UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C. 20424-0001

MEMORANDUM

DATE: March 29, 2010

TO: The Federal Labor Relations Authority

FROM: CHARLES R. CENTER
Chief Administrative Law Judge

SUBJECT: DEPARTMENT OF THE NAVY
SUPERVISOR OF SHIPBUILDING , CONVERSION AND REPAIR
NEWPORT NEWS, VIRGINIA

RESPONDENT

AND Case Nos. WA-CA-08-0207
WA-CA-08-0208

NATIONAL ASSOCIATION OF INDEPENDENT
LABOR, LOCAL 2

CHARGING PARTY

AND

INTERNATIONAL FEDERATION OF PROFESSIONAL AND
TECHNICAL, ENGINEERS, LOCAL 1

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 cross motions for summary judgment, 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

DEPARTMENT OF THE NAVY SUPERVISOR OF SHIPBUILDING, CONVERSION AND REPAIR, NEWPORT NEWS, VIRGINIA RESPONDENT AND NATIONAL ASSOCIATION OF INDEPENENT LABOR, LOCAL 2 CHARGING PARTY AND INTERNATIONAL FEDERATION OF PROFESSIONAL AND TECHNICAL ENGINEERS, LOCAL 1 CHARGING PARTY	Case Nos. WA-CA-08-0207 WA-CA-08-0208

NOTICE OF TRANSMITTAL OF DECISION

The above-entitled case having been heard by the undersigned Chief, 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. §§2423.40-41, 2429.12, 2429.21-2429.22, 2429.24-2429.25, and 2429.27.

Any such exceptions must be filed on or before **APRIL 28, 2010**, and addressed to:

Office of Case Intake & Publication
Federal Labor Relations Authority
1400 K Street, NW., 2nd Floor
Washington, DC 20424-0001

CHARLES R. CENTER
Chief Administrative Law Judge

Dated: March 29, 2010
Washington, D.C.

OALJ 10-09

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

DEPARTMENT OF THE NAVY SUPERVISOR OF SHIPBUILDING, CONVERSION AND REPAIR, NEWPORT NEWS, VIRGINIA RESPONDENT AND NATIONAL ASSOCIATION OF INDEPENDENT LABOR, LOCAL 2 CHARGING PARTY AND INTERNATIONAL FEDERATION OF PROFESSIONAL AND TECHNICAL ENGINEERS, LOCAL 1 CHARGING PARTY	Case Nos. WA-CA-08-0207 WA-CA-08-0208

June M. Marshall, Esq.
For the General Counsel

Joseph R. Barco, Labor Relations Specialist
For the Respondent

Before: CHARLES R. CENTER
Chief Administrative Law Judge

DECISION ON MOTIONS FOR SUMMARY JUDGMENT

STATEMENT OF THE CASE

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

A Consolidated Complaint and Notice of Hearing was issued on December 28, 2009, based on two separate unfair labor practice charges filed on February 7, 2008, against the Department of the Navy, Supervisor of Shipbuilding, Conversion, and Repair, Newport News, Virginia (Respondent). Case No. WA-CA-08-0207 was filed by the National Association of Independent Labor, Local 2 (NAIL), and Case No. WA-CA-08-0208 was filed by the International Federation of Professional and Technical Engineers, Local 1 (IFPTE).

The Consolidated Complaint alleges that the Respondent repudiated an agreement it entered into with NAIL and IFPTE concerning vehicle parking and violated §7116(a)(1) and (5) of the Statute.

On February 16, 2010, the General Counsel filed a Motion for Summary Judgment in the consolidated complaint asserting that there were no material facts in dispute, and it was entitled to judgment as a matter of law. On February 17, 2010, the Respondent filed a response to the motion for summary judgment in which it agreed that there were no material facts in dispute, but contended that summary judgment should be made in favor of the Respondent.[1]/

Based upon the assertions of the Respondent and General Counsel, there were no genuine issue of material facts in dispute, and an Order Indefinitely Postponing the hearing was issued on February 18, 2010.

