OFFICE OF ADMINISTRATIVE LAW JUDGES

WASHINGTON, D.C. 20424-0001

U.S. DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

Respondent

and Case No. CH-CA-40240

AMERICAN FEDERATION OF GOVERNMENT

EMPLOYEES, LOCAL 2718, AFL-CIO

Charging Party

Marian M. Luisi

For the Respondent

Philip T. Roberts, Esquire

For the General Counsel

Rodolfo E. Medellin

For the Charging Party

Before: JESSE ETELSON

Administrative Law Judge

DECISION

Statement of the Case

The complaint alleges that the Respondent (INS), in its Chicago District Office, violated sections 7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute (the Statute) by refusing to bargain with the Charging Party (the Union) over the impact and implementation of a new work assignment to certain employees. INS denies that it made any new work assignments and further denies that it failed to give the Union an opportunity to bargain concerning the assignments.

A hearing was held in Chicago, Illinois, on October 20, 1994. Counsel for the General Counsel and for INS filed post- hearing briefs.

Findings of Fact

INS employees are in a nationwide bargaining unit with a master collective bargaining agreement. Their certified representative has delegated to the Union the authority to represent INS employees in the Chicago District Office for matters such as mid-term bargaining. This case concerns the assignment of "cashier duties" to employees called "information officers" (IO's) or "immigration information officers" (IIO's), formerly called "contact representatives." These are the employees who meet prospective clients or their family members--individuals who come into the INS office seeking information and "benefits," such as "naturalization" or the "green card."

The first IO whom the prospective client meets directs her or him to another IO who is responsible for overseeing the preparation of, and reviewing when completed, the appropriate petition or application. Upon ascertaining that the petitions or applications contain all the necessary information, the IO stamps the "packet," indicating the amount of fees or charges that are required for filing, and directs the clients to the cashier booths to pay such amounts.

Before the alleged change in their work assignments the IO's, although they had signed forms acknowledging that they were personally accountable for any "Government Money (cash and/or checks)" under their control, had no occasion to handle cash. They did, however, receive some applications by mail, in which cases they handled non-cash remittances, such as checks or money orders, that accompanied the applications. Such handling took up between two and five percent of the time of an IO.

Until 1992, the Chicago District Office employed "cash clerks" who occupied the cashier booths and received all of the fees and charges paid by clients who filed their papers in person. There had been two cash clerks. Each of them left, apparently sometime around June 1992. Because of a hiring freeze, neither of them was replaced. Instead, some file clerks were given their duties. The Union filed one or more grievances in 1993 on behalf of file clerk Donna Leslie, seeking what it considered to be a more equitable distribution of the cashier duties. For reasons to be discussed below, many employees did not welcome these duties. In August 1993, the Union official who was representing Leslie was informed that INS planned to "detail" IO's into cash clerk positions. In fact, INS had begun to train IO's in July 1993 to perform cash clerk duties. Each IO was given a two-week training session, in rotation.

On November 23, 1993, INS posted the assignment schedule for IO's for the period of November 29 to December 11. Each IO was assigned to a specific booth or desk. For the first time, an IO was assigned for regular (post-training) duty in the cashier's booth for the two-week period.

On December 17, the Union's president, Rodolfo Medellin wrote to INS District Director A. D. Moyer, requesting "Impact Bargaining" pursuant to the parties' master agreement, "under Article 9, pertaining to the Cashier Booth position(s)." Medellin's letter explained that the Union believed "that Management has made a decision to permanently rotate and/or place Immigration Information Officers in this position." Medellin then restated the bargaining request as one for "formal negotiations . . . on the proposed change(s) and its impact on the bargaining unit 'employee'." (G.C. Exh. 5.)

On December 28, District Director Moyer responded to President Medellin. He stated that the Union had been informed on October 7, in INS' response to one of the grievances mentioned above, that the IO's were being trained and rotated to work in the cash clerk area, work that "has always been a part of their duties and responsibilities as stated in their job description." Moyer confirmed that the vacant cash clerk positions would not be filled and that IO's would be performing those duties. The letter ends:

> If there are any special concerns the Union has regarding these duties, please let me know.
>
> However, at the present time, no formal negotiations are necessary and therefore, your
>
> request is denied. (G.C. Exh. 6.)

