the boiler plant operators' supervisors, that she intended to meet with employees the following morning. Accordingly, Hollingsworth informed Larry Cisler, Chris Poulton, and the other employees about a morning meeting with CPO in the lunchroom the next day. Zakar admitted that she did not inform Phelps about the meeting even though she knew that the purpose of the meeting was to provide employees with information on financial incentives for a buyout, affecting working conditions.

14. On the morning of May 26, Phelps was working on a job in the engineering headquarters building, and as Phelps was walking down the hallway, Ron Kailey saw him going past his office door and stopped him. Kailey asked Phelps what he knew about the meeting being held in the boiler plant. Phelps told Kailey he knew nothing about it and asked Kailey what he knew. Kailey only knew that Zakar was going to be there.⁵

15. At about 9:00 or 10:00 a.m., Cisler and Poulton left their work site and went to the lunch room or break area. Present were at least three of their co-workers: Cisler recalled that Roger Williams, Bob Adolph, and Ron Dooley, the other boiler operators, were on leave and therefore, not present. In addition to the boiler plant operators, Jim Hollingsworth, Ron Kailey and Stu Ziemer, were there for the presentation by CPO. Hollingsworth introduced the meeting and the two CPO representatives, Zakar and Prellwitz. Zakar had a copy of the message from Wurtsmith Air Force Base with an attached list of occupations and grades affected by displaced Wurtsmith

5

Phelps later learned about the subject of the meeting when one of the boiler plant employees telephoned him to ask what the Union knew about incentive buyouts being offered to F.E. Warren employees due to the closure of Wurtsmith Air Force Base.

employees. According to both Poulton and Cisler, the presentation from the representatives from CPO concerned financial incentives to a maximum of \$25,000 to make room for a more senior employee from Wurtsmith. Poulton testified that Zakar and Prellwitz stated that they were not making a firm offer to any employee, but were notifying everyone that the offer was contingent on an employee from Wurtsmith agreeing to relocate to F.E. Warren. Poulton stated that the deadline for taking a financial incentive was May 31, just three or four days from the meeting. Poulton said that Gene Kissell, his co-worker, asked a question, but he could not remember its content. Poulton also said that one of the management officials, either Kailey or Ziemer, made a comment or asked a question; however, Cisler recalled that it was Kailey who made a joke about his own possible early retirement. Zakar acknowledged that Prellwitz "interjected a thought or two here and there." Few of the employees attending the meeting showed much interest in the buyout because no one had enough civil service time or sufficient age. However, at least two employees told Zakar that they were interested. The entire meeting with the boiler plant operators lasted 15 to 45 minutes. No representative from the Union attended.

16. On May 27, upon learning of the meeting with boiler plant employees, Phelps notified Zakar he planned to file a charge, which became Case No. DE-CA-30791. Zakar did not deny meeting with the employees. Zakar told Phelps she did not notify him because she had such short notice; furthermore, the meeting was "informational." While Zakar and Prellwitz may not have taken notes during their May 26 meeting with unit employees in the boiler plant, Zakar ordered Prellwitz to prepare minutes two weeks after that meeting to address concerns of a commander inquiring on behalf of a secretary who had been telephoned about a possible buyout due to the Wurtsmith closure. The portion of the document summarizing the May 26 meeting with the boiler plant operators indicates some employees were not at the meeting and certain employees, Adolph and Kissell, were interested in the separation incentives. In addition, Zakar drew up a handwritten list of list of boiler plant operators' names which she checked when she established that they had received information concerning the separation incentives.

Conclusions

a. The alleged March mock RIF Meeting at Rivet Mile.

These consolidated cases involve a series of meetings surrounding employee reductions in force and as such are

subject to the criteria the Authority uses to gauge formality. Its eight indicia of formality are as follows:

(1) whether the meeting was held by a first-level supervisor or someone higher; (2) whether other management representatives attended; (3) where the meeting took place; (4) how long the meeting lasted; (5) how the meeting was called; (6) whether a formal agenda was established; (7) whether attendance was mandatory; and (8) the manner in which the meeting was conducted (whether comments were noted or transcribed).

