UNITED STATES OF AMERICA

FEDERAL LABOR RELATIONS AUTHORITY

Office of Administrative Law Judges

WASHINGTON, D.C. 20424-0001

MEMORANDUM DATE: June 27, 2002

TO: The Federal Labor Relations Authority

FROM: WILLIAM B. DEVANEY
Administrative Law Judge

SUBJECT: HEADQUARTERS, 96th AIR BASE WING
EGLIN AIR FORCE BASE, FLORIDA

Respondent

and Case Nos. AT-CA-00659
AT-CA-00738

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 1897

Charging Party

Pursuant to section 2423.34(b) of the Rules and Regulations, 5 C.F.R. § 2423.34(b), I am hereby transferring the above case to the Authority. Enclosed are copies of my Decision, the service sheet, and the transmittal form sent to the parties. Also enclosed are the transcript, exhibits and any briefs filed by the parties.

Enclosures

UNITED STATES OF AMERICA

FEDERAL LABOR RELATIONS AUTHORITY

Office of Administrative Law Judges

WASHINGTON, D.C. 20424-0001

HEADQUARTERS, 96th AIR BASE WING EGLIN AIR FORCE BASE, FLORIDA Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1897 Charging Party	Case Nos. AT-CA-00659 AT-CA-00738

NOTICE OF TRANSMITTAL OF DECISION

The above-entitled case having been heard before the undersigned Administrative Law Judge pursuant to the Statute and the Rules and Regulations of the Authority, the undersigned herein serves his Decision, a copy of which is attached hereto, on all parties to the proceeding on this date and this case is hereby transferred to the Federal Labor Relations Authority pursuant to 5 C.F.R. § 2423.34(b).

PLEASE BE ADVISED that the filing of exceptions to the attached Decision is governed by 5 C.F.R. §§ 2423.40-2423.41, 2429.12, 2429.21-2429.22, 2429.24-2429.25, and 2429.27.

Any such exceptions must be filed on or before **JULY 29, 2002**, and addressed to:

Federal Labor Relations Authority
Office of Case Control
607 14th Street, NW, 4th Floor
Washington, DC 20424-0001

WILLIAM B. DEVANEY
Administrative Law Judge

Dated: June 27, 2002
Washington, DC

OALJ 02-47

FEDERAL LABOR RELATIONS AUTHORITY

Office of Administrative Law Judges

WASHINGTON, D.C.

HEADQUARTERS, 96th AIR BASE WING EGLIN AIR FORCE BASE, FLORIDA Respondent	
and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1897 Charging Party	Case Nos. AT-CA-00659 AT-CA-00738

Steven Sherwood, Esquire
Captain Donald E. Witmyer
For the Respondent

Mr. William McAnelly
For the Charging Party

Richard S. Jones, Esquire
On Brief: Paige A. Sanderson, Esquire
For the General Counsel

Before: WILLIAM B. DEVANEY
Administrative Law Judge

DECISION

Statement of the Case

This proceeding, under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the United States Code, 5 U.S.C. § 7101, *et seq.* [1], and the Rules and Regulations issued thereunder, 5 C.F.R. § 2423.1, *et seq.*, concerns whether, Respondent violated § 16(a)(1)

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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)(2) will be referred to, simply, as, "§ 16(a)(2)".

and (5) of the Statute when it refused to bargain on the impact and implementation of its addition of a supervisory position -- Flightline Expediter -- in the chain command of the Air Reserve Technical Civilian Employees.

This case was initiated by a charge filed on June 1, 2000, (G.C. Exh. 1(a)). The Complaint and Notice of Hearing issued on February 15, 2001 (G.C. Exh. 1(e)) and set the hearing for May 12, 2001.[2] On March 13, 2001, Respondent filed a Motion for Partial Dismissal Leading to Complete Dismissal (G.C. Exh. 1(l)) which subsequently was denied. (G.C. Exh. 1(q)).

A hearing was held on May 3, 2001, in Shalimar, Florida, 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 all parties declined. At the conclusion of the hearing, Respondent moved for summary judgment. I withheld action on the motion, pending submission of post-hearing briefs.[3] June 4, 2001, was set for the filing of briefs. General Counsel and Respondent each timely submitted an excellent brief, received on or before June 7, 2001, which have been carefully considered. Upon the basis

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The complaint consolidated Case Nos. AT-CA-00659 and AT-CA-00738. At the commencement of the hearing the parties' settlement agreement of Case No. AT-CA-00738 and a portion of Case No. AT-CA-00659 was noted (Tr. 4) and it was further noted that the hearing would be limited to the allegations of paragraphs 1 through 14 of the Complaint (G.C. Exh. 1(e)) which concern Case No. AT-CA-00659 (*id.*). The settlement agreement also disposed of paragraphs 15 through 24 of the Complaint (G.C. Exh. 1(e)) which had been part of Case No. AT-CA-00659 and which had involved the failure to provide information. (Tr. 4).