Director Moyer's letter appears actually to have been signed by Deputy District Director Brian Perryman, who corroborated in his testimony at the hearing that cash clerk duties constitute part of the job description of the IO's. However, this representation appears to be in error. General Counsel's Exhibit 3 is a position description, certified in 1991, for the position of contact representative. Except for the statement that such an employee, after accepting an application from an applicant found to be qualified for the benefits sought, "requires the payment of fees," there is no reference to any duties relating to the handling of fees or other charges. The duty of requiring payment of fees appears to describe the entering on the packet the amount of fees to be paid to a cash clerk. This position description is the only one in the record that purports to relate to the District Office employees now known as IO's.

When performing cash clerk, or cashier booth, duties, the IO's receive cash, checks, and money orders from the clients. They are responsible for all receipts, which usually are stored in the cashier booth during the work shift. At the end of the shift, all cash must be sorted, counted, and the amount verified by a supervisor to whom the receipts are turned over. IO's who testified at the hearing stated that they experienced stress from the responsibility of accounting for the money and from the delays of up to 45 minutes in serving waiting clients when the cash registers needed to be restocked. The IO's also had security concerns because each shared a cashier booth with another employee, and there was some question as to whether each could adequately and conveniently secure her cash register during breaks outside the booth. Some months after the IO's were assigned cashier duties they were issued personal safes to keep money when they had to leave the booths.

IO's wore distinctive uniforms. This made them recognizable as IO's even when they were acting as cashiers. On occasion, then, clients approached them for information, sometimes while the IO was engaged in a transaction with a cashier client, instead of going to an IO who was on regular IO duty, thereby interfering with the duties of the IO in the cashier booth.

Discussion and Conclusions

Applicable Principles in General

An agency must negotiate with the exclusive representa-tive over changes in unit employees' conditions of employment, except as provided otherwise by Federal law, Government-wide rule or regulation, or agency regulations for which a compelling need exists. Even if the decision to effect the change in conditions of employment is outside the duty to bargain, an agency must bargain about the impact and implementation of a

change that has more than a *de minimis* impact on unit employees' conditions of employment. *U.S. Department of the Treasury, Customs Service, Washington, D.C.,* 38 FLRA 875, 880 (1990). The duty to bargain requires that the exclusive representative be given notice and the **opportunity** to negotiate. The notice provided to a union must be sufficiently specific or definitive regarding the actual change contemplated so as to adequately provide the union with a reasonable opportunity to request bargaining. *Ogden Air Logistics Center, Hill Air Force Base, Utah*, 41 FLRA 690, 698 (1991) (*Ogden ALC).* The exclusive representative may **waive** its right to bargain, provided that such waiver is clear and unmistakable. *Department of the Air Force, Scott Air Force Base, Illinois,* 5 FLRA 9 (1981). And even in the absence of a waiver, the duty to bargain over a particular matter is satisfied to the extent that the parties' collective bargaining agreement already "covers" that matter. *U.S. Department of Health and Human Services, Social Security Administration, Baltimore, Maryland*, 47 FLRA 1004 (1993)(*SSA*).

Duty to Bargain Concerning a Change of this Nature

With regard to the negotiability of the impact and implementation of the change of assignment here, it is difficult to dispute that there was a change in the conditions of employment of the IO's and that this change had more than a *de minimis* impact on them. As noted above, INS' assertion that cashier duties were always part of these employees' job descriptions is not supported by the record. But even if their official position descriptions could be read as including cashier-type duties, it is undisputed that until they were trained to take over the cashier booths in 1993, they had handled no cash. Their connection with the collection of fees was the stamping of the amounts due and the occasional receipt of checks and money orders accompanying mailed applications. Their assignment to the cashier booths unquestionably changed a condition of their employment.

That this change had more than a *de minimis* impact, as the Authority uses that term, is almost self-evident. Thus, the Authority has made clear that, to be more than *de minimis*, the effect of a change need not be "substantial." *United States Immigration and Naturalization Service, United States Border Patrol, Del Rio, Texas*, 47 FLRA 225, 231 (1993); *Portsmouth Naval Shipyard, Portsmouth, New Hampshire,* 45 FLRA 574, 575 n.2 (1992). The Authority's standard is based on the common law doctrine, *de minimis non curat lex*, "which is translated to mean the law does not care for, or take notice of, very small or trifling matters; the law does not concern itself about trifles." *Department of Health and Human Services, Social Security Administration*, 24 FLRA 403, 407 n.2 (1986). It can hardly be argued that a change of assignments, for intermittent two-week periods, is a trifling matter for an employee. The Authority recognized in *U.S. Department of Health and Human Services, Social Security Administration, Baltimore, Maryland*, 41 FLRA 1309, 1318 (1991), that a change in the distribution of work, so that each employee had a different mix of matters to work on, can in itself be more than *de minimis*. Analogously, the Authority has held that changing the days on which an employee is required to report to work has more than a *de minimis* effect on the employee's working conditions. *Veterans Administration Medical Center, Prescott, Arizona*, 46 FLRA 471, 475 (1992).

