

**FEDERAL LABOR RELATIONS AUTHORITY**

Office of Administrative Law Judges WASHINGTON, D.C.

DEPARTMENT OF TRANSPORTATION FEDERAL AVIATION  
ADMINISTRATION CORAOPOLIS, PENNSYLVANIA Respondent

and PROFESSIONAL AIRWAYS SYSTEMS SPECIALISTS, DISTRICT NO. 6, Case No.  
NMEBA/AFL-CIO Charging Party BN-CA-00173

Bruce R. Petroff, Esquire For the Respondent John E. Gallagher, Esquire For the General Counsel Mr.  
William H. Morrow For the Charging Party 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. <sup>(1)</sup>, and the Rules and Regulations issued thereunder, 5 C.F.R. § 2423.1 et seq., concerns whether Respondent on, or about December 1, 1999, implemented new workload assignments for Program Support Specialists in its Pittsburgh Systems Management Office and on, or about December 13, 1999, implemented new workload assignments for the Logistic Supply Specialist in the Buffalo Systems Support Center in each instance without affording the Union notice and an opportunity to negotiate the impact and implementation of the changes on conditions of employment in violation of §§ 16(a)(5) and (1) of the Statute. Respondent asserts that it had no obligation to bargain over the changes because the impact on each employee's employment situation was not more than a de minimis change.

This case was initiated by a charge on January 24, 2000 (G.C. Exh. 1(a)); the Complaint and Notice of Hearing issued on July 31, 2000, and set the hearing for November 27, 2000; and on September 18, 2000, pursuant to § 2429.2 of the Authority's Rules and Regulations, 5 C.F.R. § 2429.2, this case was transferred to the Chicago Regional Office (G.C. Exh. 1(f)). On November 2, 2000, the date of hearing was rescheduled and the place of hearing was fixed (G.C. Exh. 1(h)) and pursuant thereto a hearing was duly held on December 1, 2000, in Pittsburgh, Pennsylvania, before the undersigned. All parties were represented at the hearing, were afforded full 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, by agreement of the parties, January 16, 2001, was fixed as the date for mailing post-hearing briefs and General Counsel and Respondent each timely mailed an excellent brief, received on, or before, January 22, 2001, which have been carefully considered. On the basis of the entire record, including my observation of the witnesses and their demeanor, I make the following findings and conclusions:

**FINDINGS**

1. The Professional Airways Systems Specialists, District No. 6, NMEBA/AFL-CIO (hereinafter, "Union") is the certified exclusive representative of a nationwide unit of non-professional employees which includes employees of the Department of Transportation, Federal Aviation Administration's Coraopolis, Pennsylvania activity, also known as the Pittsburgh Systems Management Office (hereinafter, "SMO").
2. Reference to SMO as the Pittsburgh SMO is a bit misleading inasmuch as the Pittsburgh SMO covers a geographic area which includes parts of New York, Virginia, West Virginia and Pennsylvania and is divided into a number of facilities, including ten Systems Support Centers, including Buffalo and Rochester, New York. The three Program Support Specialists involved (William Morrow, Fred Bias and Clarissa Holland) (hereinafter, "PSS(s)"), and the one Logistics Supply Specialist (Jacquelyn Militello) (hereinafter, "LSS") all

are assigned to the Pittsburgh SMO and all report to the Manager, Program Support Office at the Pittsburgh SMO. Because we deal with the single Pittsburgh Systems Management Office and it is not necessary to distinguish the Pittsburgh Systems Management Office from other Systems Management Offices covering other geographic areas, it will, as noted above, be referred to as, "SMO".

3. PSS Morrow and PSS Holland are physically located at Pittsburgh; PSS Bias is physically located at Charleston, West Virginia. LSS Militello is physically located at Buffalo, New York.

4. The three Program Support Specialists (PSSs), i.e., Messrs. Morrow and Bias and Ms. Holland are responsible for technical training programs and the Personal Certification program. Each was a Technician before becoming a PSS (Tr. 31). Their function is to plan, control, evaluate and integrate training and certification activities for the some 170 Airway Transportation Systems Specialists in the SMO (Tr. 30) (hereinafter, "Technicians"). The Technicians install, repair, and maintain FAA equipment at the air facilities and are assigned to one of the ten Systems Support Centers located throughout the geographic area covered by the SMO.

