



FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C. 20424

OALJ 17-16

U.S. DEPARTMENT OF THE AIR FORCE
SELFRIIDGE AIR NATIONAL GUARD BASE, MICHIGAN

RESPONDENT

AND

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 2077, AFL-CIO

CHARGING PARTY

Case No. CH-CA-16-0272

Brittany Copper
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For the General Counsel

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Eugene R. Ingrao, Sr.
For the Respondent

Anna Chapman
For the Charging Party

Before: RICHARD A. PEARSON
Administrative Law Judge

DECISION

In response to concerns about workplace safety, the Agency held a mandatory safety meeting attended by most of the work force, including at least 100 bargaining unit employees and 15 to 20 supervisors and managers. The meeting, which lasted four hours, was held at the base's dining facility, away from employees' work areas, and was led by the base commander. Management did not notify the Union of the meeting or give it an opportunity to be represented.

The commander began the meeting by playing a professionally produced video highlighting safety issues at the base. He then gave a 156-slide PowerPoint presentation on workplace safety. While many of the slides pertained to topics that involved universal safety principles, the commander made a point of explaining how those principles applied to the employees at the meeting and to the work environment on the base.

Subsequently, the Union filed an unfair labor practice charge, alleging that the Agency violated the Statute by failing to give the Union an opportunity to be represented at the meeting which, it argues, was a formal discussion under the Statute. The Agency counters that the Union had no right to be represented at the meeting, because it was not formal and did not concern a general condition of employment.

Because the meeting had most of the characteristics of formality that have been traditionally identified in the case law (for example, the meeting was led by the base commander, was attended by a large number of supervisors and high-level managers, was held away from employees' work areas, adhered to a set agenda, and lasted for four hours), I find that the meeting was formal within the meaning of the Statute. And because the meeting concerned workplace safety, a vitally important topic that applied to bargaining unit employees generally, I find that the meeting concerned a general condition of employment. Therefore, the Agency violated the Statute by failing to notify the Union in advance and to allow it to be represented.

STATEMENT OF THE CASE

This is an unfair labor practice (ULP) proceeding under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the U.S. Code, 5 U.S.C. §§ 7101-7135 (the Statute), and the Rules and Regulations of the Federal Labor Relations Authority (the Authority or FLRA), 5 C.F.R. part 2423.

On April 1, 2016, the American Federation of Government Employees, Local 2077, AFL-CIO (the Union or Charging Party) filed a ULP charge against the U.S. Department of the Air Force, Selfridge Air National Guard Base, Michigan (the Agency, Respondent, or Selfridge). GC Ex. 1(a). After investigating the charge, the Regional Director of the FLRA's Chicago Region issued a Complaint and Notice of Hearing on October 17, 2016, on behalf of the General Counsel (GC), alleging that the Agency violated §§ 7114(a)(2)(A) and 7116(a)(1) and (8) of the Statute by failing to give the Union the opportunity to be represented at a formal discussion held by management and attended by bargaining unit employees on January 8, 2016, concerning personnel policies, practices, or other general conditions of employment. GC Ex. 1(b). On November 1, 2016, the Respondent filed an Answer admitting that it did not give the Union an opportunity to be represented at the meeting, but denying that it was required to do so. GC Ex. 1(d).

A hearing was held in this matter on December 14, 2016, in Detroit, Michigan. All parties were represented and afforded an opportunity to be heard, to introduce evidence, and to examine witnesses. The GC, Respondent, and Charging Party filed post-hearing briefs, which I have fully considered.

Based on the entire record, including my observation of the witnesses and their demeanor, I make the following findings of fact, conclusions of law, and recommendations.

FINDINGS OF FACT

Selfridge, an activity within the United States Air Force, is an agency within the meaning of § 7103(a)(3) of the Statute. *See* GC Exs. 1(b), 1(d). The Union, a labor organization within the meaning of § 7103(a)(4) of the Statute, is the certified exclusive representative of a unit of Selfridge employees. *Id.* The Agency and Union are parties to a collective bargaining agreement (CBA). Jt. Ex. 1.

Safety is an important matter at Selfridge. Many employees there, including bargaining unit employees who work in “the trades,” perform dangerous jobs. Some, for example, work with chemicals and hazardous waste. Tr. 37, 47, 116. To prevent injuries, employees are required to follow certain safety procedures and to use protective equipment such as hardhats, reflective vests, safety glasses, hearing protection, safety harnesses, and respirators. Tr. 47, 67-68, 121. The Agency has a safety office that is devoted to ensuring employee safety, and supervisors discuss safety matters with employees in group and one-on-one meetings. Tr. 27, 66, 115, 117. At the hearing, Brigadier General John Slocum, the Commander of the 127th Wing and Installation Commander of Selfridge, testified that “Everything we do is about safety.” Tr. 128.

Safety also plays a significant role in labor relations at Selfridge. Article 15 of the parties’ CBA is devoted to health and safety and contains extensive provisions relating to protective equipment, ambulance service for injured employees, the use of chemicals, and Union representation on a Base Safety Council. Jt. Ex. 1 at 18-21; Tr. 32-33. At the time of the hearing, a Union grievance, alleging that the Agency had violated Article 15 of the CBA by failing to provide safety equipment, was pending. Tr. 69.

In 2015, Selfridge suffered two workplace incidents involving excavation or “trenching.” *Id.* The first incident occurred in the summer of 2015, when an employee working in a trench was injured because the proper equipment was not being used. Tr. 38-39. After notifying management of the problem and receiving no response, the Union reported the incident to the Occupational Safety and Health Administration (OSHA), which issued citations in August or September of 2015. Tr. 39-40, 71. The second incident, which was similar to the first, occurred in the fall of the same year. Tr. 38-40. After the second incident, Union Executive Vice President Darold Hubbard, a utility systems mechanic who has worked at Selfridge since 2003, met with Colonel Daniel Whipple, the Mission Support Group Commander for the 127th Wing, to discuss the incidents. Tr. 63-64, 72, 180. The Union felt that management was not responding to its concerns. In this regard, Hubbard testified:

[W]e went right to . . . Colonel Whipple, and asked him, took him down to the site [of the trenching incident] and showed him this is why it's a violation, and this is what the problem is. And he said he would stop it. And then the next day they were back to it. . . . they returned to digging and working in the same condition.

