



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

OALJ 16-27

U.S. DEPARTMENT OF THE NAVY
PUGET SOUND NAVAL SHIPYARD
& INTERMEDIATE MAINTENANCE FACILITY
BREMERTON, WASHINGTON

RESPONDENT

Case No. SF-CA-15-0248

AND

INTERNATIONAL FEDERATION OF
PROFESSIONAL AND TECHNICAL
ENGINEERS, LOCAL 12, AFL-CIO

CHARGING PARTY

Cara Krueger
For the General Counsel

Michele C. Knauss
For the Respondent

Elaine C. Wrightson
For the Union

Before: CHARLES R. CENTER
Chief Administrative Law Judge

DECISION

STATEMENT OF THE CASE

This case arose under the Federal Service Labor-Management Relations Statute (Statute), 5 U.S.C. §§ 7101-7135 and the Rules and Regulations of the Federal Labor Relations Authority (FLRA/Authority), part 2423.

On December 18, 2014, the International Federation of Professional and Technical Engineers, Local 12, AFL-CIO (Charging Party/Union) filed an unfair labor practice (ULP) charge against the U.S. Department of the Navy, Puget Sound Naval Shipyard & Intermediate Maintenance Facility, Bremerton, Washington (Respondent/Agency). (GC Ex. 1(a)). On September 15, 2015, after investigating the charge, the Regional Director of the Chicago Regional Office of the FLRA issued a Complaint and Notice of Hearing alleging that the Agency violated § 7116(a)(1) and (5) of the Statute by refusing to bargain

over changes regarding travel reimbursements. (GC Ex. 1(b)). A hearing was scheduled for November 18, 2015. (*Id.*). In its Answer to the Complaint, dated October 8, 2015, the Respondent admitted many of the factual allegations but denied that it committed the alleged ULP. (GC Ex. 1(c)).

On January 19, 2016, the parties filed a joint motion for a decision based upon a stipulated record, attaching a Joint Stipulation of Fact (Stip.) along with Exhibits 1 through 12 (Jt. Ex. 1-12). The parties agreed that the Stipulation of Fact, and the attached exhibits, would constitute the entire record in the case. (Stip. ¶24).

In response to the motion, the scheduled hearing was canceled. The parties submitted timely briefs that were fully considered and the case is decided on the basis of the stipulated record without a hearing. Based upon the record, I find that the Respondent violated § 7116(a)(1) and (5) of the Statute by refusing to bargain over the changes regarding travel reimbursements.

In support of this decision, I make the following findings of fact, conclusions of law, and recommendations.

FINDINGS OF FACT

The Respondent is an agency within the meaning of § 7103(a)(3) of the Statute. (Stip. ¶2). The International Federation of Professional and Technical Engineers, AFL-CIO (IFPTE), is a labor organization within the meaning of § 7103(a)(4) of the Statute and is the exclusive representative of a union of employees appropriate for collective bargaining at the Respondent. (Stip. ¶3). The Local 12 is an agent of IFPTE for the purpose of representing a unit of employees at the Respondent. (Stip. ¶4). The Agency and the Union are parties to a collective bargaining agreement (CBA). (Stip. ¶5).

On September 19, 2014, Ray Kelly, a Human Resources Advisor at the Agency, notified Elaine Wrightson, Union representative, that the Agency planned to implement changes concerning travel reimbursements. (Stip. ¶6; Jt. Ex. 5). At the time, the Agency provided employees with reimbursement for meals and incidental expenses (M&IE), as well as a separate reimbursement for certain expenses (travel expenses), including laundry, baggage tips, transportation tips, and ATM fees. The Agency would no longer provide reimbursement for travel expenses separate from the reimbursement for M&IE. Instead, travel expenses would be treated as incidental expenses covered by the M&IE reimbursement. (Stip. ¶8, 20-21). (Ultimately, incidental expenses, including travel expenses, would be reimbursed at an amount equal to \$5.00 per day.) (Stip. ¶21). Kelly informed Wrightson that the Agency was making this change pursuant to changes in the Department of Defense's Joint Travel Regulations. (Stip. ¶8; Jt. Ex. 5).