The PSSs do not do the actual training of Technicians but, rather, determine the training required, obtain course admission for them, where On-The-Job (OTJ) training is required before, or after, course training, arrange for such training. For example, when a new Technician is hired, the supervisor will plan development training for the employee, normally in consultation with a PSS. Once the training plan is developed, the PSS would seek quotas, or slots, at the FAA Academy for the SMO. The employee may be sent to an equipment school by the PSS and upon return, the employee may be required to complete a formal OTJ training program. The PSS would provide for performance examinations (Tr. 34) and would certify the employee upon satisfactory completion of the required training (Tr. 33). Typically, between five and fifteen certifications are required, each probably requiring training at the FAA's Academy, before a new Technician becomes a journeyman, a process that generally takes three or four years (Tr. 34). Journeymen receive training on new equipment which would require a PSS to obtain training slots, etc.

5. Before December 1, 1999, each PSS was responsible for the training and certification of all Technicians in a specific number of Systems Support Centers, or other offices, of the SMO where Technicians were assigned. For example, PSS Bias was assigned the training and certification responsibilities of the approximately 80 Technicians assigned to facilities located at Charleston, Huntington, Martinsburg and Clarksburg, West Virginia, and Roanoke, Virginia. PSS Holland was assigned four Centers: Allegheny County, Du Bois and Erie, Pennsylvania, and Rochester, New York. PSS Morrow was assigned Buffalo, New York, and Pittsburgh, Pennsylvania, plus the Technical Support Office and the Program Support Office. Each PSS maintained the employee training records and files of the employees for his/her assigned facilities and each PSS was responsible for the full range of PSS training and certification duties.

6. On December 1, 1999, Respondent FAA by Mr. Dennis Damp, Manager, Program Support, SMO, changed the PSS's work assignment. Instead of each PSS performing the full range of training and certification duties for all Technicians in their assigned facilities, as set forth in Paragraph 5, above, as of December 1, 1999, certain specific training and certification duties were assigned exclusively to a PSS who was then responsible for performing those duties throughout the SMO. Pursuant to Mr. Damp's instructions and the documents distributed to the three PSS employees, PSS Morrow was assigned the personnel certification and the OTJ training program duties; PSS Bias was assigned Academy (non-technical) and non-Federal Program Verification training program duties; and PSS Holland was assigned Academy (technical) and CBI program duties. In addition, each PSS was assigned to develop SOPs (Standard Operating Procedures) which were to, ". . . list regional contacts, related subject files, orders and relevant directives and information, plus provide bulleted procedures that others can follow when needed." (G.C. Exh. 8, p. 1); G.C. Exh. 9). Each PSS was required to become the subject matter expert for his/her assigned program (G.C. Exh. 8; Tr. 49-51, 64, 110).

Although no PSS now performs the full range of PSS duties, the PSS Position Description (G.C. Exh. 6) has not been changed, nor has the annual performance plan (critical elements and standards) been changed to reflect changes in work assignment. For example, PSS Morrow's performance plan (each PSS has the same performance plan) requires that he be, "responsible for the technical training program . . ." (Emphasis supplied), but PSS Morrow has been relieved of this function (G.C. Exh. 10; Tr. 56-59). Because each PSS has been relieved of certain training and/or certification program duties, it is more difficult for each PSS to maintain proficiency in the entire training and certification program. PSS Morrow stated that the workload was unfairly distributed in that he was given all work in the certification and performance examination area; he now has to maintain all of the 170, or so, training folders; and the OTJ training program is entirely his responsibility (Tr. 51).

Mr. Bias explained that non-Federal people are technicians employed at smaller airports to maintain equipment (Tr. 81); that to be employed, a non-Federal person must have an FCC licence; and then he must be trained for maintaining particular equipment (either FAA approved or factory approved training); and, finally, each must pass a performance examination (Tr. 90). Once qualified, employees must maintain certifications and training which the PSS must monitor and evaluate. Mr. Bias is responsible for enrolling SMO personnel into resident training at the Academy for non-technical training and maintains about 16 files for employees scheduled for training in the IPS system (Tr. 81). Because PSS Bias does not perform all training and certification duties for the employees in his previously assigned areas (*i.e.*, Charleston, Huntington, Martinsburg, Clarksburg and Roanoke), his position at Charleston might not be warranted (Tr. 84).

7. LSS Jacquelyn Militello, as noted above, is physically located at Buffalo, New York. Before January, 2000, LSS Militello on occasion would travel to Pittsburgh to assist there for a week or two at a time (Tr. 95). When detailed to Pittsburgh she stayed in Pittsburgh and, she estimated, that she had gone to Pittsburgh six to eight times during 1998 and 1999 (Tr. 95). On December 15, 1999, Mr. Damp, her supervisor, came to the Buffalo office and gave her the document titled, "LSS DUTIES AND RESPONSIBILITIES", PD EA-G326 (G.C. Exh. 2; Tr. 96), which shows preparation by Mr. Damp on October 12, 1999. Mr. Damp informed Ms. Militello that she would be responsible for the following new work assignments: (1) one day per week she would be assigned LSS duties in Rochester, New York; (2) she would be the backup for Rochester in maintaining Real Property files, including leases and changes to leases and attendant correspondence; (3) she would assume test equipment coordinator duties in Buffalo; and (4) she would process hazardous material reports and coordinate transportation needs (G.C. Exh. 2; Tr. 100, 101, 103). These new duties were to take effect in January, 2000 (Tr. 97) and before January, 2000, Ms. Militello had not performed these duties. Rochester is about 60 miles from Buffalo (Tr. 97) and, while she drives "on-the-clock" (Tr. 106), winter driving can be hazardous because of heavy snow (Tr. 98).

