

OFFICE OF ADMINISTRATIVE LAW JUDGES

WASHINGTON, D.C. 20424-0001

ARMY AND AIR FORCE EXCHANGE SERVICE

DALLAS, TEXAS

Respondent

and

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL
2921

Case No. DA-CA-60530

Charging Party

Ronnie D. Compton, Esquire

Mr. Robert Tompkins

For the Respondent

Ms. Madonna Sterling

For the Charging Party

Kerry J. Simpson, Esquire

For the General Counsel

Before: WILLIAM B. DEVANEY

Administrative Law Judge

DECISION

Statement of the Case

This proceeding, under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the United States Code, 5 U.S.C. § 7101, et seq. ⁽¹⁾, and the Rules and Regulations issued thereunder, 5 C.F.R. § 2423.1, et seq., concerns whether Respondent refused to bargain regarding implementation of a RIF and/or whether Respondent implemented the RIF without providing the Union with an opportunity to negotiate to the extent required, all in violation of §§ 16(a)(5) and (1) of the Statute.

This case was initiated by a charge filed on June 24, 1996 (G.C. Exh. 1(a)), which alleged violation of §§ 16(a)(1), (5) and (8) of the Statute. The Complaint and Notice of Hearing issued on March 31, 1997, alleged violation only of §§ 16(a)(5) and (1), and set the hearing for July 18, 1997, at a place to be determined in Dallas, Texas. (G.C. Exh. 1(c)) By Notice dated July 9, 1997, the place of hearing was fixed (G.C. Exh. 1(e)) and the hearing was duly held on July 18, 1997, in Dallas, Texas, before the undersigned. All parties were represented at the hearing, were afforded the opportunity to be heard, to introduce evidence bearing on the issues involved, and were afforded the opportunity to present oral argument which each party waived. At the conclusion of the hearing, August 18, 1997, was set for the mailing of post-hearing briefs and Respondent and General Counsel each timely mailed an excellent brief, received on, or before, August 20, 1997, which have been carefully considered. Upon the basis of the entire record⁽²⁾, including my observation of the witnesses and their demeanor, I make the following findings and conclusions:

FINDINGS

1. The American Federation of Government Employees (AFGE) is the exclusive representative of a world-wide consolidated unit of employees appropriate for collective bargaining, including those at the Army and Air Force Exchange Service, Dallas, Texas (hereinafter, "Respondent").

2. American Federation of Government Employees, Local 2921 (hereinafter, "Union"), is an agent of AFGE for the representation of employees at Respondent's facility at the Naval Air Station, Joint Reserve Base Exchange.

3. Article 23 of the parties' Master Labor Agreement, entitled, "Reduction in Force", deals extensively with RIFs and provides, in part,

as follows:

"Section 2. A RIF action will not be taken until the affected positions have been identified by job title and a formal determination has been made that the work force be reduced due to one or more of the following:

- a. Reorganization (. . .);
- b. Excessive personnel costs;

...

- d. Consolidation;
- e. Transfer of function;

...."

"Section 3. As early as possible, but at least 60 calendar days before the effective date of a RIF, the Employer will provide the Union with preliminary written notice which includes the purpose and nature of the RIF, the location and types of positions to be affected and the number of positions at each location. The Employer will consider any suggestions made by the Union to lessen the adverse effects of the RIF. Management further agrees, if requested by the Local Union, to undertake bargaining in accordance with law and this Master Agreement.

"Section 4. As a minimum Management commits itself to impact and implementation bargaining in the following areas:

. . .

b. Procedures for employees who receive RIF notices to review retention rosters, with their Union Representative.

c. Procedures to afford the Union the opportunity to review and comment on the final retention rosters prior to issuance of advance notices

. . ." (Jt. Exh. 22).

