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OFFICE OF ADMINISTRATIVE LAW JUDGES

WASHINGTON, D.C. 20424-0001

U.S. DEPARTMENT OF COMMERCE, NATIONAL OCEANIC AND ATMOSPHERIC
ADMINISTRATION, NATIONAL OCEAN SERVICE, RIVERDALE, MARYLAND

Respondent

and

Case No.
WA-CA-30981

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, Local 2640, AFL-CIO

Charging Party

Frances C. Silva

Counsel For the Respondent

Stephen G. De Nigris

Counsel For the General Counsel, FLRA

Before: GARVIN LEE OLIVER

Administrative Law Judge

DECISION

Statement of the Case

The unfair labor practice complaint alleges that Respondent violated section 7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute (the Statute), 5 U.S.C. §§ 7116(a)(1) and (5), on or about April 13, 1993 by changing the work schedules of certain bargaining unit employees without affording the Charging Party (Union) prior notice and an opportunity to bargain over the impact and implementation of the decision.

Respondent admits that it committed an unfair labor practice in violation of section 7116(a)(5) when a first-line supervisor changed the work schedules of some employees in the Distribution Branch without

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bargaining with the Union. Respondent also states that it "will not contest summary judgment on the 5 U.S.C. § 7116(a)(1) charge."

On February 18, 1994 Counsel for the General Counsel moved for summary judgment. The motion was referred to this Office by the Acting Regional Director and all parties were afforded an opportunity to respond to the motion.

Considering all the pleadings and exhibits, it appears that there are no genuine issues of material fact and that the General Counsel is entitled to summary judgment as a matter of law. Accordingly, I make the following findings of fact, conclusions of law, and recommendations.

Findings of Fact

The American Federation of Government Employees, Local 2640, AFL-CIO (AFGE or Union) is a labor organization under 5 U.S.C. § 7103(a)(4).

The Department of Commerce is an agency under 5 U.S.C. § 7103(a)(3). The National Oceanic and Atmospheric Administration (NOAA) is a primary national subdivision under 5 C.F.R. § 2421.5, and the National Ocean Service (NOS) is an activity under 5 C.F.R. § 2421.4. The Coast and Geodetic Survey (CGS) is a line office of NOS.

The original charge was filed by the Union with the Washington Regional Director on September 16, 1993. The first amended charge was filed by the Union on December 7, 1993.

A copy of the charge and first amended charge was served on the Respondent.

During the period covered by the complaint, Doris Gordon occupied the position of Supervisory Supply Technician, Accounting Order Processing Unit, Distribution Branch, Aeronautical Charting Division, CGS, NOS, NOAA.

During the time period covered by the complaint, Gordon was a supervisor under 5 U.S.C. §§ 7103(a)(10) and was acting on behalf of Respondent.

The Union is the exclusive representative of a unit of Respondent's employees appropriate for collective bargaining. The unit was described in a September 5, 1977 collective bargaining agreement as consisting "of all employees of the Reproduction Division and Distribution Division, Office of Aeronautical Charting and Cartography, National Ocean Survey, less supervisory personnel, and employees in the immediate office of the division chiefs." The chief representative signing for Respondent was the Director, National Ocean Survey, now known as the National Ocean Service. The Reproduction Division and Distribution Division are

now branches.

On or about April 13, 1993, Respondent, through Gordon, unilaterally changed the work schedules of certain bargaining unit employees.

The Union was not afforded any prior notice or opportunity to negotiate over the impact and implementation of the Respondent's decision to change bargaining unit employees' work schedules.

Discussion and Conclusions

The parties agree that there is no material issue of fact in dispute and that summary judgment is appropriate. Moreover, Respondent does not dispute, and I find, that it committed an unfair labor practice in violation of section 7116(a)(1) and (5) of the Statute on or about April 13, 1993 by unilaterally changing the work schedules of certain bargaining unit employees without providing the Union notice and an opportunity to bargain over the impact and implementation of the decision to change bargaining unit employees' work schedules.