Beginning in January, 2000, and continuing to the date of the hearing (December 1, 2000) she has traveled to Rochester once a week. When she is not at Rochester, she performs Rochester LSS duties as requested by telephone and while at Rochester she has performed Buffalo LSS duties by telephone (Tr. 98, 99). Ms. Militello has had no training in handling hazardous materials and, of course, is not certified to handle hazardous materials and when required to ship batteries to the Jamestown, New York, area, they were returned because she was not qualified to ship them (Tr. 102).

8. Before the December 1, 1999, implementation of the change in PSS work assignments, the Union, by Mr. Morrow, the SMO representative (Tr. 21), was aware that Respondent was contemplating a change in the workload assignments of PSSs, and at a meeting on October 7, 1999, (Tr. 61) at which Mr. Barry Boshneck, Respondent's Division Manager (Tr. 54), Mr. Harry Hale, SMO Manager, Ms. Nancy Holston, Ass't. SMO Manager, Mr. Tom Demsky, Regional Vice President of the Union, Mr. Don Silsley, a Union representative from Pittsburgh, and Mr. Morrow were present (Tr. 55), Mr. Morrow asked the Division Manager, Mr. Boshneck, if workload assignment changes should be discussed and agreed to with the Union and Mr. Morrow said, ". . . both he and the regional vice president of the Union, Tom Demsky agreed and said

that's what they expected to take place." (Tr. 55). About two weeks after October 7 (Tr. 61), Mr. Morrow in a meeting with Mr. Hale asked what was going on with the PSS work assignments and Mr. Hale told him Mr. Damp was, ". . . going to work up a draft . . . and then it would be presented to both Harry Hale and myself to -- to finalize." (Tr. 62). Some time before December 1, 1999, Mr. Morrow met with Mr. Damp and Mr. Damp gave him, ". . . a workload distribution document which they reviewed" (Tr. 63) and Mr. Morrow brought up the negotiation issue and briefed Mr. Damp on the meetings and discussions with Messrs. Boshneck, Demsky and Hale (Tr. 63). There were no further meetings with Mr. Damp and no negotiations and at a routine unit telecon (Mr. Bias was on the line)(Tr. 47) with the three PSSs, Mr. Damp gave copies to Ms. Holland and Mr. Morrow and furnished a copy to Mr. Bias (Tr. 48) of a document titled, "PROGRAM SUPPORT STAFF WORKLOAD ASSIGNMENTS", dated December 1, 1999 (G.C. Exh. 8), which he announced was therewith implemented (Tr. 47, 63 and 112). Later on December 1, 1999, Mr. Damp sent an e-mail message to Ms. Holland and Messrs. Morrow and Bias entitled, "Training/Certification PSS Assignments" (G.C. Exh. 9; Tr. 48-49).

In his memorandum of December 3, 1999, to Mr. Hale, Mr. Morrow stated, in part, as follows:

"PSS Work Assignments. I at no time asked to negotiate the actual assignments of work however I did request to negotiate the impact and implementation of the charges. To that, you refused claiming there was no requirement." (G.C. Exh. 5).

9. In October, 1999, apparently on, or about, October 12, 1999, when he prepared it, Mr. Damp gave Mr. Morrow a copy of General Exhibit 2 which proposed to change work assignments of LSS Militello January 1, 2000 (Tr. 22, 23). By letter dated October 28, 1999, to Mr. Damp (G.C. Exh. 3), Mr. Morrow pointed out, and described, ". . . significant changes to the duties and responsibilities of the BUF LSS position and a deviation from the National Position Description" (id.) and requested to negotiate. By letter dated November 22, 1999, Mr. Damp responded, in pertinent part, as follows:

"I am in receipt of your letter dated 10/28/99 where you request that we negotiate . . . . The duties that are assigned to Ms. Militello are in her PD and therefore not subject to negotiations." (G.C. Exh. 4).