4. On May 13, 1996, Respondent gave the Union notice of its intent to implement a Reduction In Force (RIF) at its Naval Air Station Joint Reserve Base Exchange, which is located at Fort Worth, Texas (Jt. Exh. 1). The notice informed the Union, ". . . that a formal determination had been made to reorganize and consolidate the accounting function within the NAS Ft. Worth JRB Exchange"; the job title, grade, category of each title, grade, category and location affected. This letter set out the effective date of the RIF as July 13, 1996; advised the Union that, in accordance with the Master Agreement, Army and Air Force Regulations AR60-21/AFR 147-15 and Exchange Operating Procedure (EOP) 15-10, RIF retention rosters were being developed; that it was anticipated that adversely affected employees would be notified during the week of June 10, 1996; and notified the Union to direct any questions to Ms. Kristine GroenenBoom, Manager, Human Resources (Jt. Exh. 1).⁽³⁾

5. By letter dated May 14, 1996, Ms. Katherine Conley, President of the Union, made a timely, ". . . demand to bargain the impact and implementation of the impending RIF" and requested that Respondent, ". . . contact me . . . to negotiate the ground rules for the above bargaining." (Jt. Exh. 2).

6. By letter dated May 17, 1996, Ms. GroenenBoom acknowledged receipt of Ms. Conley's letter of May 14 and responded, in part, as follows:

"I am available to meet with the Union on Tuesday, 28

May 1996, 0900 in my office, to discuss or negotiate such matters. Please submit your written proposals to the undersigned not later than COB 22 May" (Jt. Exh. 3)

7. Monday, May 27, 1996, the day before the suggested meeting, was a Federal holiday (Memorial Day). Ms. Conley called Ms. GroenenBoom sometime after 9:00 a.m. on May 28th (Tr. 192) and told her, ". . . she was unable to make the meeting because she was too busy." (Tr. 192, 204) and Ms. GroenenBoom credibly testified that, ". . . I offered if she was not available on that day, that I'd be willing to meet any other time . . . Ms. Conley never made any effort to contact me." (Tr. 207); nor did Ms. Conley on May 28 propose any alternate date (Tr. 195). At no time did the Union request any of the RIF documents (Tr. 195).

With full knowledge that it would not be received until the next work day (Tr. 37) -- May 28 --, on Saturday, May 25, 1996, Ms. Conley sent a letter to Ms. GroenenBoom. Because of disagreement as to the meaning of her letter, it is set out in full, as follows:

"The meeting the Union requested to negotiate ground

rules for the Impact and Implementation Bargaining for the upcoming RIF at your location must be on a mutually agreed upon date and time. One of the topics of discussion could be when I & I Bargaining proposals are to be presented.

"I have designated the following persons to represent the

Union in this matter:

Tim Peters

Queen Evora

"I have also requested Madonna Sterling to participate in the above meetings, and she will have the full authority of Local 2921 to do so.

"Please contact Mr Tim Peters at your earliest convenience

to arrange for a mutually accepted day and time to begin ground rules negotiations." (Jt. Exh. 4).

Although Ms. Conley insisted that her letter of May 25 named Ms. Madonna Sterling as the Union's Chief Negotiator (Tr. 37), plainly it did not. Indeed, from the sentence, "Please contact Mr Tim Peters . . . to arrange for a . . . time to begin ground rules negotiations", the letter seemed to name Mr. Peters as the Union's Chief Negotiator.

8. Ms. Conley did not tell Mr. Peters or Ms. Queen Evora, or Ms. Sterling of Respondent's May 17, 1996, letter (Jt. Exh. 3) which set May 28, 1996, as the suggested date to begin negotiations (Tr. 104, 108, 117, 118, 125); nor did Ms. Conley tell Mr. Peters or Ms. Evora or Ms. Sterling that she was designating them to be negotiators before sending her letter of May 25, 1996 (Tr. 104, 115, 117, 118, 129). Although Ms. Conley testified that she asked Ms. Sterling on May 15, 1996, to be Chief Negotiator; that Ms. Sterling told her she would have to check her calendar; that Ms. Sterling called her back on May 16 or 17 and Ms. Conley said that by Friday, May 17, she knew that Ms. Sterling would be the Chief Negotiator (Tr. 55), Ms. Sterling testified that Ms. Conley had faxed a copy of her demand to bargain (Jt. Exh. 2; Tr. 124); that Ms. Conley, ". . . was going to handle the situation" (Tr. 125); that Ms. Conley talked to her on May 29 or 30 about being Chief Negotiator and that Mr. Peters and Ms. Evora would be on her team (Tr. 126, 129). Ms. Sterling told Ms. Conley her letter of May 25 was, ". . . a little lacking because it says that I will be participating" (Tr. 127). Ms. Sterling said Ms. Conley told her she had told Ms. GroenenBoom that she [Sterling] would be the Chief Negotiator (Tr. 127). Ms. GroenenBoom testified that Ms. Conley did not, in their telephone conversation of May 28, tell her that Madonna Sterling was the Chief Negotiator (Tr. 193, 206) and her memorandum of the conversation (Jt. Exh. 5; Tr. 193) shows in this regard that Ms. Conley, ". . . indicated that she was too busy to work on the RIF and that she had requested that Ms. Sterling be at the bargaining table with Tim Peters and Queen Evora" (Jt. Exh. 5).