Moreover, the fact that these employees now actually had cash, in substantial amounts, to account for, made demands on them of a kind that had not existed before. This new condition placed them in at least some danger of having to repay shortages found on their shifts. Other possible consequences of missing cash need no elaboration. The assignment, therefore, placed them, at least in one sense, in a "more dangerous work environment." *See United States Customs Service, Southwest Region, El Paso, Texas*, 44 FLRA 1128, 1129 n.2, 1140 (1992). I conclude that the impact of this new work assignment was more than *de minimis* and that

the Union had a right to bargain over its impact and implementation.

The Parties' Respective Responsibilities to Initiate Bargaining

INS contends that the Union waited too long to request bargaining because it knew of management's intention to make these assignments on August 23, 1993, and because the Union had never before asked to negotiate when INS rotated other employees into the cash clerk positions. I do not conclude that the Union gave up its right to bargain by failing to request negotiations earlier. If this failure is to be deemed a **waiver**, it must have been clear and unmistakable.

What occurred on August 23, according to INS witness Bridget Josey, was that Union representative David Harding came up to her while she was working and asked her whether any steps had been taken to relieve file clerk Donna Leslie from the cashier duties to which she had been assigned on a detail. Josey stated that she told Harding that INS planned to relieve the file clerks of these duties by "detailing" the contact representatives-IO's to perform those duties.

This casual notification that some IO's would be assigned to some cashier duties was insufficient to require the Union to act at that point to request negotiations, at the risk of waiver, concerning any future assignments of IO's to cashier duties. It was not apparent from Josey's statement to Harding that a change of indeterminate duration was intended. The term, "detail," suggests that it would be a one-time limited assignment.(1) Medellin testified that the Union had no problem with a detail, and it neither grieved nor requested negotiations. The Union was entitled to forego bargaining over a temporary change of that kind without waiving its right to bargain over the change that occurred, without further notice to the Union, in November. *See Department of the Air Force, Nellis Air Force Base, Nevada*, 41 FLRA 1011, 1016 (1991)(*Nellis AFB*).

I must reject INS' contention that the November posting of a scheduled cashier booth assignment for an IO was simply a continuation of the rotated training details that began in July. Whether or not the new posted assignments were intended to be "permanent," Perryman conceded that at the time they were implemented, management had to assume they would continue "for the foreseeable future" (Tr. 103-04). They were, therefore, not intended to be limited to a single assignment for each IO, the more usual connotation of the term "detail," and consistent with the parties' contractual definitions distinguishing "detail" from "rotation." *See n.1 supra.*(2)

Equally persuasive is the absence of evidence that Harding was the Union official designated to receive notice of matters that might give rise to negotiations. Harding's role at the time he spoke to Josey was that of grievance represen-tative. Moreover, Josey's role was merely that of the supervisor to whom the grievance was to be addressed. Nothing in their conversation indicated that she was informing him, on behalf of INS, of a matter that might be subject to negotia-tion. Nor is Harding, an employee who happens to be a Union official, chargeable with knowing the legal ramifications of Josey's statement, if any. While the Authority has, in some cases, found that a union waived its right to bargain by failure to respond to what amounted to an invitation by the agency to submit proposals, or at least to take a position with respect to proposed changes, this case does not present such a situation.(3)

Nor is the situation changed by Medellin's receipt, according to Moyer's December 28 letter, of a Step II response to file clerk Donna Leslie's grievance, stating in part that: "All the Immigration Information Officers (I.I.O.) are currently being trained and rotated to work in the Cash Clerk fee receipt area and, once each I.I.O. has been trained, no clerical details will be foreseen." That information was also insufficient to give the Union a clear indication of management's intention to effect anything more than the "detailing" that Josey had mentioned to Harding. *Cf. Ogden ALC, supra, at 699* (notice to union insufficiently clear and precise when it specified neither the number of employees to be affected, the expected date of the actions, nor the scope of an announced furlough). Indeed, the substitution of IO's for "clerical details" suggests that the IO's assignments would also be "details."