10. By memorandum to SMO Manager Hale, dated December 3, 1999 (G.C. Exh. 5), Mr. Morrow, inter alia, reviewed the, ". . . position of PASS as it relates to the BUF LSS . . ." (id.) and, further stated ". . . The bottom line is there is a significant change in policy, practice and working conditions and at a minimum impact and implementation bargaining is required. To that you again refused. . . ." (id., p. 2). Mr. Morrow stated that the Union had never indicated to management that it would not negotiate impact and implementation whether or not management negotiated the actual assignment of work. (Tr. 29).

11. The February, 1995, Position Description for LSS is Agency Exhibit 1 and by memorandum dated December 13, 1999 (Agency Exh. 2), to Mr. Morrow, Mr. Damp responded to Mr. Morrow's concerns. LSS Militello testified that the major changes in her work assignments were, "My requirement to travel to the Rochester SSC once a week and to be the backup person for that facility." (Tr. 97); that the Rochester backup duty was, ". . . if the supervisor at Rochester, Bruce Sarnoff would need assistance in any areas that I was to provide it . . ." (Tr. 98); and that assignment of duties as, ". . . test equipment coordinator." was a new duty (Tr. 100, 101). The 1995 LSS Position Description provided, "B. Transportation. 1. Assists the Hazardous Material Transportation Officer (HMTO), and Sector Environmental Compliance Manager (SECM) in transportation of hazardous materiel (sic). 2. Maintains tracking system for disposition of hazardous material and hazardous material waste manifests (Cradle-to-Grave tracking). 3. Completes Government Bills of Lading for transportation of hazardous materials. Ensures proper storage, packaging, and crating of hazardous materials. 4. Maintains sector file for all Material Safety Data Sheets. 5. Processes hazardous material reports and pays hazardous material business plan fees. . . ." (Agency Exh. 1, pp. 2-3). The October 12, 1999, LSS Duties and Responsibilities states:

## "Transportation

"2. Process hazardous material reports and coordinates other transportation needs as required under direction of SMO SECM [Sector Environmental Compliance Manager] for support SSCs." (G.C. Exh. 2, p. 2).

Obviously, the October 12, 1999, document (G.C. Exh. 2) is different from the 1995 document (Agency Exh. 1); but LSS Militello was not correct that was a new duty added in 1999 (Tr. 100). Nevertheless, as she testified without contradiction, she has had no training with respect to hazardous materials; was given one assignment to ship hazardous material (batteries) after January, 2000, which shipment was returned to her by Federal Express because she was not qualified to ship the material (Tr. 101-102). The 1995 P.D. under,

## "Factor 9. Work Environment

The work is performed primarily in an office setting although some visits to industrial facilities and work performance sites are occasionally required." (Agency Exh. 1. p. 6, Factor 9).

LSS Militello credibly testified that before December 15, 1999, she had traveled to Pittsburgh, ". . . as I was part of the detached staff." (Tr. 102); that she had never traveled to Erie (Tr. 103) nor did she visit any other facility except Pittsburgh to give Acquire training (Tr. 103); that she had traveled to Pittsburgh to give Acquire training and did give the training in Rochester when she was there, i.e. after January, 2000 (Tr. 103).

Mr. Damp said LSS Militello gave Acquire training at Erie, Du Bois and Allegheny County and that she, "On occasion . . . would do a day trip down to Erie prior to 12/1/99 . . ." (Tr. 146). Mr. Damp also said that, "After 12/1/99, her travel decreased considerably . . ." (Tr. 146). I do not credit Mr. Damp's testimony concerning LSS Militello's travel to Erie, Du Bois and Allegheny County or that after 12/1/99 her travel decreased considerably for the reason that it is contrary to the testimony of Ms. Militello which I found credible. Moreover, Mr. Damp's assertion that her travel decreased considerably after December 1, 1999, is directly contradicted by the unchallenged and wholly credible testimony of Ms. Militello that beginning in January, 2000, she had gone to Rochester one day per week, travel she had not performed at all before January, 2000, and that she had continued, on occasion, to travel to Pittsburgh.

Mr. Damp made clear that Ms. Militello was furnished a government car for travel to Rochester (Tr. 147) and he had explained to her that she was to be, ". . . the test equipment coordinator, not the test equipment calibration program manager. . . . She misunderstood and felt that I was talking about the calibration program, and I explained . . . what I meant was that she's responsible for exchange and repair, E and R items, and R and R, repair and replace items." (Tr. 151-152).

12. Mr. Damp stated that before 12/1/99, he had assigned specific programs to individual PSSs, for example, Ms. Holland was, ". . . our primary CBI [Computer Based Instruction (Tr. 40)] administrator." (Tr. 119); Mr. Bias, ". . . handled the MMS . . . which is now called SAL, Simplified Auto Logging. . . the Maintenance Management System." (Tr. 119); and Mr. Morrow was, ". . . in charge of the video library. He did waivers." (Tr. 119). He conceded that before December 1, 1999, ". . . we did it geographically at that time. And -- and basically, Fred and Clarissa and Bill had full responsibility for the majority of those program areas . . . the reason that -- that the assignments were changed on -- on 12/1/99 was to basically provide . . . better efficiency . . . improve teamwork . . ." (Tr. 122-123).