On September 30, 2014, Wrightson notified Kelly that the Union sought to bargain over the impact and implementation of the proposed change. (Stip. ¶9).

On October 3, 2014, Kelly advised Wrightson that the Agency planned to make another change concerning travel reimbursements. At the time, the Agency reimbursed employees on long-term temporary duty (TDY) assignments at the full per diem rate for

lodging and M&IE. The Agency planned to reduce reimbursements for lodging expenses and M&IE. For the first 30 days of a TDY assignment, the Agency would still reimburse lodging expenses and M&IE at the full per diem rate. But for days 31-180, the Agency would reimburse lodging expenses and M&IE at only 75 percent of the full per diem rate, and after 180 days, the Agency would reimburse lodging and M&IE at only 55 percent of the full per diem rate. (Stip. ¶10, 18-19). Kelly offered to bargain over the impact and implementation of the change, and stated that these changes were made in connection with the Joint Travel Regulations. (Stip. ¶10).

On October 7, 2014, Union representative Elaine Wrightson asked Kelly to bargain over these changes. (Stip. ¶11). Wrightson provided four initial proposals:

1. No employee will be suffered to pay out-of-pocket for being assigned a TDY assignment for more than 30 days.
2. All TDY lodging arranged by CWT Sato for TDY assignments of more than 30 days will have a kitchen/kitchenette and in room laundering facilities.
3. When an employee's per diem is reduced the employee will be given at least 5 working days to make other arrangements for lodging, and time on the clock for making these arrangements.
4. Per diem reductions will not be enforced for employees having to seek affordable lodging in remote locations.

(Jt. Ex. 8).

On October 23, 2014, Wrightson told Kelly, "[T]he union would like to amend our request to bargain. . . . [T]he union would like to bargain on substance rather than impact and implementation." (Jt. Ex. 9 at 4).

Kelly responded, on October 28, 2014, telling Wrightson, "[T]he Employer will not bargain over the substance of these changes, only the impact and implementation, as the changes represent an exercise of management[']s right[] . . . to determine its budget." (*Id.*).

On October 29, 2014, Wrightson denied that bargaining affected that management right, and advised that the Union would be submitting proposals to engage in "substance bargaining." (*Id.* at 2-3). Kelly replied that the Agency would bargain over the impact and implementation, but not the substance, of the change. (*Id.* at 2).

On October 30, 2014, representatives of the Respondent and the Union met, but no bargaining occurred. (Stip. ¶14).

On October 31, 2014, Kelly advised Wrightson that the Union had until November 5, 2014, to submit "appropriate impact and implementation bargaining proposals," and that the Agency would implement the changes if no such proposals were received. (Jt. Ex. 10).

Wrightson replied on November 5, 2014, asserting that the Union was not obligated to bargain over the changes because they were covered by the CBA.¹ (Jt. Ex. 11). Wrightson continued, “Regardless, out of an abundance of caution, the Union is willing to negotiate the proposed changes to travel expenses with the agency at this time[.]” (*Id.*). Wrightson submitted three new proposals:

1. The Union is agreeable with the additions to reimbursable costs such as computer internet/Wi-Fi fees and currency conversion fees.
2. The Union proposes to maintain status quo on other reimbursable costs. No independent reimbursable expenses are to be removed.
3. The Union proposes to maintain status quo on per diem rates. No changes to per diem rates shall be made.

(*Id.* at 2).²

Wrightson also reiterated the Union’s position that the changes did not involve management’s right to determine its budget. (*Id.*).

On December 1, 2014, the Agency implemented the proposed changes. From that time on, the Agency paid only 75 percent of the full per diem rate for days 31-180 of a TDY assignment, and only 55 percent of the full per diem rate for days beyond that. (Stip. ¶19). Further, from that time on, the Agency no longer provided separate, non-M&IE reimbursements for travel expenses. (Stip. ¶21).