The context in which this information was conveyed also fails to support the conclusion that it triggered a necessary response on the Union's part. The Union received it in the course of the processing of an individual's grievance. Combined with its lack of clarity, the form this communication took detracts from any supposed indication that it served as a notification from management that it was proposing a negotiable or arguably negotiable change. *See n.3 supra.*

While there may be circumstances in which a union acts at its peril in ignoring information that comes to its attention from any source, I conclude in this case that its actions fall short of constituting a clear and unmistakable waiver of its right to bargain. Neither does the Union's failure to request negotiations over previous details of employees to perform cashier duties extinguish its right to demand bargaining in this instance. *Nellis AFB, supra.*

The "Covered by" Defense

INS contends that the assignment of the IO's to the cash clerk positions was "covered by" Article 28 of the contract and therefore not subject to any further bargaining obligation. To establish a "covered by" defense, a party must show that the matter in dispute is encompassed by the contract, either expressly or by being inseparably bound up with a subject expressly covered by a contractual provision, in that it is "so commonly considered to be an aspect of the matter set forth in the provision that the negotiations are presumed to have foreclosed further bargaining over the matter[.]" *SSA, supra,* at 1018.

Article 28 of the collective bargaining agreement provides, in part, that:

(1) The employer retains the right to assign, reassign, . . . and detail employees; to assign work and to determine the personnel by which Service operations shall be conducted; and to determine the numbers, types, and grades of employees assigned to any organizational subdivision, work project, or tour of duty.

(2) The employer shall exercise the authorities set forth above:

(1) in accordance with applicable law, appropriate regulations, and this Agreement.

The subject of this case is INS' obligation, or not, to bargain about the impact and implementation of the change in assignments. The quoted language of Article 28 does not, in my view, cover this subject. What it does cover is management's right to make the change in assignments that it did. These provisions of Article 28 are similar, though not identical, to section 7106(a), the management rights section of the Statute. It is well and long established that exercise of those statutory management rights is subject to the obligation to bargain over those matters set forth in subsections (b)(2) and (3) of section 7106, matters that have acquired the familiar name of "impact and implementation." Given the well understood duty to bargain over "impact and implementation" when those statutory management rights are exercised, the grant of similar management rights in a contract cannot reasonably be construed, by itself, as intending to foreclose "impact and implementation" bargaining when such contractual rights are exercised.

Other provisions of Article 28 deal with some "impact and implementation" issues in connection with details. Thus, there are provisions for advance notice to employees, handling of details to higher graded positions in accordance with the Merit Promotion and Reassignment Plan, and for certain procedures concerning selection for details, the consequences of details with respect to the detailed employee's standing, and the grievability of details. (Resp. Exh. 2, Article 28, paragraphs C, D, and E.) Agreement on these provisions at least arguably forecloses further bargaining regarding the exercise of the management right to detail employees. *See SSA at 1018-19.*

As I have found, however, the November implementation of a policy of assigning IO's to regular rotations in the cashier booths contemplated something other than a series of "details" for each IO. I find it unnecessary to decide whether these assignments meet the contractual definition of "rotation."[(4)] It is the contrast between the phrase, "temporary assignment," in the parties' definition of "detail," and the phrase, "recurring assignment", used in the definition of a "rotation," that persuades me most directly that contractual "details" are understood to be one-time assignments for each detailee.[(5)] Article 28 contains no "impact and implementation" provisions for assignments made pursuant to that article except for details. I conclude, therefore, that nothing within Article 28, standing alone, relieves INS of its bargaining obligation.

Article 28's management rights are expressly directed to be exercised "in accordance with "applicable law, appropriate regulations, and this Agreement." The final item (the first two being essentially what section 7106(a)(1) provides) leads me to consider the effect of Article 9 of the agreement, which, as quoted in n.3 above, specifically calls for impact and mid-term bargaining on certain changes concerning matters that "are not covered by this Agreement." Since, as I have concluded, Article 28's management rights include the assignment of IO's to the cashier booths, the assignments were changes concerning matters that **are** covered by the agreement. It is arguable that Article 9, by "covering" the subject of impact bargaining, **limits** impact bargaining to subjects that are **not** covered and therefore, read together with Article 28, exhausts INS' bargaining obligation.