Mr. Damp stated that, ". . . The call for training is at the beginning of the year and all three of the PSS's . . . are involved with identifying those needs . . . once a year we do a very aggressive, very thorough call for training. Clarissa was the program manager for that prior to 12/1/99 and after 12/1/99. She's always been the

lead. . . ." (Tr. 132). Ms. Holland has, ". . . always been sort of the subject file program manager." (Tr. 133).

Mr. Damp said that, ". . . Fred Bias does training every day. He does non-Fed training . . . He does assist with Clarissa and Bill on a day-to-day basis on certification and training issues as needed. He handles managers' training; logistics training; safety training; locally-arranged training, which is technical training; regionally-conducted training; coordination, which is technical training. And he does -- he tracks the new-hire program, the new-hire training plans . . ." (Tr. 134; see, also, Tr. 137). Mr. Damp stated that Mr. Bias also does the IPPS enrollments [Integrated Personal Payroll System] (Tr. 137).

Mr. Damp said that he intended that, ". . . basically assignments will be rotated in the future to provide each PSS with the opportunity to work with and learn the -- intricacies of all major programs" (G.C. Exh. 8, p. 2; Tr. 138) and, ". . . had I still been in the position they would be rotating about now, annually." (Tr. 138) (Emphasis supplied).

### **CONCLUSIONS**

Respondent concedes that, as a reserved right of management<sup>(2)</sup>, conditions of employment were changed on December 1, 1999, for its three PSS employees in the SMO; that it did not give the Union notice and an opportunity to negotiate on the impact and implementation of the changes because the impact on each PSS employee was de minimis. In like manner, Respondent concedes that, as a reserved right of management<sup>(3)</sup>, it implemented on, or about, October 15, 1999, changes duties of its Buffalo LSS employee, effective January, 2000; that it did not give the Union notice and an opportunity to negotiate on the impact and implementation of the changes because the impact on the LSS employee was de minimis.

Accordingly, the sole issue as to each change, i.e., duties of PSS employees and duties of the LSS employee, is whether the change was more than de minimis.

As the Authority consistently has made clear,

"Where the substance of the decision is not itself subject to negotiation, an agency is nonetheless obligated to bargain over the impact and implementation of the decision if the resulting changes have a more than de minimis effect on conditions of employment. See Air Force Logistics Command, Warner Robins Air Logistics Center, Robins Air Force Base, Georgia, 53 FLRA 1664, 1668 (1998)." Federal Bureau of Prisons, Federal Correctional Institution, Bastrop, Texas, 55 FLRA 848, 854 (1999).

The Authority has set forth the standard to determine whether a change is de minimis. First, in Department of Health and Human Services, Social Security Administration, Region V, Chicago, Illinois, 19 FLRA 827 (1985); and second, in Department of Health and Human Services, Social Security Administration, 24 FLRA 403 (1986) where it stated, in pertinent part, as follows:

". . . In discussing the de minimis standard in Department of Health and Human Services, Social Security Administration, Region V, Chicago, Illinois, . . . [supra] the Authority identified a number of factors to be considered in determining whether a particular change in conditions of employment was more than de minimis. The factors identified were (1) the nature of the change (for example, the extent of the change in work duties, location, office space, hours, loss of benefits or wages, and the like); (2) the duration and frequency of the change (that is, the temporary, recurring, or permanent nature of the change); (3) the number of employees affected or foreseeably affected by the change; (4) the size of the bargaining unit; and (5) the extent to which the parties established, through negotiations or past practice, procedures and appropriate arrangements concerning analogous changes in the past.

"We have reassessed and modified the recent de minimis standard. In order to determine whether a change in conditions of employment requires bargaining in this and future cases, the pertinent facts and circumstances presented in each case will be carefully examined. In examining the record, we will place principal emphasis on such general areas of consideration as the nature and extent of the effect or reasonably foreseeable effect of the change on conditions of employment of bargaining unit employees. Equitable considerations will also be taken into account in balancing the various interests involved.

"As to the number of employees involved, this factor will not be a controlling consideration. It will be applied primarily to expand rather than limit the number of situations where bargaining will be required. For example, we may find that a change does not require bargaining. However, a similar change involving hundreds of employees could, in appropriate circumstances, give rise to a bargaining obligation. The parties' bargaining history will be subject to similar limited application. As to the size of the bargaining unit, this factor will no longer be applied. (24 FLRA at 407-408).