Tr. 72. Therefore, the Union again contacted OSHA, which issued additional citations in November of 2015. Tr. 39-40, 71, 146.

Also in the fall of 2015, Hubbard met with Colonel Rolf Mammen, then the Vice Wing Commander at Selfridge, to discuss the Union's safety concerns. Tr. 154-55. Colonel Mammen told Hubbard that he too was concerned about the safety culture at the base. Tr. 174. Asked to describe these concerns, Colonel Mammen testified:

As an example, it was last winter. This was before the safety stand-down. . . . So I'm walking to lunch, and there's an employee out there with a grinder grinding the sidewalk down. Okay, he's not wearing ear protection, required. He's not wearing eye protection, required. So I went over to him, "Stop." And he shut everything down. And I said, where's your eye protection and ear protection? He's like, oh, sir, I'm really, really sorry.

....

So when you look at it from an overall – I looked at it from a culture standpoint with an employee force. . . . [S]afety standards have been around for years on what you do, but I've seen a lot of times the older force disregard it. "Oh, I don't need to do that." But as an example, that grinding of the sidewalk, he knew exactly when I stopped him, he knew exactly what he was doing wrong.

Tr. 172-73. General Slocum also shared these concerns. Tr. 138. Colonel Mammen viewed the employee operating the grinder as "a symptom of what's going on elsewhere[]" and of employee complacency about following safety rules. Tr. 173, 178. He said it was also possible that the trenching incidents occurred because employees had not been properly trained. Tr. 173. He told Hubbard that management was thinking about holding a safety briefing for employees. Tr. 154-55, 175. According to Colonel Mammen, Hubbard responded, "[W]hat are you waiting for?"¹ Tr. 155. The two did not go into further detail at that time about such a briefing, and there were no subsequent conversations between management and the Union about conducting a safety briefing. *See* Tr. 163-65.

¹ Hubbard testified that he did not recall having this conversation with Colonel Mammen. Tr. 83-84.

As management developed plans for conducting safety training, it was determined that the instruction would be led by General Slocum. Tr. 174-75. According to Colonel Mammen, General Slocum was considered to be “the godfather” of the Air Force’s safety awareness program, as he had developed a safety training program in 2005 and adapted it into an Air Force-wide safety curriculum. Tr. 127-28, 175. Using these materials, General Slocum has conducted “hundreds” of training sessions and trained instructors to give the course as well. Tr. 127-28. Colonel Mammen said the General could “best put that information out there and frame it in a way that everybody can go ‘I get it, why it’s important that you wear your safety equipment, why it’s important that you follow the [Air Force Occupational Safety and Health] standards.’” Tr. 175.

On January 4, 2016, General Slocum sent an email to base leadership, reminding them that Friday, January 8, would be Safety Stand Down Day. GC Ex. 3 at 1-2. He indicated that “formal meetings/forums” would take place through the morning, with “informal activities” to be held the rest of the day. *Id.* at 2. All employees were required to attend, except for those performing mission-critical functions and those who did not regularly work on Fridays. *Id.* at 1-2.

The next day, January 5, Marion Seamster, a bargaining unit employee who works in Plans and Resources, received a copy of that email from her supervisor, along with a message advising employees to plan their schedules around the safety training. *Id.* at 1; Tr. 95. Seamster understood that attendance at the training, including the morning briefing, was mandatory. Tr. 96. The email Seamster received was addressed to others as well, a group that appears to include additional bargaining unit employees. GC Ex. 3 at 1. A similar email was sent to other individuals that same day. GC Ex. 2. However, other employees, including Union President Jonathan Suminski and maintenance mechanic Daniel Johnson, learned of the training for the first time on the morning of January 8, 2016, when they were told by their supervisors to attend a mandatory meeting. Tr. 23-24, 112-13. Hubbard learned of the meeting for the first time that morning as well, through Johnson. Tr. 64. The meeting was held at the base’s dining facility, a block or two away from many employees’ work areas. Tr. 23, 64, 113.

Attendance estimates for the meeting varied almost as widely as those for the 2017 Presidential Inauguration: they ranged from as low as 65-70 (Tr. 24), to 100-200 (Tr. 64, 97, 113), to as high as 400-500 (Tr. 130, 158). Suffice it to say that the dining facility was full. Most attendees sat at dining tables, but some had to stand. Tr. 64, 137, 158. Attendees were from the Mission Support Group, Headquarters, and other groups on the base, including civilian and dual status employees from two unions and at least 15 to 20 supervisors, including Colonel Whipple and Colonel Mammen. Tr. 25, 65, 129. Although the Agency did not notify the Union in advance regarding the meeting, Suminski and Hubbard took seats in the front of the room. Tr. 159.

General Slocum conducted the training in uniform and began by playing a ten-minute video, which appeared to be professionally produced. Tr. 27. The video, which played on a main screen at the front of the room and on TVs scattered throughout the dining facility, showed the commander standing indoors, next to an American flag, stating, "Welcome to Safety Down Day 2016." It then followed General Slocum to various work areas at Selfridge: the vehicle maintenance area, where he talked about the importance of doing work by the book and not working alone; the munitions storage area, where he noted that employees regularly work with hazardous substances such as accelerants, gasoline, and toxic materials; and the flight line, where he stated that he would be discussing safety-related matters like good communication and situational awareness. The video then cut to General Slocum in his car discussing the importance of safe driving. It ended with the General again standing indoors by an American flag and stating, "Every single guardsman, every single 127th Wing guardsman, and every member of Team Selfridge, deserves to be home safely every night." CP Ex. 1.