I credit Ms. GroenenBoom's testimony and do not credit Ms. Conley's testimony for a number of reasons. First, I found Ms. GroenenBoom to be a

wholly credible witness. Second, Ms. Sterling's testimony shows that Ms. Conley did not speak to her about acting as chief negotiator until after her letter of May 25 and after her conversation with Ms. GroenenBoom. Further, the fact that she had not talked to Ms. Sterling about acting as chief negotiator explains the reference in her May 25 letter that she had requested Ms. Sterling to participate. Accordingly, I find that Ms. Conley did not tell Ms. GroenenBoom that Ms. Sterling was to be the Union's chief negotiator; that Ms. Conley told Ms. GroenenBoom she was unable to make the meeting because she was too busy and had designated Mr. Peters and Ms. Evora to be at the bargaining table; and Ms. Conley suggested no alternate date or dates to meet.

9. Ms. GroenenBoom well knew that Ms. Conley's letter of May 25, 1996, stated, "Please contact Mr Tim Peters . . . to arrange for a mutually accepted day and time to begin ground rules negotiations." (Jt. Exh. 4) and she did not (Tr. 205). Nor did Mr. Peters after May 28 make any effort to inquire about meeting until about the middle of June, after the notices to employees affected by its RIF had gone out, on, or after, June 10 (Tr. 106), even though he saw Ms. GroenenBoom frequently (Tr. 93, 205).

10. As noted above, Mr. Peters, after the letters to employees had gone out, did speak to Ms. GroenenBoom about, ". . . when we were to begin negotiations . . . and she said that she didn't see how any negotiation could occur, seeing as how letters had already gone out to the employees" (Tr. 94). Mr. Peters emphasized that Ms. GroenenBoom did not say she could not negotiate, but, simply that, ". . . she couldn't see what could be negotiated since the letters had already gone out." (Tr. 106). Presumably, Mr. Peters told Ms. Conley that the letters had gone out (Tr. 43); Ms. Conley called Ms. Sterling who said that Ms. GroenenBoom had not contacted her (Tr. 43), and on June 19, 1996, Ms. Conley wrote Ms. GroenenBoom and stated, in part, ". . . I told you that Ms. Madonna Sterling was the Chief Negotiator for this bargaining. Thus far, she has not been contacted . . . Has Mr Peters been contacted? Please let me know as soon as possible." (Jt. Exh. 6).

On June 20, 1996, Ms. Conley signed the Charge in this case which was filed on June 24, 1996 (G.C. Exh. 1(a)).

On June 27, 1996, as she was leaving work, Ms. GroenenBoom was confronted on the parking lot by Ms. Vickie Wadell, National Business Agent of AFGE (Tr. 47-48) and Ms. Sterling. Ms. Sterling said that she asked her, ". . . What's going on, you know; why haven't you contacted me? And she said, I have no obligation to contact you. And I said, I'm the chief negotiator, you know. What do you mean you don't have an obligation to notify you (sic)? No, she said, I have no obligation to notify you. My obligation was to notify Kathy Conley, and that's what I

did. So I have no obligation to notify you." (Tr. 130-131). Ms. GroenenBoom in her Memorandum For The Record (Jt. Exh. 7), noted that Ms. Sterling, in part, had, ". . . asked me why I was refusing to give Mr Peters a list of the bargaining unit employees at NAS Ft. Worth JRB. I replied that Mr. Peters would have had to ask me for the list for me to have known that he wanted the list. . . Then Ms. Sterling wanted to know why I hadn't contacted her . . . I explained to Ms. Sterling that I had filed all of the appropriate paperwork with the union" (Jt. Exh. 7).