The Authority has followed this standard consistently. U.S. Customs Service (Washington, D.C.) and U.S. Customs Service, Northeast Region (Boston, Massachusetts), 29 FLRA 891, 898 (1987); Veterans Administration Medical Center, Phoenix, Arizona, 47 FLRA 419, 422-423 (1993); United States Department of the Air Force, Air Force Material Command, 54 FLRA 914, 919 (1998). Further, the Authority has made clear that the obligation to negotiate attaches to all changes in conditions of employment, including changes of conditions of employment of a single employee, Social Security Administration, 55 FLRA 978, 980 (1999); 92 Bomb Wing, Fairchild Air Force Base, Spokane, Washington, 50 FLRA 701 (1995); Veterans Administration Medical Center, Phoenix, Arizona *supra*. Finally, the Authority has made it clear that a change in a condition of employment need not be substantial but, rather, ". . . the effect of that change on bargaining unit employees need only be more than de minimis." Portsmouth Naval Hospital, Portsmouth, New Hampshire, 45 FLRA 574, 575 n.2 (1992).

A. Effect of changes on PSS employees was more than de minimis.

It is true, as respondent asserts, that, "None of the affected employees in the instant case was assigned duties and tasks that had not been performed prior to December 1999." (Respondent's Brief, p. 4). It also is true, as Mr. Damp testified, that before December 1, 1999, he had assigned specific programs to individual PSSs. For example, Ms. Holland was, ". . . our primary CBI [Computer Based Instruction] administrator." (Tr. 119); Mr. Bias, ". . . handled the MMS . . . which is now called SAL, Simplified Auto Logging . . . the Maintenance Management System." (Tr. 119); and Mr. Morrow was, ". . . in charge of the video library. He did waivers." (Tr. 119). Nevertheless, Mr. Damp conceded that on December 1, 1999, the geographical assignment of work to the PSSs, where each PSS had full responsibility for the majority of program areas, changed (Tr. 122-123). Indeed, by direct implication, Mr. Damp admitted that the change in conditions of employment was more than de minimis in his statement that he intended that, ". . . basic assignments would be rotated in the future to provide each PSS with the opportunity to work with and learn the -- intricacies of all major programs. . . ." (G.C. Exh. 8, p. 2) and, ". . . had I still been in the position they would be rotating about now, annually." (Tr. 138) (Emphasis supplied).

As each PSS testified, before December 1, 1999, each performed the full range of training and certification duties for all employees in the geographical area assigned to each. Beginning December 1, 1999, the geographical assignment of full duties ended and each PSS was assigned a particular program, or programs, and was responsible for performing those duties throughout the SMO. Each PSS was relieved of all other training and certification duties. Thus, PSS Morrow was assigned the personnel certification and on-the-job training duties; PSS Bias was assigned Academy (non-technical) and non-Federal program verification duties; and PSS Holland was assigned Academy (technical) and CBI training duties.

Not only did not the nature of their work change but, clearly the change had a reasonably foreseeable impact on the PSS that was more than de minimis. Each PSS no longer performs the full range of PSS duties; but, nevertheless, each PSS must maintain full proficiency in all areas. If a PSS performs the duties on a daily basis, he must, and will, maintain proficiency; but if most of the duties are not performed regularly, maintenance of proficiency will be difficult. As PSS Morrow testified, the PSS no longer performs duties that are part of the PSS performance plans (critical elements and meets expectation standards).

Mr. Bias is in a detached status, being located in Charleston, West Virginia, and because he has been relieved of all significant training and certification duties for FAA employees and no longer retains FAA employee training and certification files (he does 16 files for certification verification of non-federal employees), his detached duty assignment could be in doubt. Mr. Morrow felt the distribution of work to him was unfair and, further, that Respondent had assured him that some accommodation would be made to his workload to take into account his Union representational activities, but this was neither resolved nor addressed when Respondent implemented the change on December 1, 1999. I conclude that the effect of the changes on each PSS was more than de minimis and that Respondent violated §§ 16(a)(5) and (1) of the Statute by its refusal to negotiate the impact and implementation of the changes of conditions of employment of its PSS employees.

B. Effect of changes on LSS employee was more than de minimis.

LSS Militello is located at Buffalo, New York, and before January, 2000, performed her duties in Buffalo, except that on infrequent occasion she would be sent, on detail, to Pittsburgh where she would stay a week or more at a time. This occurred about a total of six to eight times in the years 1998-1999.