While at first blush Article 9 seems to address the kind of "impact" bargaining in dispute here, albeit somewhat ambiguously, I conclude on further analysis that it does not. The language, "not covered by this Agreement" is usually associated with mid-term bargaining, which Article 9 addresses, but is not usually associated with impact bargaining, with which Article 9 lumps it. A closer reading of Article 9 reveals, to my satisfaction, that its subject is full-fledged mid-term bargaining over the **substance** of changes in matters not covered by the agreement, and such impact bargaining as the Union desires in addition to or in lieu of substance bargaining concerning such matters. The "impact" bargaining addressed there is only impact

bargaining that is incidental to substance bargaining. Thus, Article 9, paragraph A, speaks of "changes [management] wishes to make," of "the proposed change", and of the Union's presentation of "its views and concerns (which must be responsive to either the proposed change or the impact of the proposed change)[.]" Article 9 does not speak of independent "impact" or "implementation" bargaining over changes that management is authorized to make without bargaining over their substance. Since it does not, I find it unreasonable to suppose that, without saying so specifically, the parties consciously and mutually intended to do here what they did not do in Article 28--to extinguish the right to bargain over the "impact and implementation" of changes made pursuant to management's right to change "covered" matters. I conclude rather that Article 9 has nothing to do with this kind of "impact and implementation" bargaining.

I reach this conclusion in the face of the fact that Union President Medellin, evidently thinking that Article 9 was applicable, made his request to bargain pursuant to that article. Article 9 is part of a national master agreement. Medellin, the local Union president, was not shown to have any special insight into the intention of the national negotiators.(6) His bargaining request may or may not have represented the parties' practice concerning Article 9. The contract was signed only a month before the bargaining request, and there is no evidence as to whether any previous contract contained anything comparable to Article 9. Moreover, it would not be inconsistent with my conclusion for the parties to have adopted the bargaining **procedures** set forth in Article 9 when conducting "impact and implementation" bargaining for which the contract sets forth no separate set of procedures. Thus, Medellin's request, as restated in the second paragraph of his letter, is for formal negotiations "on the proposed change(s) and its impact on the bargaining unit 'employee' *[sic]*. The negotiations will be conducted pursuant to Article 9 of the 'Agreement'."(7)

INS also contends that its "covered by" defense is supported by the Chicago Regional Director's dismissal of a charge filed by the Union against INS alleging, among other things, an unlawful refusal to bargain when detailing deportation officers to work as IO's. The Regional Director concluded in that case that the subject matter was covered by Article 28 of the contract. Aside from the fact that I have concluded that the instant case does not involve Article 28 "details," the Regional Director's dismissal prevents neither him from issuing a complaint nor the Authority from reaching a different conclusion than the Regional Director previously did, when a new case arises.

I conclude, in sum, that INS violated section 7116(a)(1) and (5) of the Statute by refusing to bargain with the Union.

The Remedy

Counsel for the General Counsel requests affirmative relief in the form of restoration of the *status quo ante. Federal Correctional Institution*, 8 FLRA 604 (1982), requires a case-by-case analysis of the circumstances to determine the appropriateness of such a remedy, considering factors such as those I shall discuss here. INS provided a form of notice to the Union, but I have found that it was inadequate. The Union requested bargaining when it learned of the change that it considered to have occurred in November. INS then refused that request, giving some reasons immediately and further reasons in the following months. I am unable to say that INS acted in other than a good faith belief that it was not obligated to bargain. Thus I cannot conclude that it willfully failed to discharge its bargaining obligation. The impact experienced by the adversely affected IO's was, as discussed above, a certain additional stress and risk. However, the demands of the cash clerk duties were no more than those ordinarily made on employees who did not necessarily possess any special skills. Finally, since, someone must perform these duties, restoring the *status quo ante* by removing these

duties from the IO's would disrupt the efficiency and effectiveness of the office's operations. Assignment of other unit employees would entail the same bargaining obligations as are operable here. Hiring of new employees is not something that seems indicated here, even assuming that there are circumstances in which the Authority might properly take action that has the effect of overriding a hiring freeze.

Counsel for the General Counsel also requests an affirmative remedy of making whole any IO's who have suffered monetary loss as a result of the change in assignment. I assume that what this means, since no other monetary loss was mentioned in the record, is that any IO's who had to make restitution for missing cash should be reimbursed. In any event, counsel has only made the request and has not further explained it. The problem with this requested remedy is that, although it may be reasonable to begin with the presumption that cash shortages were accidental, reimbursement would be inappropriate without giving INS an opportunity to show that they were not, in which case the employee would not be made whole but be enriched. Granting the remedy with that condition would open the door to further disputes that would predictably have exactly the opposite effect from that which the Statute is designed to promote. Further, as stated above, the IO's were only subjected to conditions that other employees had previously endured as a regular incident of their positions.