All eight factors are to be taken in totality.⁶

When a RIF is looming, the importance of the Union's rights under Section 7114(a)(2)(A) to attend meetings explaining a mock RIF is all the more significant, because by its presence, the Union might have met the concerns of "restless" and "irritated" employees who could perceive that the Union's absence from those meetings meant that it was not representing their interests.

It is contended here that the Union was not given prior notification or the opportunity to be represented at the March mock RIF discussion among various levels of management and supervisors, including three representatives from CPO, all levels of Rivet Mile supervision, as well as all 63 unit employees of the Rivet Mile Section. The stated purpose of the meeting was to inform Rivet Mile employees of the mock RIF run from February 26 to March 3. The mock RIF discussion allegedly concerned general working conditions, including employees' possible separations from employment at Rivet Mile, possible buyout incentives from them offered through Hill Air Force Base, and their rights as employees to displace others with lower RIF computation dates.

Respondent steadfastly denies that any March mock RIF meeting with all of the Rivet Mile employees ever occurred. The weight of the evidence suggests that Respondent is correct. The two principal witnesses relied on by the General Counsel, out of approximately 63 employees who supposedly attended the March mock RIF meeting were employees Gonsior and Duck. Neither was a Union advocate, but both attended Union meetings to ventilate their frustration at Phelps' non-participation in all the meetings being conducted at Rivet Mile. Further, some of the meetings about which they were complaining did occur in March.

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Defense Logistics Agency, 48 FLRA 744, 753 (1993).

Gonsior, after he was asked to focus on the "mock RIF meeting", described a meeting which was identical to an April 8 mock RIF meeting in most respects including time, place and participants. Obvious inconsistencies between the accounts of Gonsior and fellow employee Duck, raise serious questions concerning their independent recollection of when the mock RIF meeting actually did occur. The most striking inconsistency is Duck's recollection that two mock RIF meetings occurred while Gonsior makes no mention of a second mock RIF meeting being held. In this regard, the record reveals no reason for any necessity to hold more than one mock RIF meeting at Rivet Mile. Additionally, Respondent insists that only one mock RIF meeting involving CPO personnel occurred and that this meeting was held on April 8 because of employee concerns, and furthermore the Union was invited to attend. Since there were several meetings held during this period, both group and individual; the RIF had become a certainty; and, employees were experiencing emotional times, it comes as no surprise that employee participants in the meetings might be uncertain as to dates. Given the further fact that one such meeting was held in early April, it is my view that Gonsior and Duck simply confused the date on which the meeting was held and that they were each testifying concerning the one mock RIF meeting, held on April 8. In rejecting the General Counsel's stance that Respondent was motivated by some personal considerations to deny that a March mock RIF meeting with Rivet Mile employees took place, I find little reason to discredit Respondent's witnesses who testified that a mock RIF meeting was not held at Rivet Mile in March. Moreover, the Union was invited by Respondent to attend that April 8 meeting. In all the circumstances, I am not persuaded by a preponderance of the evidence that a March mock RIF meeting as described by Duck or Gonsior did take place.

Therefore, it is found, as Respondent suggests that the General Counsel did not meet its burden of proof in establishing that a March mock RIF meeting of Rivet Mile employees ever occurred. Consequently, it must be found that Respondent did not violate section 7116(a)(1) and (8) by holding a mock RIF meeting for Rivet Mile employees without the Union's presence in March 1993.

b. The March meetings Simmons conducted with Duck and other DSA employees and, with Gonsior and a group of twelve or thirteen employees.

The record disclosed that Simmons conducted both group and individual meetings at Rivet Mile with the DSA crew members, including Duck and, with Gonsior and a group of employees, sometime in March or April. The General Counsel

maintains that some, but not all, of these meetings were formal discussions within the meaning of section 7114(a)(2)(A) of the Statute.

The evidence reveals that only one group meeting was held by Simmons where he discussed financial incentives with the group, which might require the presence of the exclusive representative. The remaining meetings, in my view, seem to be only information gathering meetings where Simmons met one-on-one or with a particular section, such as DSA, to obtain service information.