The parties have stipulated that these changes had greater than de minimis effects on bargaining unit employees’ conditions of employment. (Stip. ¶22).

POSITIONS OF THE PARTIES

General Counsel

The General Counsel asserts that the Respondent violated § 7116(a)(1) and (5) of the Statute by refusing to bargain with the Union over the Agency’s decision to reduce per diem rates and to no longer provide a reimbursement for travel expenses separate from the reimbursement for M&IE. (GC Br. at 3). In this regard, the General Counsel argues that it is a ULP to refuse to bargain based only on the union’s desire to bargain over the substance of a change. (*Id.* at 5) (citing *U.S. DHHS, PHS, Indian Health Serv., Indian Hosp., Rapid City, S.D.*, 37 FLRA 972, 981 (1990) (*IHS*)). In addition, the General Counsel argues that the Union’s proposals submitted on October 7, 2014, and on November 5, 2014, did not affect management’s right to determine its budget. (GC Br. at 3).

¹ Subsequently, the General Counsel and the Respondent agreed that the changes are not covered by the CBA. (Stip. ¶23).

² The first of the three November 5, 2014, proposals was not a subject of dispute.

The General Counsel contends that because the changes were substantively negotiable, it is appropriate to order a status quo ante remedy. (*Id.* at 6). Moreover, while the General Counsel acknowledges that per diem reimbursements are not “pay” within the meaning of the Back Pay Act, the General Counsel argues that employees affected by the changes should be able to submit supplemental vouchers and receive the difference between the reimbursements they received and the reimbursements they would have received, had the Respondent not implemented the December 1, 2014, changes. (*Id.* at 7).

Charging Party

The Charging Party argues that a status quo ante remedy is warranted. In addition, the Charging Party argues that while employees are not entitled to monetary damages under the Back Pay Act, employees should “receive a per diem award[]” under the Travel Expenses Act, 5 U.S.C. § 5701, *et seq.* (CP Br. at 6). In this regard, the Charging Party argues that the Travel Expenses Act is a “money mandating statute that requires payment for certain travel expenses.” (*Id.*). Further, the Charging Party argues that if an agency improperly withholds per diem payments, courts and the FLRA “have the authority, under the Travel Expenses Act, to order the payment of back per diems.” (*Id.* at 7). To support this argument, the Charging Party cites the following cases: *Eastman v. United States*, 33 Fed. Cl. 293, 298 (1995); *Hambusch v. United States*, 12 Cl. Ct. 744, 751 (1987), *vacated*, 857 F.2d 763 (Fed. Cir. 1988); *McClary v. United States*, 7 Cl. Ct. 160, 165 (1984), *aff’d in part, rev’d in part*, 775 F.2d 280 (Fed. Cir. 1985).³

Respondent

The Respondent contends that it did not violate § 7116(a)(1) and (5) of the Statute. (R. Br. at 4). With regard to the negotiability of the Union’s proposals, the Respondent asserts that it “declin[ed] to go along with the Union’s desire to label the negotiations” as involving substantive bargaining. (*Id.* at 6). (The Respondent acknowledges, however, that the Union submitted “impact and implementation” proposals on October 7, 2014.) (*Id.* at 3-4). In addition, the Respondent submits that this case is distinguishable from *U.S. Dep’t of the Interior, U.S. Geological Survey, Great Lakes Sci. Ctr., Ann Arbor, Mich.*, 68 FLRA 734 (2015) (*Geological Survey*), where, the Respondent claims, the agency “reduce[d] per diem rates without analyzing the cost of food and considering the costs to the [a]gency”⁴ (R. Br. at 8).

The Respondent also contends that the Union waived its bargaining rights by: (1) insisting that the changes were covered by the CBA; and (2) failing to file a negotiability appeal to determine whether there was a compelling need for the Department of Defense’s Joint Travel Regulations. (*Id.* at 5-7).

³ The Charging Party makes several factual allegations in connection with this argument. (CP Br. at 4). However, the facts alleged are not part of the stipulated record, so I will not consider them.