On, or about October 15, 1999, the Union was informed that beginning January, 2000, LSS Militello would be assigned the LSS duties at Rochester, New York, including Field Spares Inventory Program manager for both Buffalo and Rochester (G.C. Exh. 2), work she had not performed previously, and back-up duties for the Rochester Center, work she had not previously performed; she was instructed to travel to the Rochester, New York, Office once a week (a distance of about 60 miles each way), on the clock and using a government vehicle, but travel she had never performed; and her responsibilities at Buffalo were not reduced, indeed, she was assigned at least one new duty at Buffalo, namely, "Test equipment coordinator" (G.C. Exh. 2)(See, also, Field Spares Inventory Program manager for both Buffalo and Rochester).

Obviously, the assignment of new duties to LSS Militello including: LSS duties at Rochester; Manager, Field Spares Inventory Program at Buffalo and Rochester which Respondent's statement of Duties and Responsibilities stated, ". . . is a recurring program and requires oversight and onsite support to the technical workforce"; back-up duties for the Rochester Center (G.C. Exh. 2); maintenance of Real Property files for Rochester, with attendant correspondence (G.C. Exh. 2); travel to Rochester one day per week; etc., changed her conditions of employment and had more than a de minimis impact. Respondent violated §§ 16(a)(5) and (1) of the Statute by its refusal to negotiate the impact and implementation of the changes of conditions of employment of LSS Militello.

C. Remedy.

General Counsel seeks a status quo ante bargaining order and states that,

"In determining whether a status quo ante remedy would be appropriate in a case involving a violation of the duty to bargain over section 7106(b)(2) and (3) matters, the authority considers, among other things, (1) whether, and when, notice was given to the union by the agency concerning the action or change decided upon; (2) whether, and when, the union requested bargaining on the procedures to be observed by the agency in implementing such action or change and/or concerning appropriate arrangements for employees adversely affected by such action or change; (3) the willfulness of the agency's conduct in failing to discharge its



bargaining obligations under the Statute; (4) the nature and extent of the impact experienced by adversely affected employees; and (5) whether, and to what degree, a status quo ante remedy would disrupt or impair the efficiency and effectiveness of the agency's operations. Federal Correctional Institution, 8 FLRA 604, 606 (1982).

Concerning the first criterion, notice, while the Union did receive notice of the LSS prior to the date of implementation, the Union did not have notice or knowledge of the PSS change Respondent implemented on December 1, 1999.

"Concerning the second criterion, a request to negotiate, the record establishes for both changes that the Union submitted timely requests to negotiate.

"Concerning the third criterion, Respondent's decision not to negotiate was willful. Beginning in October, 1999, and continuing through December 3, 1999, meeting, the Union requested to negotiate over the PSS change. Having been placed on notice that the Union wanted to negotiate, and Respondent having previously assured the Union that Respondent would negotiate the impact of the change, and given, after Mr. Morrow reminded Mr. Damp during the December 1 meeting of the Union outstanding request, Mr. Damp responded that Mr. Hale had given him the "green light," one can only conclude that Respondent's refusal/failure to negotiate over the PSS change was a willful, deliberate and intentional act on its part.

"The same can be said for the LSS change. The record establishes that the Union requested to negotiate on October 28, several months before the actual implementation of the change, and then again requested on December 3, after Respondent refused to negotiate.

"Not only did Respondent have more than adequate time to negotiate between the time the Union requested to negotiate the changes and the implementation of the changes, a review of the record revealed no reason why Respondent had to implement the changes on the date they did. Thus, even assuming negotiations had not been completed prior to the time of the implementation dates, there appears to have been no reason why Respondent could not have delayed the implementation of either change.

"Concerning the fourth criterion, impact on bargaining unit employees, the impact on the employees is serious and has already been discussed . . . .

"Concerning the fifth criterion, the efficiency and effectiveness of the agency's operations, in U.S. Department of Justice, Immigration and Naturalization Service, 55 FLRA 892, 906 (1999), the Authority has made clear in order to deny a status quo remedy, the record must establish that such a remedy would be disruptive to the agency:

'[T]he Authority requires that a conclusion that a status quo ante remedy would be disruptive to the operations of an agency be "based on record evidence." Army and Air Force Exchange Service, Waco Distribution Center, Waco Texas and American Federation of Government Employees, Local 4042, 53 FLRA 749, 763 (1997). See, e.g., U.S. Department of Health and Human Services, Social Security Administration and American Federation of Government Employees, General Committee, 50 FLRA 296, 299 (1995) (finding that the record evidence sufficiently established that the efficiency of respondent's operations would be affected where all performance appraisals issued under the revised standards and all related personnel actions would have to be rescinded). In the absence of record evidence establishing that a status quo ante remedy is not appropriate, the Authority "should" restore the status quo. NTEU v. FLRA, 910 F.2d at 969. In this regard, the Authority recently held in Federal Bureau of Prisons, Federal Correctional Institution, Bastro, Texas and American Federation of Government Employees, Local 3828, AFL-CIO, 55 FLRA No. 147 (1999), that a status quo ante remedy was appropriate under FCI because the agency asserted, but failed to establish, that such a remedy would lead to disruption by interfering with internal security at the corrections facility.'