After the video ended, General Slocum began his PowerPoint presentation, which consisted of 156 slides. Tr. 28; Jt. Ex. 2. Captain Camille Horne, the 127th Wing Executive Officer, advanced the slides on her laptop. Tr. 188-89. Slide topics included human error management, personal protective equipment, safety culture, basic communication principles, teamwork, managing stress and fatigue, task management, situational awareness, decision making, and leadership. Jt. Ex. 2. Some slides led into additional video clips. Tr. 100-01.

At the hearing, General Slocum stated that the slide topics pertained to safety issues that are "universal." Tr. 131-32. Suminski similarly testified that the presentation concerned "general safety" matters, "[e]verything from personal protective gear to suicide awareness." Tr. 28. Despite the broad applicability of these issues, General Slocum made a point of elaborating on the slides at the training, in order to show how the general principles in the slides applied to employees working at Selfridge. *See* Tr. 102. He told the audience that protective gear should be "in your work center as available and that you should be using it at every chance you get"; that "everyone had a responsibility to point out hazards" and ensure that "everyone next to them" is wearing protective gear and following safety procedures "by the book"; with respect to situational awareness, that employees should be aware of "influencers we have on our lives [that] come from work, home, kids, family, and school," that employees should "recognize when things are going wrong with our co-workers that could potentially lead to mishaps," and that employees should know that "if we are feeling tired on the job that we need to . . . take a quick break." Tr. 32, 34-36.

In addition, Suminski testified, General Slocum told employees that they should use a phrase, "knock it off," to communicate to coworkers and supervisors when there is a danger so immediate that work needs to be stopped. Tr. 29, 31. In this regard, Suminski testified:

[T]he general described this concept in the Air Force and his background called “knock it off” where if you’re ever working on a job, you could call “knock it off” . . . at any point you felt that you were working in an environment that had a safety hazard or a potential for a safety hazard. And at which point the site supervisors and co-workers . . . would have to stop and have a discussion about the hazards you’ve brought up and mitigate those hazards before the job continues. And that was his expectation for moving forward as far as procedures go for safety hazards on the job.

Tr. 29. Suminski said this was the first time he had heard of using the phrase “knock it off” in this way. Tr. 29-30. He testified that when he had discussed the 2015 trenching incidents with management, there had been no discussion of the “knock it off” concept. Tr. 40.

Johnson similarly testified that General Slocum told the audience that employees should feel empowered to assert their safety concerns. According to Johnson, the General told them:

[If] you needed this specific piece of equipment, a hardhat or whatever it was . . . if you legitimately needed something like that, nobody should give you a hassle for trying to get it or saying it’s too expensive to buy or something like that, or telling you that you don’t need it.

Tr. 116. In addition, Johnson testified, employees were advised that “if we see something that isn’t safe or should be done a different way to make it safe, we should notify our supervisors or safety department . . .” Tr. 117. The General told employees if “nobody was taking action, that we could feel free to talk to him about it and send an email or make contact with him[,]” and he would “listen to our concerns and make it happen.” Tr. 117-18.

At the end of the PowerPoint presentation, General Slocum asked, in a pro forma manner, if there were any questions. There were none, and the meeting ended, approximately four hours after it began. Tr. 49-50, 59, 130-31.

Immediately after the meeting ended, Suminski and Hubbard went up to talk to General Slocum. Suminski testified that they told him there were serious safety concerns at Selfridge that needed to be addressed, and that they both expressed “discontent” that the Union was not allowed to take a part in the presentation. Tr. 52-53. General Slocum, however, recalled only that Suminski and Hubbard told him that the meeting was too long. Tr. 132. Suminski and Hubbard also talked to Colonel Whipple, who recalled Hubbard telling him that the meeting was “a huge waste of time”; Hubbard denied making such a remark. Tr. 90, 185-86.

Witnesses indicated that the January 8 meeting was an uncommon event in many respects. Safety briefings are normally conducted in small groups, last a few minutes, and are not held in the dining facility or run by a general. Nobody could recall any meeting lasting four hours, or attended by so many people. Tr. 26, 65, 114-15. Captain Horne described the meeting as follows:

[W]e're in a military environment. And when a one-star general is talking, people typically pay attention. . . . [T]he majority of the audience were doing just that, paying attention to our one-star base commander and general who was imparting information about safety about which we all take very seriously.

Tr. 194.

Witnesses disputed whether “knock it off” was a new concept introduced for the first time at the January 8, 2016, meeting. In this regard, Suminski confirmed his earlier testimony, stating “[p]rior to the general’s meeting, myself and the folks that I represent to the best of my knowledge had never heard the concept ‘knock it off,’ ‘time out,’ etcetera.” Tr. 57. Because the term “knock it off” was “so simplistic,” he said he would have recalled it if he had encountered it before. Tr. 58. Suminski acknowledged that there may have been earlier memos discussing the “knock it off” principle, but he stated that there are “hundreds” of safety documents and asserted, “Because a policy is written on a piece of paper does not mean I’ve seen it” Tr. 57.

Hubbard also testified that he had not heard of using the phrase “knock it off” in a safety context prior to the meeting. He noted, however, that he was familiar with other terms, including a “stand down” and an “assessment,” used to get people to stop working when a hazardous situation arose, consistent with a CBA provision requiring that management will not put employees in imminent danger.² Tr. 84-86, 88. “There was no ‘knock it off’ name. It was just basically stop or you’re going to get somebody killed, or an expletive.” Tr. 86.