⁴ In addition, the Respondent makes several factual allegations relating to budgetary concerns. (R. Br. at 2-3). However, the facts alleged are not part of the stipulated record, so I will not consider them.

Finally, the Respondent contends that a status quo ante remedy is unwarranted, since the Respondent has “ameliorated adverse impacts identified as a result of [the] change[s]” (*Id.* at 7) (emphasis omitted). Essentially, the Respondent argues that the changes it implemented did not leave employees worse off. In this regard, the Respondent argues that even before it implemented the changes, the Respondent could have reduced the per diem rate, under the Federal Travel Regulations (41 C.F.R. § 301-11.200). Further, the Respondent argues that under the Joint Travel Regulations, the Respondent can, in some circumstances, increase per diem rates up to or above the locality per diem rates (Chapter 4, Part B, Section 4, Paragraph 4250-B2; Chapter 4, Part C, Paragraph 4300).

ANALYSIS AND CONCLUSIONS

Prior to implementing a change in conditions of employment, an agency is required by § 7116(a)(5) of the Statute to provide the exclusive representative with notice of the change and an opportunity to bargain over those aspects of the change that are within the duty to bargain. *See U.S. Penitentiary, Leavenworth, Kan.*, 55 FLRA 704, 715 (1999). When an agency exercises a reserved management right and the substance of the decision is not itself subject to negotiation, the agency nonetheless has an obligation to bargain over the impact and implementation of that decision, if the resulting change has more than a de minimis effect on a condition of employment. *Geological Survey*, 68 FLRA at 737.

An agency may unilaterally implement a change in conditions of employment without violating the Statute where all of a union’s proposals, submitted in response to the agency’s change, are nonnegotiable. (*Id.*). In a ULP case, the respondent has the burden of demonstrating that all proposals on the table were nonnegotiable. *Pension Benefit Guar. Corp.*, 59 FLRA 48; 50 (2003) (*PBGC*).

The Respondent acknowledges that it changed conditions of employment on December 1, 2014, when it stopped providing reimbursements for travel expenses separate from the reimbursements it provided for M&IE, and when it reduced the per diem rates for certain long-term TDY assignments. (GC Exs. 1(b), 1(c); Stip. ¶¶18-20). The Authority has indicated that matters pertaining to per diem rates and travel expenses concern conditions of employment. *See Office of the Gen. Counsel, NLRB*, 22 FLRA 259, 262-63 (1986) (*NLRB*). Further, the Respondent acknowledges that these changes had greater than de minimis effects on conditions of employment. (Stip. ¶22). This is consistent with Authority precedent indicating that changes with potential financial consequences for employees have greater than de minimis effects. *E.g., U.S. DOJ, Fed. Bureau of Prisons*, 68 FLRA 728, 732 (2015). For these reasons, I find that the changes implemented on December 1, 2014, had greater than de minimis effects on conditions of employment.

The Union Submitted Negotiable Proposals

As an initial matter, the Respondent argues that it had no obligation to bargain, because the Union insisted on negotiating the substance of the changes. The Authority has indicated that an agency should not be able to avoid bargaining based on the union’s characterization of bargaining as “substantive” or “impact and implementation.” In this regard, the Authority has stated that it was “unwilling to interpret the Statute in a manner

which would require a union . . . to label its proposals in a particular way to preserve its right to bargain. To do so . . . would encourage the parties to engage in semantic disputes instead of collective bargaining . . .” *IHS*, 37 FLRA at 980; *see also Davis-Monthan AFB, Tucson, Ariz.*, 42 FLRA 1267, 1276 (1991). Consistent with this precedent, the Respondent cannot avoid bargaining based on the Union’s claim that it was entitled to bargain over the substance of the changes, especially since the Authority has indicated proposals concerning per diems can be substantively negotiable. *See NLRB*, 22 FLRA at 264.