The only issue that remains is what remedy is appropriate. The General Counsel seeks a remedial notice to employees to be signed by the Under Secretary of Commerce/ Administrator of NOAA, status quo ante relief, a bargaining order, and any other appropriate relief. The General Counsel seeks a notice signed by the Under Secretary of Commerce/Administrator of NOAA because this "is the third of several cases wherein the Respondent admits its unlawful conduct."

Respondent opposes this remedy. Respondent points out that it has admitted to unfair labor practice charges in three cases; all other charges have been denied and are as yet unadjudicated. Respondent claims that the level of recognition is at activity's branch level, the work schedule was changed by a first-line supervisor in the distribution branch, and there was no involvement in the admitted violation at the department, primary national subdivision, activity, division, or branch level. Respondent urges that the posting be signed by the distribution branch chief or, alternatively, by the division chief.

The Authority "has long held that the remedial purposes of a notice are best served by requiring the head of the activity responsible for the violation to sign the notice." Department of Health and Human Services, Regional Personnel Office, Seattle, Washington, 48 FLRA 410, 411 (1993). Accordingly, the purposes of the Statute would be served by imposing the normal requirement that the head of the activity, the NOAA Assistant Administrator for the National Ocean Service, sign the remedial notice. U.S. Department of Veterans Affairs, Washington, D.C., 48 FLRA 991, 992 (1993).

There is no evidence that a status quo ante remedy would disrupt or impair the efficiency and effectiveness of the agency's operations. Accordingly, after balancing the appropriate factors pursuant to Federal Correctional Institution, 8 FLRA 604, 606 (1982), I conclude that a status quo ante remedy is appropriate to best effectuate the purposes and policies of the Statute.

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

ORDER

Pursuant to section 2423.29 of the Federal Labor Relations Authority's Rules and Regulations and section 7118 of the Statute, it is hereby ordered that the U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Ocean Service, Riverdale, Maryland shall:

1. Cease and desist from:

(a) Changing the work schedules of employees in the bargaining unit represented by the American Federation of Government Employees, Local 2640, AFL-CIO (the Union), without providing the Union notice and an opportunity to bargain concerning the impact and implementation of the change.

(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) Rescind the change in the work schedules of bargaining unit employees in the Distribution Branch, Aeronautical Charting Division made on or about April 13, 1993 and restore the work schedules in effect prior to that change.

(b) Notify the American Federation of Government Employees, Local 2640, AFL-CIO, of any proposed change in the work schedules of bargaining unit employees and afford the Union an opportunity to bargain concerning the impact and implementation of the proposed change.

(c) Post at its facilities where bargaining unit employees represented by American Federation of Government Employees, Local 2640, AFL-CIO, are located copies of the attached Notice on forms to be furnished by the Federal Labor Relations Authority. Upon receipt of such forms, they shall be signed by the NOAA Assistant Administrator for the National Ocean Service 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.

(d) Pursuant to section 2423.30 of the Authority's Rules and Regulations, notify the Regional Director, of the Washington Region, 1255 22nd Street, NW, 4th Floor, Washington, DC 20037-1206, in writing, within

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30 days from the date of this Order, as to what steps have been taken to comply herewith.

Issued, Washington, DC, March 22, 1994

GARVIN LEE OLIVER

Administrative Law Judge

NOTICE TO ALL EMPLOYEES

AS ORDERED BY THE FEDERAL LABOR RELATIONS AUTHORITY

AND TO EFFECTUATE THE POLICIES OF THE

FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS STATUTE

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT change the work schedules of employees in the bargaining unit represented by the American Federation of Government Employees, Local 2640, AFL-CIO (the Union), without providing the Union notice and an opportunity to bargain concerning the impact and implementation of the change.

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 rescind the change in the work schedules of bargaining unit employees in the Distribution Branch, Aeronautical Charting Division made on or about April 13, 1993 and restore the work schedules in effect prior to that change.

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WE WILL notify the American Federation of Government Employees, Local 2640, AFL-CIO, of any proposed change in the work schedules of bargaining unit employees and afford the Union an opportunity to bargain concerning the impact and implementation of the proposed change.

(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, Washington Region, 1255 22nd Street, NW, 4th Floor, Washington, DC 20037-1206, and whose telephone number is: (202) 653-8500.

Dated: March 22, 1994

Washington, DC