² Hubbard did not identify the contract provision, but he likely was referring either to Article 15, Section 10 of the CBA which requires the Agency to comply with applicable regulations when dealing with imminent danger and states that any employee affected by an imminent danger “will be allowed to contact their Union representative immediately regarding potentially imminent danger situations,” or to Article 15, Section 6 of the CBA, which states that the Agency “will not require employees to work under conditions which will be injurious to their health.” Jt. Ex. 1 at 18-19.

Colonel Mammen countered that management issued a memorandum in 2015 that used “knock it off” as a safety term. The memorandum, a reissuance of a memorandum from the previous year, was posted on safety bulletin boards throughout Selfridge, and was sent to employees via email, Colonel Mammen stated. Tr. 156-57, 160-61; Resp. Ex. 1.³ In addition, Colonel Mammen testified that he talked about saying “knock it off” after one of the trenching incidents that occurred in 2015. “I remember saying, does everybody know that you have a ‘knock it off’? And they all said, yes, we all know that we have a ‘knock it off.’ So I said, if anything doesn’t look right, you stop; it’s totally okay,” he testified. Tr. 172. Colonel Mammen added that “knock it off” has been used as a safety term in the Air Force for thirty years. Tr. 155-56. Colonel Whipple similarly testified that the “knock it off” concept had been a part of Air Force safety culture for years. Tr. 182.

With respect to Union representation at the meeting, Suminski testified that if he had received prior notice of the meeting, he would have appointed Hubbard as the Union’s representative at the meeting, since Hubbard is the Union’s safety expert. Tr. 37. And if Hubbard had been the Union’s representative, he “would have been able to talk about what employees should do if there is an injury and that the Union can get involved in the ‘knock it off’ procedure.” Tr. 38.

Finally, Suminski noted that a few months after the meeting, employees felt that a crane was being operated improperly and the Union “emailed the wing commander and called ‘knock it off’ using that phrase. And he immediately shut down the jobsite and performed an investigation” Tr. 41.

³ As relevant here, the memorandum states:

The integration of “Knock-it-off” & “Time-out” concepts. These concepts are essential to ensuring that all personnel have a voice in any situation to identify concerns or to inform others of a developing hazardous situation. Verbalizing either of these terms sends a message to those involved in a specific action to stop, take a moment to reset, and reevaluate the current situation. The concept should be an essential part of all on and off duty operations/activities. Key aspects of these two terms include:

- a. All Airmen (regardless of rank or position) are empowered to use these terms without any fear of repercussions.
- b. When either of these terms is used, all current actions are immediately halted and the situation is stabilized to a safe position in order to evaluate what the specific concern is; this is non-negotiable and cannot be overridden by command authority.
- c. After the Knock-it-off or Time-out call, a clear determination is made whether the current action may be continued safely, requires change or must be terminated based upon the perceived concern(s)/hazard(s).

POSITIONS OF THE PARTIES

General Counsel

The General Counsel argues that the Respondent violated §§ 7114(a)(2)(A) and 7116(a)(1) and (8) of the Statute by failing to provide the Union an opportunity to be represented at the January 8 meeting. GC Br. at 7.

The GC contends that the meeting was formal because: (1) General Slocum, the highest management official at Selfridge, was the only person to speak at the meeting; (2) it was attended by numerous supervisors, including Colonel Mammen and Colonel Whipple; (3) it took place away from employees' work areas; (4) management planned the meeting in advance and gave advance notice of it to at least some employees; (5) the meeting lasted four hours; (6) General Slocum's PowerPoint presentation served as a formal agenda; (7) attendance was mandatory; and (8) General Slocum conducted the meeting in a formal, professional manner, complete with multi-media presentation tools, and with Captain Horne advancing slides for General Slocum. *Id.* at 8-9.

The GC further contends that the meeting concerned a general condition of employment, as it focused on employee safety. *Id.* at 9-10 (citing *U.S. Dep't of the Army, New Cumberland Army Depot, New Cumberland, Pa.*, 38 FLRA 671, 677 (1990) (*New Cumberland*), and *Library of Cong. v. FLRA*, 699 F.2d 1280, 1286 (D.C. Cir. 1983) (*Library of Cong.*)). The meeting also touched on issues relating to employees' work environment (teamwork, observation of other employees' stress and fatigue as factors that can jeopardize safety), which the Authority has also found to be a general condition of employment. *Gen. Serv. Admin.*, 50 FLRA 401, 405 (1995) (*GSA*). Even though the meeting did not establish or discuss any new conditions of employment, the GC asserts that the Authority does not require a meeting to discuss new conditions of employment to be considered formal under § 7114(a)(2)(A). *See, e.g., U.S. Customs Serv., Region VIII, S.F., Cal.*, 18 FLRA 195, 197 (1985) (discussion of agency's existing dress code); *Dep't of HEW, Region IV, Atlanta, Ga.*, 5 FLRA 458, 460 (1981) (routine orientation sessions for new employees).

Finally, the General Counsel argues that by failing to notify the Union of the meeting, the Agency hindered the Union's ability to safeguard the safety interests of bargaining unit employees. GC Br. at 11.

Charging Party

The Union supports the GC's allegation that the Agency violated the Statute. While the Union agrees with the GC that a meeting can be a formal discussion even though it does not concern new conditions of employment, it insists that the January 8 meeting was not held for "mere information dissemination," as the Agency claims. CP Br. at 3. Rather, the Union asserts that "much of Gen. Slocum's agenda consisted of explaining safety procedures that were new to much or all of the bargaining unit members present." *Id.* at 4.

Respondent

The Respondent concedes that it failed to give the Union advance notice of, or an opportunity to be represented at, the January 8 training. Resp. Br. at 4. However, it argues that the Union was not entitled to notice or representation, under § 7114(a)(2)(A) of the Statute. The Agency contends instead that the training was a “one-way discussion” in which no discussion of personnel policies, conditions of employment, or grievances occurred; accordingly, it did not meet the statutory criteria of a formal discussion. *Id.* at 9.