3
Because the case has been heard and fully briefed, summary judgment is no longer appropriate. *See* 5 C.F.R. § 2423.27. Accordingly, Respondent's motion is dismissed as moot.

of the entire record[4], I make the following findings and conclusions:

FINDINGS

1. Employees at Eglin AFB are covered by a nationwide collective bargaining agreement (master agreement) between Council 214, American Federation of Government Employees (Council 214) and the Air Force Material Command (Tr. 72). The American Federation of Government Employees, Local 1897 (hereinafter, "Union") is the bargaining agent for Council 214 for all employees at Eglin AFB (*id.*).

2. The main organization at Eglin AFB is the Air Armament Center (Tr. 73; Res. Exh. 1). The 96th Air Base Wing is a subordinate entity within the Air Armament Center (Tr. 73). Also at Eglin AFB are various tenant organizations which are not within the organizational scope of the Air Armament Center. Bargaining unit members in tenant organizations are covered by the master agreement, and the 96th Air Base Wing provides labor relations support for all of Eglin AFB, including tenant organizations (Tr. 11).

3. The 919th Special Operations Wing (919th), an Air Force Reserve unit, is a tenant organization at Eglin AFB, located at Duke Field, a part of the Eglin AFB complex (Tr. 70). Bargaining unit members in the 919th include aircraft mechanic crew chiefs. Each crew chief is assigned a specific airplane for which he is responsible for its maintenance and pre-flight inspections (Tr. 53, 56, 103-04). Crew chiefs have the authority to "sign off" on documents certifying that the plane is flight worthy and that maintenance has been done in accordance with technical orders (Tr. 54).

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4 Respondent's Motion to Correct Transcript, to which there was no objection, is granted and the transcript is hereby corrected as follows:

1) Page 7, lines 13, 18, [21] and 24; Page 8, line 1, change, "JONES" to "SHERWOOD".

2) Page 54, line 10, 13 and 14; Page 129, line 1; Page 134, line 6, change, "Redex" to "Red-X".

3) Page 69, line 9, change, "Holbert" to "Hurlburt".

4) Page 79, line 6, change, "provide" to "provided".

5) Page 107, line 9, change, "plan" to "plane".

4. Prior to April 2000, crew chiefs worked on their assigned aircraft unless called to assist on other aircraft. Decisions to call crew chiefs off their assigned aircraft were normally made by the shop chief, the crew chiefs' first line supervisor (Tr. 87-88, 94). When the shop chief was otherwise occupied, one of the crew chiefs would assume the responsibility for determining when and where personnel should be pulled from their assigned aircraft (Tr. 121). Although crew chiefs were "not often" called from their assigned air craft (Tr. 96), the frequency of such occurrences increased when flying schedules were heavy (Tr. 105).

5. Sometime around February 2000, the number of active duty military personnel increased at Duke Field (Tr. 94). Coincident with the influx of active duty personnel, the flying activity of the planes serviced by the crew chiefs increased (Tr. 115). The increased flying activity led to greater maintenance requirements (*id.*).

6. On April 7, 2000, Charles Boehm, maintenance superintendent and a management official in the 919th, met with the crew chiefs and reviewed a recently issued Maintenance Instruction Letter (Instruction) (Tr. 57). The Instruction was issued by Major Reginald Stroud, Maintenance Commander of the 919th (G.C. Exh. 2). The Union received no advance notice of the meeting nor had it been provided a copy of the Instruction (Tr. 56). Paragraph 5 of the Instruction provided for the installation of an "expediter." The expediter has responsibility for assigning work to crew chiefs based on workload and mission. According to the Instruction, crew chiefs would work their assigned aircraft "only when workload and mission allows" (G.C. Exh. 2). At the meeting, the crew chiefs expressed their disapproval of the creation of the expediter position and one crew chief walked out of the meeting (Tr. 58). Nonetheless, the Instruction, including the implementation of the expediter position, went into effect on or about that date (Tr. 67-68).