More specifically, the Respondent contends that the Union’s substantive proposals were nonnegotiable because they affected management’s right to determine its budget. The Authority has held that if a proposal prescribes either the particular programs to be included in an agency’s budget, or the amount to be allocated in the budget, then the proposal affects the agency’s right to determine its budget. *Geological Survey*, 68 FLRA at 740.

Alternatively, if the agency makes a substantial demonstration that a proposal would result in an increase in costs that is significant and unavoidable, and that the costs are not offset by compensating benefits, then the Authority will find that the proposal affects the agency’s right to determine its budget. (*Id.* at 740-41). But an assertion that a proposal would increase an agency’s costs does not, by itself, establish that the proposal affects management’s right to determine its budget. (*Id.* at 741). Rather, an agency must provide specific information to substantiate its claim, including information allowing the Authority to assess the significance of a cost increase in relation to the relevant budget as a whole. *See U.S. DHS, Customs & Border Prot. Agency, N.Y., N.Y.*, 61 FLRA 72, 76 (2005).

It is clear that the Union’s proposals do not prescribe particular programs to be included in the Agency’s budget or establish specific amounts to be allocated in the budget, and the Respondent does not raise an argument to the contrary. Accordingly, the Union’s proposals do not affect management’s right to determine its budget under the first factor.

With regard to the second factor, the Respondent has provided virtually no evidence to show that the Union’s proposals would significantly and unavoidably increase costs. The Respondent has not provided an estimate, much less a precise dollar figure, showing how much the Union’s proposals would cost the Respondent. And even if the Respondent had provided a dollar figure as to how much the Union’s proposals would cost, the Respondent has given us no other budgetary figures to enable us to determine whether the costs associated with the proposals were truly significant. Put simply, the Respondent has not even attempted to show that the proposals affect management’s right to determine its budget under the second test.

Further, the record does not contain evidence showing that the Union’s proposals would significantly and unavoidably increase costs (or, for that matter, that such costs would not be offset by compensating benefits). It is clear that employees now receive reimbursement for expenses in the amount of five dollars per day, we do not know whether, or to what extent, that amount differs from the amounts paid prior to the December 1, 2014, changes. Similarly, while the Respondent has reduced the per diem rate for 30-180 day assignments to 75 percent of the full rate, and reduced the per diem rate for longer assignments to 55 percent of the full rate, it is unclear how many employees were subject to

such reduced rates, how many travel days were involved, or what percentage of total travel per diems those amounts would reflect. They may reflect only 1 percent of the Respondent's overall travel budget, or the percentage could be higher, but the Respondent did not disclose such information, and without such financial information, I find that the Respondent has failed to show that the Union's proposals would result in significantly increased costs relative to its total travel budget let alone its budget as a whole. Thus, I find that the Respondent's claim that the Union's proposals affected management's right to determine its budget is not supported by the record to which the Respondent stipulated. Virtually every decision within an agency has a financial impact, and if merely having a financial element resulted in it being an exercise of management's right to determine budget, there would be no substantive bargain as the exception would swallow the rule. Such a broad interpretation of the right being argued by the Respondent in this case is inconsistent with Authority precedent and the sparse evidence presented does not support its position that the Union proposals were not substantively negotiable.

Aside from the November 5, 2014, proposals seeking to bargain substantively, the Respondent does not contend that the Union's October 7, 2014, proposals were nonnegotiable. In fact, the Respondent refers to them as "impact and implementation" proposals. (R. Br. at 3-4). Further, the Respondent does not expressly address the General Counsel's argument that the October 7, 2014, proposals were still on the table when the Respondent refused to bargain. While the question is close, a preponderance of the evidence shows that the October 7, 2014, proposals were still pending. In this regard, Wrightson never expressly stated that the Union was abandoning the October 7, 2014, proposals. Further, while Wrightson stated that the Union was "amending" its request and "would like to bargain on substance rather than impact and implementation," Wrightson made this statement in the abstract, without specifically referencing or withdrawing the October 7, 2014, proposals. (Jt. Ex. 9 at 4, *see also* Ex. 11). And while one could argue that intent to abandon the October 7, 2014, proposals was implicit in Wrightson's statement, I decline to make that inference. Abandonment is akin to waiver; it should be found only if stated clearly and unmistakably. *See U.S. Dep't of the Army, Womack Army Med. Ctr., Fort Bragg, N.C.*, 63 FLRA 524, 527 (2009) (*Army*).