11. By letter dated July 5, 1996, Ms. GroenenBoom replied to Ms. Conley's letter of June 19, 1996, and quite succinctly set forth Respondent's position, in part, as follows:

"This is in response to your letter dated 19 June 1996,

inquiring about any contacts with Ms. Madonna Sterling and Timothy Peters by management in reply to the Union's demand to bargain submitted by you on 14 May 1996.

Management promptly responded to the Union's demand to bargain with a letter dated 17 May 1996 and provided a date and time to meet with the Union to honor their request. The Union was not in agreement with the meeting arrangements offered by management; however, made no attempt to make alternate arrangements suitable to both parties. Since the Union has failed to pursue the demand to bargain, management considered that the demand to bargain had been withdrawn.

". . . The answer to your question, whether Ms. Sterling or Mr. Peters have been contract (sic) about their representational responsi-bilities in this mater, I believe, rests with you. Management has advised the Union in

accordance with the Master Agreement and responded appropriately to the demand to bargain. The Union has yet to make any effort or arrangements to fulfill the requirements of their demand.

"Since there's no obligation to nudge the Union if they

decide to 'sit on their rights', management proceeded to administer the RIF in accordance with the schedule outlined in the Union Notice of Reduction-In-Force (RIF) letter dated 13 May 1996. Management remains available to discuss any matters pertaining to this RIF" (Jt. Exh. 8)

(Emphasis supplied).

12. By letter dated July 18, 1996, Ms. Sterling addressed Mr. Michael Hooker, General Manager, AAFES, Dallas (Tr. 216-217) in which she said, in part,

". . . let me take the initiative and propose a few possible dates that I will be available to begin this negotiations.

September 11, 1996

" 18, 1996

" 26, 1996

". . . I must say . . . I am not available in the month of August. . . ." (Jt. Exh. 9).

13. Mr. Hooker responded by letter dated August 7, 1996, and, after stating that the Union had been advised of the proposed RIF on May 13, 1996, to be effective July 13, 1996, noted that her (Ms. Sterling's)

availability dates to bargain the RIF [mid to late September] were well beyond the effective date of the RIF. Nevertheless, Mr. Hooker stated,

"If the Union has any specific questions or comments . . .

I am available to meet and discuss any concerns you may have regarding this matter. . . Providing that you are still interested, I am available to meet with you on 11 Sept 1996 at 1000, as you've requested in your letter." (Jt. Exh. 10).

14. Ms. Sterling, declining to face reality, replied by letter dated August 13, 1996, in which she stated, in part, as follows:

"Please contact my office to make a clarification as to weather (sic) or not we will be, beginning the first phase of negotiations, ground rules. If this (sic) not your intent, to begin negotiations please let me know that as well. . . ."
(Jt. Exh. 11).

15. Mr. Hooker replied by letter dated August 22, 1996, in which he stated, in part, as follows:

". . . Although your request for arrangements to negotiate is rather untimely and our scheduled meeting is after the fact, I am still available to meet with the Union to attempt to resolve any legitimate issues regarding the reduction in force

". . . Management . . . offered a date (28 May 1996) to commence negotiations. No response was received from the Union, until your letter of 18 July 1996, . . . It is

unfortunate that the Union failed to provide a timely response to an issue of such importance to their constituents.