7. By memorandum dated April 19, 2000, addressed to Major Stroud with a copy furnished to Eglin's Labor Relations Officer (LRO), the Union requested to bargain over the Instruction (G.C. Exh. 3, Tr. 61. Neither Major Stroud nor the LRO responded to the union's request and bargaining never took place (Tr. 61).

CONCLUSIONS

1. Preliminary Issues

As a threshold matter, Respondent contends that the complaint should be dismissed because:(1) the complaint misidentifies the proper respondent and (2) the unilateral change specified in the complaint did not concern conditions of employment of bargaining unit employees. For the reasons that follow, I find that neither of these contentions merit dismissal of the complaint.

a. General Principles

Both contentions seek to dismiss the complaint based on what are essentially pleading errors by the General Counsel. However, the Authority has long held that it does not judge a complaint on rigid pleading requirements. *OLAM Southwest Air Defense Sector (TAC), Point Arena Air Force Station, Point Arena, California*, 51 FLRA 797, 807 (1996). Rather, the Authority will consider matters not specified in the complaint, if those matters are fully and fairly litigated. *Id.* at 808; *see also, Bureau of Prisons, Office of Internal Affairs, Washington, D.C. and Phoenix Ariz.*, 52 FLRA 421, 429 (1996) (*Bureau of Prisons*) (Where a complaint is silent or ambiguous about specific issues that are later raised at hearing, the Authority may consider and dispose of those issues if they are fully and fairly litigated). The test of full and fair litigation is "whether the respondent knew what conduct was at issue and had a fair opportunity to present a defense." *United States Dep't of Labor, Washington, D.C.*, 51 FLRA 462, 467 (1995). Fairness requires that any "doubts about due process be resolved in favor of the respondent." *Bureau of Prisons*, 52 FLRA at 431. The Authority has recently stated that these "due process" principles are the appropriate framework to resolve questions concerning the identity of a respondent. *United States Department of Justice, Federal Bureau of Prisons, Federal Correctional Institution, Forest City, Arkansas*, 57 FLRA No. 175 (May 24, 2002), slip op. at 5.

b. Identity of the Proper Respondent

Respondent contends that the conduct alleged to be violative of the Statute was not committed by the named Respondent, Eglin AFB, 96th Air Base Wing, but rather was committed by management officials in the 919th, a tenant organization outside the organizational authority of the 96th Air Base Wing. However, for the reasons below, I find that the Respondent is identified with sufficient clarity.

The complaint names "Headquarters, 96th Air Base Wing, Eglin Air Force Base, Florida" as the Respondent. According

to Counsel for the Respondent, "the General Counsel has simply got the wrong party," because the 96th Air Base Wing is not responsible for the conduct alleged as violative of the Statute (Tr. 10). According to Respondent, the alleged misconduct was performed by management officials in the 919th, an organizational entity, wholly independent of the 96th Air Base Wing.
At the beginning of the hearing, General Counsel first noted that the matter was discussed and clarified at the pre-hearing conference (Tr. 10), and that Respondent amended its prehearing disclosure to include the relevant management officials as witnesses. General Counsel further stated that its intent was to identify Eglin Air Force Base as an entity because the bargaining unit encompasses the entire base (Tr. 11). Lastly, General Counsel stated that it named the 96th Air Wing because it provides labor relations support for the entire base (*id.*).

I find that through the course of litigation, Respondent and its counsel knew what was at issue and who the responsible parties were. Accordingly, the Authority may consider whether management officials of the 919th violated the Statute by their conduct. I note particularly that Respondent has not contended that there was confusion regarding what management officials were alleged to have violated the Statute, or that it was unable to present a proper defense.[5] Rather, Respondent's claim is simply that the General Counsel got it wrong on the face of the complaint. As noted above, the Authority has consistently held that it will not dismiss a complaint for technical failures in a complaint when the matter has been fully and fairly litigated.

c. Sufficiency of Allegations Contained in the Complaint

Respondent argues that because the unilateral change, *as stated in the complaint*, does not concern the conditions of employment of bargaining unit employees, there was no obligation to bargain over the matter.[6] In that regard, the complaint alleges that the Respondent violated the Statute when it "added the position of Flightline Expediter to the chain of command of the Air Reserve Technician Civilian

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Respondent chose not to call the management officials charged with violating the Statute as witnesses.

6
Respondent initially moved to dismiss on this ground in advance of hearing. The motion was denied by the Chief Administrative Law Judge. Respondent renewed the motion at the start of the hearing (Tr. 8).