With respect to whether the meeting concerned a general condition of employment, Respondent asserts that the meeting was “merely an information dissemination briefing reminding personnel how important safety is in general.” *Id.* at 12. It insists that “the discussion of work place practices and the reminders of policies by supervisors to subordinates do not get transformed into a formal discussion.” *Id.* at 7. It further argues that the “knock it off” concept has existed for years, and that Suminski’s claim that he learned about the concept for the first time at the January 8 meeting is not credible. *Id.* at 9-10.

With respect to whether the meeting was formal, the Agency asserts, “Although the briefer was a Brigadier General and installation commander, the reason for him to deliver [the briefing] was due to his extraordinary expertise in safety matters.” *Id.* at 12. To support its arguments that the training was not a formal discussion, Respondent cites a number of Authority decisions. In *Dep’t of Veterans Affairs, Veterans Affairs Med. Ctr., Gainesville, Fla.*, 49 FLRA 1173, 1175-76 (1994) (*VA Gainesville*), the Authority held that because a monthly staff meeting was informational, and a supervisor’s statements regarding disciplinary policies were routine reminders of existing policy, the meeting was not a formal discussion. Similarly, in *Marine Corps Logistics Base, Barstow, Cal.*, 45 FLRA 1332 (1992) (*Marine Corps*) a meeting to solicit volunteers for overtime and to explain the procedures for assigning overtime was not considered formal. And in *Dep’t of Health & Human Servs., Soc. Sec. Admin.*, 29 FLRA 1205 (1987) (*SSA*), a supervisor’s orientation session with a new employee, explaining office policies regarding hours, proper attire, smoking, and breaks, was found to be informal. *See also U.S. Gov’t Printing Office, Pub. Documents Distrib. Ctr., Pueblo, Colo.*, 17 FLRA 927 (1985) (*GPO*); *Def. Logistics Agency, Def. Distrib. Region West, Tracy, Cal.*, 48 FLRA 744 (1993) (*DLA*).

ANALYSIS AND CONCLUSIONS

Section 7114(a)(2)(A) of the Statute provides:

(2) An exclusive representative of an appropriate unit in an agency shall be given the opportunity to be represented at—

(A) any formal discussion between one or more representatives of the agency and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment.

In order for a union to have a right to be represented under § 7114(a)(2)(A), there must be: (1) a discussion; (2) which is formal; (3) between a representative of the agency and a bargaining unit employee or the employee's representative; (4) concerning any grievance or any personnel policy or practice or other general condition of employment. *U.S. Dep't of Def., U.S. Air Force, 325th Fighter Wing, Tyndall AFB, Fla.*, 66 FLRA 256, 259 (2011) (*Tyndall AFB*).

In addition, the Authority is guided by the intent and purpose of § 7114(a)(2)(A), which is to provide a union with an opportunity to be present at discussions addressing matters of interest to unit employees, in order to take appropriate action to safeguard their interests, as viewed in the context of the union's full range of responsibilities. *Id.* The intent and purpose of § 7114(a)(2)(A) does not constitute a separate element in the analytical framework, but is simply a guiding principle that informs the Authority's analysis in applying the statutory criteria. *GSA*, 50 FLRA at 404 n.3. When a meeting satisfies these criteria, management must give the union notice of, and an opportunity to be present at, the meeting, or else it violates § 7116(a)(1) and (8) of the Statute. *Tyndall AFB*, 66 FLRA at 260.

It is not disputed that the January 8 meeting was between General Slocum, a representative of the Agency, and bargaining unit employees. And as noted above, the Respondent has conceded that it failed to give the Union advance notice of, and an opportunity to be represented at, the meeting. Tr. 165; Resp. Br. at 4.

As for the Respondent's suggestion (Resp. Br. at 9) that the meeting was not a "discussion" because General Slocum was the only one who spoke, it is well settled that the term "discussion" in § 7114(a)(2)(A) is synonymous with "meeting," and that no actual discussion or debate need occur for a meeting to constitute a "discussion" within the meaning of the Statute. *Pension Benefit Guar. Corp., Wash., D.C.*, 62 FLRA 219, 221 (2007) (*PBGC*); *Dep't of Def., Nat'l Guard Bureau, Tex. Adjutant General's Dep't, 149th TAC Fighter Group (ANG) (TAC), Kelly AFB*, 15 FLRA 529, 532-33 (1984). Accordingly, I find that the January 8 meeting was a "discussion" within the meaning of § 7114(a)(2)(A) of the Statute.

This leaves us with two issues to resolve: whether the January 8, 2016, meeting was formal, and whether it concerned a general condition of employment.⁴

⁴ It is clear in this case that the meeting did not concern a grievance. The General Counsel appears to argue that safety, the subject of the January 8 meeting, is both a "policy or practice" and a "general condition of employment" (*see* GC Br. at 9-10), but the GC conveniently omits the essential word "personnel" from its argument. Safety issues such as "knock it off" may be encompassed within agency policies or practices, but I don't think it is accurate to call them "personnel policies or practices." Without engaging in an extended analysis of the meaning of "personnel policy or practice" under § 7114(a)(2)(A), I believe that our attention in this case should most appropriately be focused on whether the January 8 meeting concerned a "general condition of employment."