I therefore deny these requests and recommend to the Authority only the usual cease-and-desist, bargaining, and posting provisions as contained in the following recommended order.[8]

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 Justice, Immigration and Naturalization Service, shall:

1. Cease and desist from:

(a) Failing and refusing to bargain with American Federation of Government Employees, Local 2718, AFL-CIO, the agent of the exclusive representative of its employees, over the impact and implementation of the rotation of immigration information officers into cashier positions formerly held by cash clerks.

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

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

(a) Bargain with American Federation of Government Employees, Local 2718, AFL-CIO, over the impact and implementation of the rotation of immigration information officers into cashier positions.

(b) Post at its facilities in Chicago, Illinois, 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 District Director of the Chicago District Office, 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 Chicago Region, 55 West Monroe, Suite 1150, Chicago, IL 60603-9729, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply.

Issued, Washington, D.C., January 13, 1995.

JESSE ETELSON

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 fail and refuse to bargain with American Federation of Government Employees, Local 2718, AFL-CIO, the agent of the exclusive representative of our employees, over the impact and implementation of the rotation of immigration information officers into cashier positions.

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 bargain with American Federation of Government Employees, Local 2718, AFL-CIO, over the impact and implementation of the rotation of immigration information officers into cashier positions.

_____

(Agency or Activity)

Date: _____ By: _____

(Signature) (Title)

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

If employees have any questions concerning this Notice or compliance with any of its provisions, they may communicate directly with the Regional Director of the Federal Labor Relations Authority, Chicago Region, 55 West Monroe, Suite 1150, Chicago, IL 60603-9729, and whose telephone number is: (312) 353-6306.

1. Article 28 of the parties' collective bargaining agreement defines the terms, "detail," and "rotation":

Detail: Temporary assignment of an employee to a different position, work location, or post of duty without change of pay regardless of grade, for a specified period, with the employee returning to his assigned position at the end of the detail.

Rotation: The recurring assignment of employees to different work locations, work shifts and/or tours of duty within the confines of the employees' work location or other locations to which the employees are regularly assigned.

2. Acceptance of the argument that the cashier assignments begun in November were merely a series of details, recurring for each IO when his or her turn came in rotation, would mean that virtually any change of assignment short of a permanent position change would fit within the definition of a detail. Had the parties intended this, it seems unlikely that they would have gone to the trouble of separately defining, as they did, "temporary assignments," "details," and "rotations" for the purposes of Article 28. Were the definition of "detail" interpreted as broadly as INS' argument requires, the further drafting of a definition for "rotation" would seem particu-larly pointless inasmuch as Article 28 contains no further reference to "rotation." Its definition, therefore, serves no purpose if not to differentiate it from a detail.

3. The collective bargaining agreement, in "Article 9 - Impact Bargaining and Mid-Term Bargaining," provides that when, during the life of the agreement, the need arises for changes in "existing regulations covering personnel policies, practices, and/or working conditions not covered by this Agreement," management "shall present the changes and explanation of the changes it wishes to make to existing rules, regulations, and, existing practices to the Union in writing. . . . The Service will also state in its opinion whether the proposed change is National, Regional or District-wide in scope. The Union will present its views and concerns (which must be responsive to either the proposed change or the impact of the proposed change) within a set time after receiving notice from Management of the proposed change."

I believe this language gives some indication of the understanding of parties to a collective bargaining relationship with respect to how bargaining about proposed mid-term changes proceeds. I have concluded below, however, that Article 9 does not "cover" bargaining over the changes at issue in this case.

4. The contract does not define "rotation" expressly in terms of assignment to different kinds of work. The definition covers recurring assignments to "different work locations," but it is not clear whether this includes different work stations within the same office. On the other hand, the IO assignments here might be regarded as "tours of duty," which the definition covers. *See n.1, supra.*

5. *See nn. 1 and 2, supra*, and related text.

6. No evidence was presented at all concerning the bargaining history of this contract.

7. Medellin's reliance on Article 9, even if in error, is not fatal to his bargaining request. He adequately asserted the Union's right to bargain, and need not have been lawyerly in articulating either the basis for that right or the scope of the bargaining the Statute requires. Further, as Counsel for the General Counsel suggests, the Union may not have been required to request bargaining at all after learning of an already implemented unilateral change.

8. I have departed from the language of the traditional bargaining order by omitting the usual opening phrase, "[u]pon request." Where, as here, the Union has already requested bargaining, I recommend that the Authority not require a second request.