Based on the foregoing, I find that the Union's October 7, 2014, proposals were still on the table when the Agency refused to bargain because the Union wanted to engage in substantive bargaining. As there is no claim that the October 7, 2014, proposals were nonnegotiable, the Respondent was obligated to bargain over the October 7, 2014, proposals, even if the November 5, 2014, proposals were nonnegotiable. *PBGC*, 59 FLRA at 50.

The Union Did Not Waive Its Right to Bargain

The Authority has recognized that a union may waive its right to bargain over a proposed change through agreement or inaction. *U.S. DHS, U.S. Customs & Border Prot.*, 62 FLRA 263, 265 (2007) (*Customs*). But, as noted above, such waiver must be clear and unmistakable. *Army*, 63 FLRA at 527. As relevant here, waiver may be found when the union has failed to request bargaining within a reasonable period of time, failed to submit

bargaining proposals within a contractual or other agreed upon time limit, or failed to bargain. *Customs*, 62 FLRA at 265. The respondent bears the burden of proving the waiver. See *U.S. Army Corps of Eng'rs, Memphis Dist., Memphis, Tenn.*, 53 FLRA 79, 82-83 & n.2 (1997).

The Respondent argues that the Union waived its right to bargain over the changes because Wrightson asserted that the changes were covered by the CBA. This argument ignores the fact that when making this assertion, Wrightson also submitted new proposals and expressly stated that the Union was "willing to negotiate the proposed changes." (R. Ex. 11). The Union's willingness to negotiate shows that it was not waiving its right to bargain. Accordingly, I reject the Respondent's argument.

The Respondent also argues that the Union waived its right to bargain over the changes by failing to file a negotiability appeal to determine whether there was a compelling need for the Joint Travel Regulations. However, a union has no obligation to establish a compelling need for agency regulations. See *Dep't of VA, Veterans Admin. Med. Ctr., Decatur, Ga.*, 46 FLRA 339, 344 (1992). And to the extent the Respondent is arguing that the Union's proposals conflicted with Agency regulations for which there was a compelling need, such an argument is unsupported. In order to establish that a conflict with an agency rule or regulation relieves an agency of its duty to bargain, the *agency* must: (1) identify a specific agency-wide regulation; (2) show that there is a conflict between its regulation and the proposal; and (3) demonstrate that its regulation is supported by a compelling need within the meaning of § 2424.50 of the Authority's Regulations. *AFGE, Immigration & Customs Enforcement, Nat'l Council 118*, 68 FLRA 910, 914 (2015). While the Respondent has referenced sections of the Joint Travel Regulations, the Respondent has not shown that there is a conflict between those regulations and the Union's proposals, and the Respondent has not said anything to demonstrate that the regulations are supported by a compelling need. Accordingly, I reject this argument.

For all of these reasons, I find that the Respondent violated § 7116(a)(1) and (5) of the Statute by refusing to bargain over the December 1, 2014, changes.

REMEDY

When an agency has an obligation to bargain over the substance of a matter, and fails to meet the obligation, the Authority orders a status quo ante remedy in the absence of special circumstances. *Air Force Logistics Command, Warner Robins Air Logistics Ctr., Robins AFB, Ga.*, 53 FLRA 1664, 1671 (1998). The Respondent has failed to show that the Union was not entitled to bargain over the substance of the change, and it has failed to show there are special circumstances that should preclude a status quo ante remedy. Accordingly, a status quo ante is warranted.