In order to determine whether a meeting was “formal,” the totality of the circumstances presented in each case must be examined. The Authority has identified a variety of factors that are relevant for this purpose, but it has also stated that these factors are merely illustrative. *F.E. Warren AFB, Cheyenne, Wyo.*, 52 FLRA 149, 157 (1996) (*F.E. Warren*). The relevant factors include: (1) the status of the individual who held the discussion; (2) whether any other management representatives attended; (3) the site of the discussions (i.e., in the supervisor’s office, at the employee’s desk, or elsewhere) (4) how the meeting was called (i.e. with formal advance notice or more spontaneously and informally); (5) the length of the discussion; (6) whether a formal agenda was established; and (7) the manner in which the discussions were conducted (i.e., whether the employee’s identity and comments were noted or transcribed). *PBGC*, 62 FLRA at 222; *U.S. Dep’t of Labor, Office of the Assistant Sec’y for Admin. & Mgmt., Chi., Ill.*, 32 FLRA 465, 470 (1988). Also relevant at times are whether attendees signed a confidentiality agreement (*U.S. Dep’t of the Air Force, 436th Airlift Wing, Dover AFB, Dover, Del.*, 57 FLRA 304, 307 (2001)), and whether attendance at the meeting was mandatory (*Am. Fed’n of Gov’t Emps., Local 2054*, 63 FLRA 169, 172 (2009)). In addition, the Authority considers the purpose of the discussion, and in some cases the purpose of the discussion may be sufficient, by itself, to establish its formality. *F.E. Warren*, 52 FLRA at 156-57.

There are numerous indications that the January 8, 2016, meeting was formal. First, the meeting was led by General Slocum, the highest official in the chain of command at Selfridge. While General Slocum indicated at the hearing that he gave the presentation as an “academic” lecturer, he acknowledged that attendees would see his uniform and understand that he was also acting in his roles as the Wing Commander of the 127th Wing and as Installation Commander for the base. Tr. 136-37. General Slocum’s status surely contributed to the formality of the meeting. As Captain Horne put it, “[W]hen a one-star general is talking, people typically pay attention.” Tr. 194. Second, approximately fifteen to twenty other supervisors and management officials attended the meeting, including Colonel Whipple and Colonel Mammen. Third, the meeting took place at the Selfridge dining facility, away from the work locations of most attendees. Fourth, the meeting was planned in advance, and management gave advance written notice to supervisors several days in advance of the meeting.⁵ Fifth, the meeting lasted for four hours, far longer than other meetings found to have been formal. See *Dep’t of Veterans Affairs v. FLRA*, 3 F.3d 1386, 1390 (10th Cir. 1993) (10 to 20 minutes), *aff’g* 44 FLRA 768 (1992) and 44 FLRA 408 (1992); *U.S. Dep’t of Justice, Bureau of Prisons, FCI, Bastrop, Tex.*, 51 FLRA 1339, 1343, 1356 (1996) (25-30 minutes); *Dep’t of the Air Force, Sacramento Air Logistics Ctr., McClellan AFB, Cal.*, 35 FLRA 594, 604 (1990) (15-25 minutes). Sixth, while no formal agenda was established, General Slocum’s 156-slide PowerPoint ensured that the meeting followed the script he had delivered many times before. The fact that he could confidently state that the briefing lasted

⁵ Although we have testimony from only one employee who received written advance notice, I infer that most employees were told of the meeting in advance, either through written notice or verbally from their supervisors.

“four hours and not a minute longer” (Tr. 131) suggests that the slides served not merely as the functional equivalent of an agenda, but as a script. *See, e.g., F.E. Warren*, 52 FLRA at 158-59 (where a message from upper management served as an agenda for the manager holding the meeting).

Other aspects of the meeting indicate formality as well. In this regard, the meeting was mandatory for all employees who weren't performing mission-critical functions and who were regularly scheduled to work on Fridays. General Slocum's presentation was well-roduced: it obviously was the product of thorough preparation, and it had been polished by his having given it hundreds of times. The uniqueness of the meeting – it was uncommon, if not unprecedented, at Selfridge for a general to give a four-hour safety class to more than 400 people – further indicates that the meeting was formal, rather than a routine event. Moreover, as Captain Horne indicated, the fact that the meeting took place in a “military environment,” and concerned safety, a matter that individuals at Selfridge “take very seriously,” further indicate that the meeting was formal. Tr. 194. Finally, General Slocum himself indicated to Selfridge leadership that the training would be “formal.” GC Ex. 3 at 2. While some indicia of formality often cited by the Authority are missing here (the meeting was not transcribed, and some employees did not receive advance written notice), the evidence weighs overwhelmingly on the side of formality.

The decisions cited by the Respondent in this regard are distinguishable, as they involve meetings that were far less formal than the January 8 training. In *VA Gainesville*, the meeting lasted less than thirty minutes; was led by first-line supervisor; was attended by only ten to fifteen employees; took place in an employee work area, where work continued to be performed; and was typical of the monthly meetings that were regularly held. In *DLA*, the meeting lasted only fifteen minutes, and the only supervisor in attendance was a first-line supervisor who did not prepare an agenda. In *Marine Corps*, the meeting lasted only ten minutes; took place on the shop floor; involved only one management official, a first-line supervisor; and was planned only five to ten minutes in advance. Merely describing the details of the cases cited by Respondent emphasizes how different, and how much more formal, the January 8 meeting was. Indeed, if the January 8 meeting does not meet the formality criteria of § 7114(a)(2)(A), then no meeting can.

Finally, I turn to the question of whether the January 8 meeting concerned a general condition of employment. In reviewing the legislative history of § 7114(a)(2)(A), the Authority has indicated that the word “general” is intended to limit a union's right to representation to those formal discussions “which concern conditions of employment affecting employees in the unit generally.” *Nuclear Regulatory Comm'n*, 29 FLRA 660, 663 (1987) (citations and internal quotation marks omitted).

In our case, it is undisputed that the January 8 training dealt solely with workplace safety, a matter of vital importance at Selfridge. As General Slocum stated, "Everything we do is about safety." Tr. 128. It is also clear that the topics discussed were applicable to employees in the bargaining unit generally. Nearly all of the topics discussed, from safe driving on the base to dealing with stress and fatigue to wearing protective gear, concerned "universal" matters that "everybody [could] relate to," including the 100 or more bargaining unit employees present at the meeting. Tr. 132.