It is clear from the record that sometime in March, Simmons conducted a meeting with Gonsior and 12 or 13 other employees targeted as likely separatees, which constituted a formal discussion under the Statute. The evidence shows that around 6:15 a.m. or 6:30 a.m. one late March morning, Gonsior was notified by his first-line supervisor, Ventureno, that he was not to go out to the field, but was to report to Simmons' office. Once he arrived at Simmons' office, Gonsior took a chair and sat with 12 to 13 other employees. Simmons began the meeting by stating that his purpose in calling the employees together was to inform them that as a result of the mock RIF, they were likely to be affected by the actual RIF. Simmons then went on to discuss how employees should watch their purchases and budgets to avoid financial binds. In addition, Simmons explained that he was trying to get Hill Air Force Base, the Activity funding Rivet Mile, to give him information about buyouts. The entire meeting lasted twenty minutes to one-half hour. The Union was not notified of this March meeting with the targeted unit employees as likely separatees in a RIF and was not present. Therefore, no Union representative was present.

Duck testified that his first-line supervisor, Krauer, notified his crew one afternoon in March that they would be meeting the following morning in the office of their second-line supervisor, Simmons. The meeting was mandatory and conducted in an area other than the employees' normal work site. According to Duck, Simmons announced the meeting was about the RIF. Simmons also asked each employee to tell him the number of years spent in military and civil service, and Simmons noted down each employee's answer.

While crediting Duck, that the DSA crew members were called to a meeting with Simmons, it is my view that the meeting about which he testified did not rise to the level of a formal discussion. Based on the record evidence, the undersigned can only conclude that if Duck did attend a group meeting with Simmons, that meeting was merely to obtain the service dates from employees who could have

potentially been affected by the RIF and Simmons did not discuss conditions of employment. Although it is not clear exactly why Simmons would need such information, Gonsior, it is also noted, said that Simmons sought the same information from him in a one-on-one meeting.

Simmons denied conducting any meetings following the mock RIF results other than one-on-one meetings with targeted employees whose names were set out on a handwritten list prepared by Schaefer. Yet, in his direct examination, Simmons recalled that there was a meeting involving "[a]ll of Rivet Mile concerning financial incentives. Gonsior, on the other hand, described not only the earlier small group meeting with 12 or 13 other employees potentially affected by a RIF, but also a second one-on-one meeting which he had with Simmons where he was asked privately about his years of federal service. The second meeting, as depicted by Gonsior, corresponds to the series of one-on-one meetings Simmons conducted with each targeted employee in his office around March 29 and 30, was personal to Gonsior's situation and was not alleged to be a formal discussion.⁷

Gonsior's testimony is sufficient, however, to demonstrate that a formal discussion concerning general working conditions, where the Union was not notified or given the opportunity to be represented occurred. Furthermore, Gonsior's recollection of two meetings with Simmons is partially corroborated by Duck's recollection of Simmons' meeting with another small group of the DSA crew. Duck however, made no mention of financial incentives, but recalled only the requests by Simmons for service information. Although Duck testifies that others were present during this small group meeting, it appears that the meeting about which he testified was akin to the one-on-one meetings conducted by Simmons where he sought individual employee's service dates. Therefore, it is more likely than not that Simmons, in addition to conducting one-on-one meetings personal to each targeted employee, also conducted at least one small group meeting sometime in March where he discussed financial incentives which constituted a formal discussion within the meaning of the Statute. Thus, it is found that Simmons did conduct a formal discussion with Gonsior and other employees in March, where the Union was not allowed an opportunity to be present, although he intended to and did discuss general working conditions.

Finally, it is found that if Duck attended a group meeting in March, it was a meeting not intended to discuss conditions of employment, but to obtain employee service dates. In my view, seeking such information from employees

is not violative of the Statute. Thus, it is found that the meeting held with Duck and the DSA group was limited to information seeking and was not, therefore, violative of the Statute.⁸

Accordingly, it is found that Respondent's failure to give the Union notice or the opportunity to be represented at a meeting involving 12 or 13 Rivet Mile employees that encompassed the elements of a formal discussion and concerned conditions of employment constituted a violation of section 7116(a)(1) and (8) of the Statute.

c. DE-CA-30791

The meeting held on or about May 25, 1993 with boiler plant operator and engineering management officials.