Further, I would find a status quo ante to be warranted, even if the Union was entitled to bargain over only the impact and implementation of the changes. When a union may bargain only the impact and implementation of a change, the appropriateness of status quo ante relief requires, "on a case-by-case basis, carefully balancing the nature and circumstances of the particular violation against the degree of disruption in government

operations that would be caused by such a remedy.” *Fed. Corr. Inst.*, 8 FLRA 604, 606 (1982). In this regard, the Authority considers: (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; (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. (*Id.*). The party alleging that a status quo ante remedy is not appropriate bears the burden of persuasion through “specific allegations.” *Dep’t of HHS, Soc. Sec. Admin.*, 35 FLRA 940, 953 (1990) (*SSA*).

With respect to the first factor, the Respondent properly notified the Union of the planned changes; this favors the Respondent. With respect to the second factor, the Union submitted a timely request to bargain; this favors the Union. With respect to the third factor, the Respondent refused to bargain with the Union, based largely on the Union’s claim that it wanted to engage in “substance” bargaining. The Respondent should have known that the Union’s characterization of bargaining as “substantive” could not be used as an excuse for the Respondent to avoid bargaining altogether. *See IHS*, 37 FLRA at 980. Moreover, it is undisputed that the Union’s October 7, 2014, proposals concerned the impact and implementation of the changes and, as discussed above, those proposals were still on the table when the Respondent refused to bargain. For these reasons, the third factor supports a conclusion that a status quo ante remedy is warranted. With respect to the fourth factor, it is unclear how many employees were affected by the change, or whether the changes had a significant financial impact on employees. But the Respondent’s argument with regard to this factor is unhelpful. The Respondent suggests that employees are no worse off than they were before the changes went into effect, because the Respondent *could* have reduced per diem rates prior to the changes, and because the Respondent still *could* increase per diem rates after the changes. Yet the Respondent cites no evidence to demonstrate that the changes did not harm employees. Accordingly, I reject the Respondent’s argument as speculative. With respect to the fifth factor, it is unclear whether a status quo ante remedy would disrupt or impair the efficiency and effectiveness of the agency’s operations. However, the Respondent is the party in the best position to know what, if any, harm the Union’s proposals could cause, and it is therefore notable that the Respondent has not provided any evidence, or made any specific allegations, showing that a status quo ante remedy would impair the efficiency and effectiveness of its operations. *See SSA*, 35 FLRA at 953.

In sum, the third factor supports a conclusion that a status quo ante remedy is warranted. The other factors either favor the Union or fail to support the Respondent’s position. Accordingly, I find that a status quo ante remedy is warranted even if the Union was entitled to bargain only over the impact and implementation of the changes.

In connection with its request for a status quo ante remedy, the General Counsel requests that employees affected by the changes be able to submit supplemental vouchers and receive the difference between the reimbursements they received and the reimbursements they would have received, had the Respondent not implemented the December 1, 2014, changes.

The Authority has held that remedies for ULPs should be designed to recreate the conditions and relationships that would have been had there been no ULP. *U.S. Dep't of Commerce, NOAA, Nat'l Ocean Serv., Coast & Geodetic Survey, Aeronautical Charting Div., Wash., D.C.*, 54 FLRA 987, 1021 (1998). Further, the Authority has stated that the purpose of ULP remedies is to restore, as far as possible, the status quo that would have obtained if the violation had not been committed. *U.S. DOJ, Fed. BOP, FCI Danbury, Danbury, Conn.*, 55 FLRA 201, 205 (1999). Where employees have lost money as a result of an agency's unlawful actions, it is appropriate to order a status quo ante remedy that allows affected employees to obtain money they would have received but for the agency's unlawful action. *See NLRB*, 22 FLRA at 265. Such a remedy is equitable in nature and does not require a waiver of sovereign immunity. *See U.S. DOJ, Fed. BOP, Fed. Corr. Complex, Tucson, Ariz.*, 66 FLRA 517, 519-21 (2012).

Consistent with this precedent, I conclude that employees should be allowed to submit supplemental vouchers and should receive the difference between the per diem and travel expense reimbursements they received and the reimbursements they would have received, had the Respondent not implemented the December 1, 2014, changes. Any dispute over actual losses to employees may be resolved during the compliance stage of proceedings. *Dep't of Def. Dependents Sch.*, 50 FLRA 197, 207 (1995).