"While Respondent, via Mr. Damp, claimed that the purpose for implementing the PSS change was for the efficiency of the agency (Tr. 122, lines 17-25), that mere assertion is not sufficient to deny a status quo ante remedy. A review of the record demonstrates that the record is devoid of any such evidence.

"Finally, it should be noted that one critical purpose of the status quo ante remedy is to deter the Respondent and future parties from failing to satisfy their duty to bargain, and reduce any incentive that may exist to unilaterally implement changes in conditions of employment and then refuse to negotiate over all pertinent aspects of the impact and implementation of the changes. FCI Bastrop, 55 FLRA at 857." (General Counsel's Brief, pp. 21-24).

I agree with General Counsel's comments and further note that Respondent has not made any statement in opposition to a status quo ante remedy. Accordingly, a status quo ante remedy will be recommended.

Having found that the Department of Transportation, Federal Aviation Administration, Coraopolis, Pennsylvania, has violated §§ 16(a)(5) and (1) of the Statute, it is recommended that the Authority adopt the following:

### ORDER

Pursuant to § 2423.41 of the Authority's Rules and Regulations, 5 C.F.R. § 2423.41, and § 18 of the Statute, 5 U.S.C. § 7118, it is hereby ordered that the Department of Transportation, Federal Aviation Administration, Coraopolis, Pennsylvania, shall:

1. Cease and desist from:

(a) Unilaterally implementing changes in the work assignments of the Pittsburgh Systems Management Office's bargaining unit employee without giving prior notice to the Professional Airways Systems Specialist, District No. 6, NMBEA/AFL-CIO (hereinafter, "PASS"), the exclusive representative of certain of its employees, and affording it an opportunity to bargain over the impact and implementation of the these changes prior to their implementation.

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

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

(a) Rescind the Program Support Specialist change which was implemented on December 1, 1999, and the Logistic Support Specialist change which was implemented in January 2000.

(b) Notify and, upon request, negotiate with PASS over any changes in conditions of employment to the extent required by the Statute.

(c) Post at its Pittsburgh Systems Management Office and at all facilities, including Support Centers, which report to the Pittsburgh SMO, 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 Manager of the Pittsburgh Systems Management Office, and they 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 ensure that such Notices are not altered, defaced, or covered by any other material.

(d) Pursuant to § 2423.41(e) of the Authority's Rules and Regulations, 5 C.F.R. § 2423.41(e), notify the Regional Director, Chicago Region, Federal Labor Relations Authority, 55 West Monroe, Suite 1150, Chicago, Illinois 60603-9729, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

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WILLIAM B. DEVANEY

Administrative Law Judge

Dated: May 24, 2001

Washington, DC

**NOTICE TO ALL EMPLOYEES**  
**POSTED BY ORDER OF THE**  
**FEDERAL LABOR RELATIONS AUTHORITY**

The Federal Labor Relations Authority has found that the Department of Transportation, Federal Aviation Administration, Coraopolis, Pennsylvania, has violated the Federal Service Labor-Management Relations Statute and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT unilaterally implement changes in the work assignments of the Pittsburgh Systems Management Office's bargaining unit employee without giving prior notice to the Professional Airways Systems Specialist, District No. 6, NMBEA/AFL-CIO (hereinafter, "PASS"), to bargain over the impact and implementation of the these changes prior to their implementation.

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

WE WILL rescind the Program Support Specialist change which was implemented on December 1, 1999, and the Logistic Support Specialist change which was implemented in January 2000.

WE WILL, in the future, notify and, upon request, negotiate with PASS over changes in conditions of employment which affect bargaining unit employees.

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, Chicago Region, Federal Labor Relations Authority, whose address is: 55 West Monroe, Suite 1150, Chicago, Illinois 60603-9729, and whose telephone number is: (312) 353-6306.

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. The Union in its December 3, 1999, memorandum to SMO Manager Harry Hale, that it, ". . . at no time asked to negotiate the actual assignments of [PSS] work however I did request to negotiate the impact and implementation of the changes. . . ." (G.C. Exh. 5).
3. As to the Buffalo LSS change, the Union in its memorandum of December 3, 1999, attempted to, "straddle the fence", stating, in part, ". . . The bottom line is a significant change . . . and at a minimum impact and implementation bargaining is required. . . ." (G.C. Exh. 5, p. 2), an effort Mr. Morrow continued at the hearing (Tr. 29); but General Counsel has made it plain that,

". . .this case involves the exercise of a management right under section 7106 to assign work . . . ." (General Counsel's Brief, p. 13) (See, also Tr. 14).