"I am, however, available to meet with you on 11 September 1996, as requested by the Union and indicated in my letter dated 07 Aug 96, to review and discuss any issues the Union wishes to advance on behalf of the affected bargaining unit employees regarding this matter." (Jt. Exh. 12)

16. Ms. Sterling replied by letter dated September 5, 1996, in which she stated, in part, as follows:

"Unfortunately, as you are available on 11 September, I am not. . . I maybe able toeke out some time on the morning of the 13th of September but only if we will be, beginning serious negotiations of the Operations Assistance RIF. Let me stress this meeting will be for the purpose of negotiating on the behalf of Operations Assistance's as per Article 23 of the MLA.

. . . ." (Jt. Exh. 13)

17. Mr. Hooker responded by letter dated September 17, 1996, as follows:

"This is in response to your letter dated 5 September 1996, in which you question whether management is refusing to negotiate. Management has never refused to negotiate with the Union on legitimate concerns or issues affecting the working conditions of bargaining unit employees, in fact I made

myself available to meet with you on one of the dates which you proposed in your 18 July 96 letter. Although the Union has failed to pursue their demand to bargain and allowed the advance notification period to expire, I am still available to address the Unions real concerns and consider any legitimate proposals submitted on behalf of the bargaining unit employees affected by the RIF. Please submit your written proposals to the undersigned not later than 27 September 1996 for my review. Upon receipt of these proposals, I will be prepared to meet with you in my office on 16 Oct 96 at 1000 to address your proposals. Please contact Kristine GroenenBoom . . . by 09 Oct 96 to confirm or, if necessary, change these arrangements to meet." (Jt. Exh. 14).

18. Ms. Sterling replied by letter dated September 26, 1996, in which she used strong language about Mr. Hooker. She stated, in part, that,

". . . You have requested in the past several months for our proposals in advance of our negotiation session, again I must point out there is no requirement to do that, therefor (sic), I will not. I will clear my calendar for the morning of the 16th of October to begin ground rules negotiation. . . ." (Jt. Exh. 15).

19. Mr. Hooker responded by letter dated October 4, 1996, as follows:

"My letter of 7 August 1996 indicated that the union failed to reach an accommodation to meet within the contractual

period of Notice to Bargain Impact and Implementation of the Reduction-In-Force (RIF) action initiated in July. I am, however, amenable to dialogue and serious consideration to proposals of merit and validity as deemed by the Union, that would diminish any adverse impact, on bargaining unit members, arising from this action.

"I fully appreciate that you are not obligated to provide a list of specifics you intend to propose prior to our scheduled meeting. My request is exclusively limited to facilitating a productive and mutually beneficial interchange and to secure the best possible outcome for those of intended benefit. If you remain predisposed to our scheduled meeting of 16 October 1996, please confirm same by contacting me by 11 October 1996. Please direct your confirmation through Ms. Kristine GroenenBoom . . . as I will be on leave. . . ." (Jt. Exh. 16).

20. Also on October 4, 1996, Mr. Hooker filed a management grievance with regard to Ms. Sterling's statements about him in her September 26, 1996, letter. As part of the grievance, Mr. Hooker did state that, ". . . in settlement of this grievance, management request (sic) that the Union appoint another representative as its Chief Negotiator in this matter that would facilitate improved communications. If Ms. Sterling is retained as a part of this process . . . she will need to present a written letter of apology to the undersigned in settlement of this grievance." (Jt. Exh. 17)

The grievance was denied by Mr. Peters, who had succeeded Ms. Conley as President of Local 2921, on October 9, 1996 (Jt. Exh. 18); Ms. Sterling wrote Mr. Hooker a letter dated October 17, 1996, in which she appeared to apologize (Jt. Exh. 19) and again on January 30, 1997 (Jt. Exh. 20). Nevertheless, the grievance proceeded to arbitration on July 16, 1997 (Tr. 230).

21. The parties did not meet on October 11, 1996, and no further meetings have been scheduled.

CONCLUSIONS

Paragraph 13 of the Complaint alleges that,

"By a letter dated July 5, 1996 [Jt. Exh. 8] the Respondent refused to bargain with the Union regarding the implementation of the RIF." (G.C. Exh. 1(c), Par. 13).