However, I reject the Charging Party's request for monetary damages under the Travel Expenses Act. While the Charging Party cites cases for the proposition that monetary damages *may* be based on the Travel Expenses Act, *see Eastman*, 33 Fed. Cl. 293 at 298; *Hambusch*, 12 Cl. Ct. at 751; *McClary*, 7 Cl. Ct. at 165, the Charging Party has failed to demonstrate that the Respondent violated the Travel Expenses Act, such that monetary damages under the Travel Expenses Act would be warranted.

CONCLUSION

I find that the Respondent violated § 7116(a)(1) and (5) of the Statute by failing to bargain over its decision to: (1) stop providing separate, non-M&IE reimbursement of travel expenses; and (2) reduce the per diem rate for long-term TDY assignments to 75 percent of the full per diem rate for days 31-180 of a TDY assignment, and to 55 percent of the full per diem rate for days beyond that.

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 (Statute), the U.S. Department of the Navy, Puget Sound Naval Shipyard and Intermediate Maintenance Facility, Bremerton, Washington, shall:

1. Cease and desist from:

(a) Changing employees' conditions of employment without first providing the International Federation of Professional and Technical Engineers, Local 12, AFL-CIO

(Union) an opportunity to bargain over the proposed decisions to reduce per diem rates and to stop providing separate, non-M&IE reimbursement of travel expenses of bargaining unit employees.

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

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

(a) Rescind the December 1, 2014, reduction of per diem rates and elimination of separate, non-M&IE reimbursement of travel expenses.

(b) Allow bargaining unit employees to submit supplemental vouchers for per diem and travel expenses for long-term TDY assignments occurring after the December 1, 2014, changes were implemented, and provide them the difference between the reimbursements they received and the reimbursements they would have received, had the December 1, 2014, changes not been implemented.

(c) Upon request, bargain with the Union concerning any future proposed decision to reduce per diem rates or eliminate separate, non-M&IE reimbursement of travel expenses of bargaining unit employees.

(d) 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 Commander of the Puget Sound Naval Shipyard and Intermediate Maintenance Facility, 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.

(e) Disseminate a copy of the signed Notice through the Agency's email system to all bargaining unit employees represented by the Union.

(f) Pursuant to § 2423.41(e) of the Rules and Regulations of the Authority, notify the Regional Director, San Francisco 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, 2016

A handwritten signature in black ink, appearing to read "Charles R. Center". The signature is written in a cursive style with a horizontal line extending from the end of the name.

CHARLES R. CENTER
Chief 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 Navy, Puget Sound Naval Shipyard and Intermediate Maintenance Facility, Bremerton, Washington, violated the Federal Service Labor-Management Relations Statute (Statute) and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY EMPLOYEES THAT:

WE WILL NOT change employees' conditions of employment without first providing the International Federation of Professional and Technical Engineers, Local 12, AFL-CIO (Union) an opportunity to bargain over the proposed decisions to reduce per diem rates and to eliminate separate, non-Meals and Incidental Expenses (M&IE) reimbursement of travel expenses for bargaining unit employees.

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

WE WILL rescind the December 1, 2014, reduction of per diem rates and the elimination of separate, non-M&IE reimbursement of travel expenses.

WE WILL provide the Union with notice and an opportunity to bargain over any future proposed decision to change employees' per diem rates or to no longer provide separate, non-M&IE reimbursement of travel expenses.

WE WILL allow bargaining unit employees to submit supplemental vouchers for per diem and travel expenses for long-term TDY assignments occurring after the December 1, 2014, changes were implemented, and provide those employees the difference between the reimbursement they received and the reimbursements they would have received, had the December 1, 2014, changes not been implemented.

(Agency/Respondent)

Dated: _____

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, San Francisco Region, Federal Labor Relations Authority, whose address is: 901 Market Street, Suite 470, San Francisco, CA 94103, and whose telephone number is: (415) 356-5000.