General Slocum related these issues to the specific concerns of Selfridge employees, beginning with the introductory video discussing specific safety issues employees face at several locations on the base. General Slocum then spoke directly to the work situations of Selfridge employees during his presentation, telling attendees that protective gear should be "in your work center"; that employees should use protective gear "every chance you get"; that "nobody should give you a hassle" for trying to get safety equipment; that "everyone" must point out hazards and ensure that "everyone next to them" is wearing protective gear and following safety procedures; that employees should recognize when stresses from work or home are causing problems with their co-workers; and that employees should take a quick break when they feel tired on the job. Tr. 32, 34-36, 116.

The subject of workplace safety is undoubtedly a general condition of employment. *New Cumberland*, 38 FLRA at 677. Indeed, "few policies and practices could be considered more central to an employee's working conditions than those relating to job safety and office environment." *Library of Cong. v. FLRA*, 699 F.2d at 1286. Virtually every CBA negotiated in the federal sector includes provisions relating to safety, as does the parties' agreement in this case.

The Respondent suggests that the meeting was not a formal discussion because it did not address new rules or policies. Resp. Br. at 7, 12. As an initial matter, I note that while the discussion of new or changed conditions of employment may demonstrate that a meeting concerns a personnel policy or practice or general condition of employment, meetings do not need to involve new or changed policies in order to meet the statutory definition. Under § 7114(a)(2)(A), a union is entitled to be represented at "any formal discussion . . . concerning . . . any personnel policy or practice or other general condition of employment" (emphasis added). In *GSA*, 50 FLRA at 404-05, the Authority rejected the agency's argument that the disputed meetings did not fit the statutory definition because they concerned only past conditions of employment. It found no basis "for adding a temporal requirement to the Statute's reference to 'any grievance . . . or other general condition of employment[.]'" In other words, a meeting discussing safety practices concerns a general condition of employment, regardless of whether the safety practices are new or old.

In any event, the January 8 training was not merely a recitation of commonly known and followed safety practices. Rather, the meeting was designed to address, and did address, serious safety problems at Selfridge that needed to be corrected. Tr. 138. These problems included complacency among employees with respect to following safety rules, such as those pertaining to wearing safety gear (Tr. 172-73, 178); a lack of responsiveness among management to Union concerns about workplace hazards (Tr. 72); and an ignorance of

(Tr. 30, 40), or an inability to properly use, the “knock it off” rule (Tr. 172).⁶ General Slocum, who was described as being especially well suited to motivating employees to understand the importance of following safety rules, addressed these pressing safety concerns. Specifically, he emphasized that employees should follow safety procedures “by the book,” especially with respect to protective equipment; that employees could contact him to ensure that management was responding to safety problems; and that employees should feel empowered to call “knock it off” – a practice that some other employees were not familiar with – to shut down a jobsite if a hazard warranted it. Tr. 29, 34-35, 41, 117-18. That the “knock it off” rule was also the subject of Agency memoranda distributed to Selfridge employees in 2014 and 2015 is yet another indication that General Slocum’s presentation concerned a general condition of employment and that it sought to correct underlying problems affecting both employees and supervisors.

The fact that General Slocum addressed such important issues – issues that could literally be of life and death importance (*see* Tr. 38-39, 86) – indicates that the meeting was not a routine safety briefing but instead was an attempt to change and improve the safety culture at Selfridge. And the fact that the Union invoked the “knock it off” rule to report a dangerous situation and shut down a jobsite a few months later (Tr. 41) suggests (at least anecdotally) that the January 8 training may have had a beneficial effect on the safety culture. These support a conclusion that the training concerned a general condition of employment.

Finally, the January 8 meeting directly related to safety problems that were an ongoing subject of Union-management discussion. The Union had brought a number of safety issues to management’s attention in 2015, and Union officials strongly supported management’s decision to conduct a day of safety training. Tr. 137-38, 154-55, 175. If the Agency had given the Union an opportunity to be represented at the meeting, then Hubbard, or another representative of the Union’s choosing, could have given employees the Union’s perspective on safety issues and reinforced General Slocum’s presentation. Tr. 37-38. This would have been consistent with the Union’s broader role of promoting safe work practices at Selfridge, whether through filing safety-related grievances, meeting with management to discuss safety issues, or filing complaints with OSHA. This would also have enabled the Union to safeguard its interests and the interests of the bargaining unit, in keeping with the purpose of § 7114(a)(2)(A).

The decisions cited by the Respondent to prove that the January 8 training session was “merely [for] information dissemination” do not compel a contrary conclusion. Resp. Br. at 12. As an initial matter, the bare assertion that a meeting is “informational” does not prove much, since virtually every meeting involves the dissemination of information. With

⁶ I credit Suminski’s testimony that he had not heard of the “knock it off” rule before, or at least that it had not sunk into his consciousness. That Air Force veterans like Colonel Mammen and Colonel Whipple had heard of the principle does not mean that relatively new civilian employees like Suminski had heard of it. Further, it is entirely understandable that Suminski and others either did not read, or did not recall, the memoranda from 2014 and 2015 discussing the “knock it off” rule.

that said, the Authority has sometimes used the word to describe meetings that, for one reason or another, do not rise to the level of a formal discussion. For example, the Authority indicated in *VA Gainesville*, 49 FLRA at 1175, that since a meeting was conducted in the same manner as prior monthly meetings, it was “informational rather than formal in nature[.]” In *U.S. Dep’t of the Air Force, AFMC, Space & Missile Sys. Ctr., Detachment 12, Kirtland AFB, NM*, 64 FLRA 166, 174 (2009), the Authority rejected an agency’s argument (similar to the Respondent’s here) that a meeting did not concern a personnel policy or practice or general condition of employment because it was simply held to “provide information” about a staff reorganization. Even if the agency’s assertion were true, the Authority said that the meeting could still involve matters that would implicate the union’s right to safeguard the interests of employees under § 7114(a)(2)(A). *Id.* The January 8 meeting was much more formal than any of cases cited by Respondent: it lasted for four hours, with a highly scripted, polished presentation by the base’s commanding officer, and it addressed issues that had also been the subject of labor-management negotiations. In this context, the “informational” aspects of the meeting do not diminish its formality or the Union’s interest in being represented there.