Plainly, Respondent did not by its letter of July 5, 1996, refuse to bargain. To be sure, Respondent recited the facts that: (a) Respondent had promptly responded to the Union's demand to bargain by giving a date and time to meet; (b) the Union was not in agreement with the date offered, but made no alternative suggestion; and, because the Union make no effort to meet, Respondent had proceeded to administer the RIF as stated in its May 13, 1996, Notice [Jt. Exh. 1]. Nevertheless, Respondent stated,

". . . Management remains available to discuss any matters pertaining to this RIF" (Jt. Exh. 8).

Paragraph 15 of the Complaint alleges that,

"The Respondent implemented the . . . [RIF] without providing the Union with an opportunity to negotiate to the extent required by the Statute." (G.C. Exh. 1(c), Par. 15).

The record does not support this allegation. To the contrary, Respondent provided the Union with full opportunity to bargain. To begin, on May 13, 1996, Respondent gave proper notice of the intended RIF, fully in compliance with Article 23 of the Master Labor Agreement (Jt. Exh. 22, Article 23); stated that the consolidation would be effective July 13, 1996; stated the reasons for the RIF; identified by Job Title, Grade,

Category, Location and the number of positions affected; stated that RIF retention rosters and a RIF plan were being developed in accordance with the MLA, AR60-21/AFR 147-15 and EOP 15-10; and that employees adversely affected would be notified during the week of June 10, 1996 (Jt. Exh. 1).

The Union, on May 14, 1996, requested negotiations for "ground rules" (Jt. Exh. 2); and Ms. GroenenBoom, on behalf of Respondent, on May 17, 1996, advised the Union she was available to meet at 9:00 a.m. on Tuesday, May 28, 1996, and requested the Union's written proposals by May 22, 1996 (Jt. Exh. 3). Ms. Conley, then President of Local 2921 who had demanded bargaining and to whom Ms. GroenenBoom's letter of May 17 was addressed, did nothing until Saturday, May 25, 1996, when she wrote a letter naming a bargaining team knowing that, because of the Memorial Day holiday, it would not be received until Tuesday, May 28; she did not tell the persons she named as negotiators that she had done so; she did not tell them that Ms. GroenenBoom had suggested a date to begin negotiations; and she did not show up for negotiations on May 28 at the suggested time. Nor had the Union asked for any RIF information. Well after the time suggested for meeting, Ms. Conley called Ms. GroenenBoom and told her she was unable to make the meeting because she was too busy. Ms. GroenenBoom told Ms. Conley she would be willing to meet any other time, but Ms. Conley suggested no alternate date.

Respondent could, it is true, have contacted Mr. Peters, but it did not, for the simple reason that it had proposed a date to begin negotiations; the Union had not shown up and, having told the Union it was willing to meet at any other time, felt the "ball was in the Union's court". The Union, except to designate negotiators by its letter of May 25, did nothing. The RIF Notice of May 13, 1996, had stated that the effective date of the consolidation and reorganization was July 13, 1996, and that employees adversely affected by the RIF would be notified during the week of June 10, 1996; but, the Union requested no information and suggested no date for negotiations until July 18, 1996, which was five days after the reorganization and consolidation had become effective. Nevertheless, Respondent agreed to meet on September 11, 1996, the first date proposed by the Union, ". . . to meet with you . . . as you've requested in your letter." (Jt. Exh. 10). Not satisfied with Mr. Hooker's agreement to meet as she requested, Ms. Sterling engaged in filibuster by her letter of August 13 (Jt. Exh. 11), and on September 5, announced that she was not available to meet on September 11 (Jt. Exh. 13). Nevertheless, Mr. Hooker on September 17, 1996, advised Ms. Sterling that he was, ". . . prepared to meet . . . on 16 Oct 96 at 1000 to address your proposals." (Jt. Exh. 14). Ms. Sterling replied in a vituperative letter to Mr. Hooker, dated September 26, 1996, but agreed to meet on October 16, ". . . to begin ground rules negotiation." (Jt. Exh. 15). Mr. Hooker, on October 4, stated, ". . . If you remain predisposed to our scheduled meeting of 16 October 1996, please confirm . . . by 11 October 1996 . . ." (Jt. Exh. 16). Although no meeting was held, it was the Union which failed to proceed. At every stage, from the issuance of the proposed notice on