Employees" (G.C. Exh. 1(e)¶ 11(a)). If the addition of the expediter position was the sole basis of the General Counsel's case, then I would agree that the case should be dismissed because the staffing of supervisory positions does not concern conditions of employment of bargaining unit employees.[7] *See Veterans Admin. and Veterans Admin. Medical Ctr., Lyons, N.J.*, 24 FLRA 64, 68 (1986) *reversed on other grounds, sub nom. AFGE, Local 1012, AFL-CIO v. FLRA*, 841 F.2d 1165 (D.C. Cir. 1988) (procedures for filling supervisory positions do not concern conditions of employment of bargaining unit members). However, as made clear at the hearing, General Counsel's theory of the case was not that the addition of the expediter changed conditions of employment, but rather that the duties and responsibilities of the bargaining unit employees (crew chiefs) had been modified (Tr. 14-15, 28-29).

As discussed above, where a complaint is silent or ambiguous about specific issues that are later raised at hearing, the Authority may consider and dispose of those issues if they are fully and fairly litigated. *Bureau of Prisons*, 52 FLRA at 429. The extent to which the crew chief's duties and responsibilities were changed was fully and fairly litigated. Not only did General Counsel make the theory of the case clear in his opening remarks, but the witnesses testified at length about their duties. I again take note of the fact that Respondent does not argue to the contrary, nor does it make any claim of prejudice or inability to present a defense. In that regard, Respondent specifically addressed the question of whether there had been a change in the duties and responsibility of the crew chiefs (Respondent Br. 8, 10-11) and those arguments have formed the basis of my decision on the merits.

2. There Was No Change in Conditions of Employment

As a threshold requirement to finding a violation, it must be established that Respondent changed conditions of employment of bargaining unit employees. *United States Immigration and Naturalization Service, Houston District, Houston, Texas*, 50 FLRA 140, 143 (1995) (*INS, Houston*). For the reasons that follow, I find that General Counsel has not demonstrated that there was a change in unit employees' conditions of employment.

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Respondent contends that the expediter position is supervisory and General Counsel does not contest this. In any event, the expediter positions have been filled with military personnel, so it is undeniable that the expediter position is outside the bargaining unit.

All three witnesses for General Counsel, two current crew chiefs and one retired assistant crew chief, testified that prior to the implementation of the Instruction, crew chiefs were pulled off their assigned aircraft when required by mission and workload considerations (Tr. 88, 103, 130). Such determinations were made by the shop chief or by crew chiefs, acting in the capacity of the shop chief. The Instruction issued by the Maintenance Commander did not change the nature of the crew chiefs assignments; it only changed the non-unit personnel making assignment determinations. Where, as here, an agency has an established practice of modifying work assignments in response to mission and workload fluctuations, assignments consistent with that practice are not bargainable changes in conditions of employment. *INS, Houston*, 50 FLRA at 144 (where agency had a practice of assigning and reassigning employees to different tours of duty in response to workload requirements, assigning employees to an established, though seldom used tour of duty, was not a change in conditions of employment.)

Although consistent testimony demonstrated that the crew chiefs were pulled off their aircraft more often after the implementation of the Instruction (Tr. 105, 115, 136-37), that same testimony indicated that this was the predictable result of increased flying time of the serviced aircraft (Tr. 105, 115). To the extent crew chiefs were required to spend more time on assignments other than maintenance of their assigned aircraft, such change was merely a variation of existing assignment practices, not a bargainable change in conditions of employment. *United States Dep't of the Treasury, Internal Revenue Serv., Chicago, Ill.*, 13 FLRA 636, 651 (1984) (requirement to give priority to one class of cases in employee's existing inventory not a change in conditions of employment).

Consistent with the foregoing, I recommend that the Authority issue the following:

ORDER

The Complaint in Case No. AT-CA-00659 be, and the same is hereby, dismissed.

WILLIAM B. DEVANEY
Administrative Law Judge

Dated: June 27, 2002
Washington, D.C.

CERTIFICATE OF SERVICE

I hereby certify that copies of this DECISION issued by WILLIAM B. DEVANEY, Administrative Law Judge, in Case Nos. AT-CA-00659 and AT-CA-00738, were sent to the following parties in the manner indicated:

CERTIFIED MAIL AND RETURN RECEIPT	**CERTIFIED NOS:**
Richard S. Jones, Esq.	7000 1670 0000 1175 0061
Paige A. Sanderson, Esq. Counsel for the General Counsel Federal Labor Relations Authority Marquis Two Tower, Suite 701 285 Peachtree Center Avenue Atlanta, GA 30303-1270	
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Dated: June 27, 2002
        Washington, DC