More broadly, the Respondent suggests -- and on this point I agree -- that some meetings involve conditions of employment that are so minor or limited in scope that they do not concern a condition of employment of bargaining unit employees “generally,” and thus do not meet the criteria of § 7114(a)(2)(A). For example, in *AFGE, Council 214*, 38 FLRA 309, 330-31 (1990), *enforced sub nom. U.S. Dep’t of the Air Force v. FLRA*, 949 F.2d 475 (D.C. Cir. 1991), the Authority indicated that “last chance” agreements involve only a discrete action taken with respect to an individual employee, not a general condition of employment, and that meetings arising from such agreements do not constitute formal discussions under § 7114(a)(2)(A). *See also Bureau of Field Operations, Soc. Sec. Admin, S.F., Cal.*, 20 FLRA 80, 83-84 (1985) (a meeting attended by two employees regarding a temporary reassignment did not involve a discussion of a general condition of employment and was not a formal discussion).

The Respondent relies on decisions that similarly indicate that meetings involving only superficial discussions of routine workplace matters affecting a small number of employees are not formal discussions. *See VA Gainesville*, 49 FLRA at 1175-76, 1185 (meeting involved “routine reminders” affecting a small number of employees); *GPO*, 17 FLRA at 929 (meeting concerned the manner in which four employees in a small subcomponent of the respondent’s operations were reporting their productivity, and the discussion constituted “no more than a routine monitoring function by management”). Unlike the meetings in those cases, the January 8 training session was an entirely uncommon event that concerned vital safety-related matters that applied to virtually all Selfridge employees. Given these significant differences, these decisions fail to support the Respondent’s claim that it had no obligation to provide the Union an opportunity to be represented here.

Because the January 8 training involved a thorough discussion about vital safety topics that applied to virtually all Selfridge employees, and because the issues discussed at the meeting clearly implicated the interests of the Union and bargaining unit employees, I find that the meeting concerned a general condition of employment within the meaning of § 7114(a)(2)(A) of the Statute.

To summarize, the record shows that the January 8, 2016, meeting was a formal discussion between a representative of the Agency and bargaining unit employees that concerned a general condition of employment. As such, the Agency was obligated to provide the Union with notice and an opportunity to be represented at the meeting. By failing to meet this obligation, the Agency violated § 7116(a)(1) and (8) of the Statute.

Accordingly, I recommend that the Authority adopt the following order:

ORDER

Pursuant to § 2423.41(c) of the Rules and Regulations of the Authority and § 7118 of the Federal Service Labor-Management Relations Statute (the Statute), the U.S. Department of the Air Force, Selfridge Air National Guard Base, Michigan, shall:

1. Cease and desist from:

(a) Failing to provide the American Federation of Government Employees, Local 2077, AFL-CIO (the Union) advance notice and the opportunity to be represented at formal discussions with bargaining unit employees concerning any grievance or any personnel policy or practice or other general condition of employment, including formal safety meetings.

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

2. Take the following affirmative actions in order to effectuate the purposes and policies of the Statute:

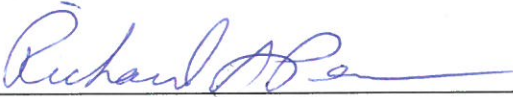
(a) Provide the Union with advance notice and the opportunity to be represented at formal discussions with bargaining unit employees, including formal safety meetings.

(b) Post at its facilities where bargaining unit employees represented by the Union 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 127th Wing Commander, and shall be posted and maintained for sixty (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 ensure that such Notices are not altered, defaced, or covered by any other material.

(c) In addition to physical posting of paper notices, the Notice shall be distributed electronically, on the same day as the physical posting, such as by email, posting on an intranet or internet site, or other electronic means, if the Respondent customarily communicates with employees by such means.

(d) Pursuant to § 2423.41(e) of the Rules and Regulations, notify the Regional Director of the Chicago Region, Federal Labor Relations Authority, in writing within thirty (30) days from the date of this Order, as to what steps have been taken to comply.

Issued Washington, D.C., May 24, 2017



RICHARD A. PEARSON
Administrative Law Judge

NOTICE TO ALL EMPLOYEES

POSTED BY ORDER OF THE

FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the U.S. Department of the Air Force, Selfridge Air National Guard Base, Michigan, violated the Federal Service Labor-Management Relations Statute (the Statute), and has ordered us to post and abide by this Notice:

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT deprive employees of their right to have the American Federation of Government Employees, Local 2077, AFL-CIO (the Union) represent them at formal discussions with bargaining unit employees concerning any grievance or any personnel policy or practice or other general condition of employment, including formal safety meetings, such as the one conducted on January 8, 2016.

WE WILL NOT in any like or related manner, interfere with, restrain, or coerce bargaining unit employees in the exercise of the rights assured them by the Statute.

WE WILL provide the Union with advance notice and an opportunity to be represented at any formal discussion, including formal safety meetings.

(Agency/Activity)

Date: _____

By: _____
(Signature) (Title)

This Notice must remain posted for sixty (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 its provisions, they may communicate directly with the Regional Director, Chicago Region, Federal Labor Relations Authority, whose address is: 224 S. Michigan Ave., Suite 445, Chicago, IL 60604, and whose telephone number is: (312) 886-3465.