The essential facts surrounding the meeting held on or about May 25 are undisputed. Respondent maintains that this meeting was merely to disseminate information to the employees and not to discuss a condition of employment and therefore, lacked the requisite formality to satisfy Statutory requirements. I disagree with Respondent and find again that a briefing of employees eligible for the buyout incentive does constitute a discussion of a condition of employment.

Boiler plant operators were notified by supervisor Hollingsworth of the meeting conducted by CPO. Between 9:00 a.m. and 10:00 a.m., Cisler and Poulton, along with all other boiler plant operators not on leave, met with Hollingsworth, their first-line supervisor, and their upper level managers Kailey and Ziemen reported to the break room. Zakar and Prellwitz informed them that the subject of the meeting was the possibility of financial incentives up to \$25,000 for early separation to accommodate employees from Wurtsmith Air Force Base. Also, Zakar told employees that the offer was contingent upon whether an employee from Wurtsmith was interested in a permanent change of station to come to F.E. Warren. Zakar further warned employees that if they were interested in early separation, they must make that interest known by May 31 as she had to inform Wurtsmith by June 1. Finally, Zakar spoke using a copy of the message and the attached list she had received from Headquarters,

8

Internal Revenue Service, 19 FLRA 353 (1985), *enforced sub nom. NTEU v. FLRA*, 826 F.2d 14 (D.C. Cir. 1987); *Defense Depot Tracy*, 14 FLRA 475(1984).

Langley Air Force Base. The message and the list served as the agenda.⁹

At least one employee, Kissell, asked a question, and one management official, Kailey, joked about the possibility of his own early retirement. Even Prellwitz, Zakar's subordinate, interjected a thought or two. Although some dialogue occurred, such is not a requisite requirement of a formal discussion. Moreover, which employees attended and what, if any, interest they expressed about the possible separation incentive was somehow noted, because nearly two weeks after the meeting, at the request of a commander, Prellwitz was able to reconstruct the events of the meeting with boiler plant operators on May 26. The meeting lasted at least 15 minutes, and perhaps as long as 45 minutes. No Union representative attended.

Zakar admittedly did not inform the Union about this meeting. Furthermore, Zakar's testimony alone discloses not only the Statutory elements for a formal discussion, but all eight of the indicia of formality established by the Authority. There was a discussion, which was formal, between five representatives of management and several unit employees, concerning the Respondents' early separation procedures and the question of continued employment.¹⁰ The eight formality factors are met as follows: (1) Zakar and Prellwitz from CPO conducted a meeting with the employees' first-level supervisor, Hollingsworth; (2) Kailey and Zieman, second-level and third-level supervisors in the employees' supervisory hierarchy, also attended; (3) the meeting took place in the break room, not the employees' work site; (4) the meeting lasted 15 to 45 minutes; (5) the meeting was called by the first-level supervisor Hollingsworth who notified his employees the afternoon prior to the presentation; (6) Zakar used the message and the attached list from Headquarters, Langley Air Force Base, in addressing her remarks, as the formal agenda of the meeting; (7) employees' were informed in advance, that their attendance was not discretionary, but mandatory; (8) the meeting was conducted in a manner that made it possible for Zakar to prepare a handwritten list of interested employees, and the meeting was conducted in a manner to make it possible for Prellwitz, even two weeks after the event, to construct an outline of what was presented and which

9

Cf. Social Security Administration, 41 FLRA 1309, 1342 (1991).

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Defense Distribution Region West, 47 FLRA 1131 (1993).

employees expressed an interest in the separation incentives.¹¹

Accordingly, it is found that the meeting held on or about May 25, 1993 constituted a formal discussion within the meaning of section 7114(a)(2)(A) of the Statute and was held without giving the Union an opportunity to be represented and therefore, constituted a violation of section 7116(a)(1) and (8) of the Statute.¹²

ORDER

Pursuant to section 2423.29 of the Federal Labor Relations Authority's Rules and Regulations and section 7118 of the Statute, it is hereby ordered that the Department of the Air Force, F.E. Warren Air Force Base, Cheyenne, Wyoming, shall:

1. Cease and desist from:

(a) Conducting formal discussions with its employees in the bargaining unit exclusively represented by the American Federation of Government Employees, Local 2354, AFL-CIO concerning grievances or any personnel policy or practices or other general conditions of employment, including discussions of financial incentives for employees to retire or resign from their positions, without affording the American Federation of Government Employees, Local 2354, AFL-CIO prior notice of and the opportunity to be represented at the formal discussions.