May 13, 1996, the Union had notice and opportunity to bargain on the impact and implementation of the RIF which it failed to exercise⁽⁴⁾. Respondent did not, at any time, refuse to bargain. To the contrary, Respondent proposed they meet on May 28; the Union failed to show up; Respondent stated, on May 28, that it was willing to meet at any other time, but the Union suggested no date until July 18, after the effective date of the reorganization and consolidation, when it proposed a meeting on September 11, 1996, to which Respondent agreed, but which was canceled by the Union on September 5. Respondent proposed a meeting on October 16, 1996, to which the Union initially agreed; but no meeting was held even though Respondent remained ready and willing to negotiate (Tr. 196). Accordingly, Respondent did not violate §16(a)(5) or (1) of the Statute. Department of the Air Force, Air Force Logistics Command, Wright-Patterson Air Force Base, Ohio, 10 FLRA 281, 292-293 (1982); Department of Defense, Department of the Air Force, Armament Division, AFSC, Eglin Air Force Base, 13 FLRA 612 (1984); General Services Administration, 15 FLRA 22 (1984); Department of Justice, United States Immigration and Naturalization Service, United States Border Patrol, Laredo, Texas, 23 FLRA 90 (1986).

Having found that Respondent did not violate §16(a)(5) or (1) of the Statute, it is recommended that the Authority adopt the following:

ORDER

The Complaint in Case No. DA-CA-60530 be, and the same is hereby, dismissed.

WILLIAM B. DEVANEY

Administrative Law Judge

Dated: September 23, 1997

Washington, DC

1. For convenience of reference, sections of the Statute hereinafter are, also, referred to without inclusion of the initial "71" of the statutory reference, i.e., Section 7116(a)(5) will be referred to, simply, as, "§ 16(a)(5)".

2. On my own motion, the "Index" - "Exhibits" page of the transcript, p. 3, is hereby corrected as follows:

G.C. Exh. 2	Rejected at p. 27	
G.C. Exhs. 3, 4, 5	Identified at p. 28	Not offered.

3. General Counsel states,

". . . Although the actual Union representative to whom the notice as (sic) addressed was absent on leave, the Union president was provided notice by facsimile the following day."

(General Counsel's Brief, p. 2).

Respondent's notice, dated May 13, 1996 (Jt. Exh. 1), was addressed to Mr. Tim Peters, Steward and Vice President of the Union at NAS Ft. Worth Exchange [Carswell] (Tr. 15, 102-103) and he was, ". . . the point of contact at the facility for management for whatever management was going to do that would affect the contract." (Tr. 16) (see, also, Tr. 103). Not only was the notice properly addressed to Mr. Peters as the Union's point of contact, but the notice was received by the Union on May 13, 1996; because Mr. Peters was on vacation, Ms. Conley was informed of the notice on May 13, 1996; Ms. Conley indicated that she called Ms. GroenenBoom on May 13 and asked for a copy and that Ms. GroenenBoom faxed her a copy which, it would appear, Ms. Conley received on May 13, 1996:

". . . and she did fax me a copy. . . The next day [May 14] I prepared a document for -- a demand to bargain the ground rules"

[Jt. Exh. 2] (Tr. 17).

However, Ms. Conley later said she received the fax on May 14, 1996 (Tr. 80) and Ms. GroenenBoom stated that she faxed the notice to Ms. Conley on May 14 and received Ms. Conley's letter of May 14, by fax, on May 14th (Tr. 200).

4. Indeed, in the past the Union had seldom negotiated concerning RIFs at Carswell. From June, 1993, to February, 1997, there had been five RIFs at Carswell, including the one involved herein, and the Union actually bargained impact and implementation on one and gave notice on the RIF involved herein (Tr. 194-195).

Respondent was able to offer every affected employee a position (Tr. 195); those in the headquarters building within their current grade and pay status (Tr. 195-196); two employees were downgraded and given save pay; all others were placed with their current grade (Tr. 196) (see, also Tr. 198-199).