(b) In any like or related manner, interfering with, restraining or coercing its employees in the exercise of their rights assured by the Federal Service Labor-Management Relations Statute.

2. Take the following affirmative action in order to effectuate the purposes and policies of the Federal Service Labor-Management Relations Statute:

(a) Notify the American Federation of Government Employees, Local 2354, AFL-CIO and afford it the opportunity to be represented at formal discussions concerning grievances or any personnel policy or practices or other general conditions of employment, including discussions of financial incentives for employees to retire or resign from their positions.

¹¹

Defense Distribution Region West, supra.

¹²

In light of the above disposition of these matters, the General Counsel's proposed remedy is deemed unwarranted.

(b) Post at its facilities in Cheyenne, Wyoming, 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 Officer, and shall be posted and maintained for 60 consecutive days thereafter, in conspicuous places, including all bulletin boards and other places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that such Notices are not altered, defaced, or covered by any other material.

(c) Pursuant to section 2423.30 of the Authority's Rules and Regulations, notify the Regional Director of the Denver Region, 1244 Speer Boulevard, Suite 100, Denver, CO 80204-3581, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

Issued, Washington, DC, March 30, 1995

ELI NASH, JR.
Administrative Law Judge

NOTICE TO ALL EMPLOYEES

AS ORDERED BY THE FEDERAL LABOR RELATIONS AUTHORITY

AND TO EFFECTUATE THE POLICIES OF THE

FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS STATUTE

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT conduct formal discussions our employees in the bargaining unit exclusively represented by the American Federation of Government Employees, Local 2354, AFL-CIO concerning grievances of any personnel policy or practices or other general conditions of employment, including discussions of financial incentives for employees to retire or resign from their positions, without affording the American Federation of Government Employees, Local 2354, AFL-CIO prior notice of and the opportunity to be represented at the formal discussions.

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

WE WILL notify the American Federation of Government Employees, Local 2354, AFL-CIO and afford it the opportunity to be represented at formal discussions concerning grievances or any personnel policy or practices or other general conditions of employment, including discussions of financial incentives for employees to retire or resign from their positions.

(Activity)

Dated: _____

By: _____

(Signature)

(Title)

This Notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material.

If employees have any questions concerning this Notice or compliance with any of its provisions, they may communicate directly with the Regional Director of the Federal Labor Relations Authority, Denver Region, 1244 Speer Boulevard,

Suite 100, Denver, CO 80204-3581, and whose telephone number is: (303) 844-5224.

CERTIFICATE OF SERVICE

I hereby certify that copies of this DECISION issued by ELI NASH, JR., Administrative Law Judge, in Case Nos. DE-CA-30519 and DE-CA-30791, were sent to the following parties in the manner indicated:

CERTIFIED MAIL:

Hazel Hanley, Esq.
Federal Labor Relations Authority
1244 Speer Boulevard, Suite 100
Denver, CO

Capt. Jeffery A. Rockwell
AFLSA/CLLO
1501 Wilson Boulevard
Arlington, VA 22209-2403

Ronald Phelps, President
American Federation of Government
Employees, Local 2354
P.O. Box 9604
F.E. Warren AFB, WY 82801

Kimberly D. Zakar
Labor Relations Specialist
90th Mission Support Squadron
Department of the Air Force
F.E. Warren AFB, WY 82801

Daniel Minahan
Minahan and Shapiro, P.C.
165 South Union Boulevard, Suite 366
Lakewood, CO 80228

REGULAR MAIL:

National President
American Federation of Government
Employees, AFL-CIO
80 F Street, NW
Washington, DC 20001

Dated: March 30, 1995
Washington, DC