MOTIONS FOR SUMMARY JUDGMENT

The Authority has held that motions for summary judgment filed under §2423.27 of its Regulations serve the same purpose and are governed by the same principles, as motions filed in the United States District Courts under Rule 56 of the Federal Rules of Civil Procedure. *Dep't of Veterans Affairs, Veterans Affairs Med. Ctr, Nashville, Tenn.*, 50 FLRA 220, 222 (1995); *Dep't of the Navy, U.S. Naval Ordnance Station, Louisville, Ky.*, 33 FLRA 3, 4-5 (1988) (*NOS, Louisville*), *rev'd on other grounds*, No. 88-1861 (D.C. Cir. Aug. 9, 1990). The motion is to be granted if the "'pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" *NOS, Louisville* at 4, quoting Rule 56(c). After reviewing the pleadings, affidavits, and exhibits submitted by the parties, I agree that there is no genuine issue of material facts with respect to the consolidated complaint before me.

Accordingly, it is unnecessary to hold a hearing in this case, and it is appropriate to decide the case on the motions for summary judgment. The summary of the undisputed material facts and my conclusions of law and recommendations are set forth below.

Findings of Fact

The Respondent is an agency under §7103(a)(3) of the Statute. (GC Ex. 2, 3) The Respondent's facility is not located on a military installation or other federal property, but rather is situated at the Northrop Grumman Shipyard in Newport News, Virginia. (Resp. App. A) In addition to its own employees, there are other federal personnel located at the Respondent's facility who provide support to the Respondent's mission and are considered "Tenant Command Personnel". (*Id.*) The largest tenant command having employees at Respondent's facility is the Integrated Logistics Support Department, which is organizationally aligned under the Fleet Industrial Supply Center, Norfolk (FISC, Norfolk). (*Id.*)

The Charging Parties in this case, NAIL and IFPTE are labor organizations within the meaning of §7103(a)(4) of the Statute. (GC Ex. 2, 3) NAIL is the exclusive representative of

[1] The "response" to the General Counsel's motion submitted by Respondent is for all intents and purposes a cross-motion for summary judgment and it is treated as such.

a unit of Respondent's employees appropriate for collective bargaining at the Newport News facility; IFPTE is also the exclusive representative of a unit of Respondent's employees at the same facility. (*Id.*). The American Federation of Government Employees, Local 53 (Local 53), is the exclusive representative of a bargaining unit that includes employees employed by FISC, Norfolk. (Resp. Apps. A, B at 2) Some of the employees in Local 53 bargaining unit are assigned to one of the tenant commands at the Respondent's Newport News facility and are located there.[2/] (Resp. Apps. A, B)

In addition to office space, Northrop Grumman Shipbuilding, Newport News, provides 378 parking spaces for the Respondent and its tenant commands at the Newport News facility. (Resp. App. A) In the summer of 2007, the Respondent began the process of revising its instruction for the distribution and use of parking spaces. (*Id.*) During the course of the negotiations associated with this revision IFPTE and NAIL proposed, among other things, that the former practice of assigning individuals to a parking lot, but leaving the choice of specific parking spaces to a daily first-come, first-served basis, be replaced with one that assigned all parking spaces by numbers, to individuals and carpools. (*Id.*) Another proposal put forward by IFPTE and NAIL was that individuals employed by tenant commands be assigned parking spaces only after individuals in four other categories that included employees of the Respondent, received parking space assignments. (*Id.*) Respondent notified FISC, Norfolk of the IFPTE/NAIL proposals which would change a working condition of FISC employees located at the Newport News facility, and suggested that FISC, Norfolk inform Local 53 of the proposals. (*Id.*) During the ensuing negotiations between Respondent and IFPTE and NAIL, there was no discussion between the Respondent and either FISC, Norfolk or Local 53. (*Id.*)

On or about August 8, 2007, negotiations with IFPTE and NAIL were completed and an agreement was reached and signed. The agreement took the form of SUPSHIPNN Instruction 5560.1J (Revision J), which set forth policies concerning the allocation of vehicle parking at the Respondent's Newport News facility. (GC Ex. 2, 3, 4; Resp. App. A at 2)

[2] The FISC, Norfolk employees located at the Respondent's facility had previously been employees of the Respondent. (Resp. Response at 2; Resp. App. B) As a consequence of a reorganization that was effective in 2005, they were "organizationally reassigned in place" to FISC, Norfolk which was another component within the Department of the Navy. (Resp. App. B) In a decision issued in 2006, the Regional Director of the Authority's Denver Regional Office found that the employees who previously were included in the bargaining unit represented by NAIL had accreted to the bargaining unit represented by AFGE, Local 53. (Resp. App. B)

Revision J included the proposals described above that were made by IFPTE and NAIL.[3/] (GC Ex. 4; Resp. App. A)

In October 2007, the Respondent made an initial allocation of parking spaces using the process set forth in Revision J and discovered there were approximately 25 fewer spaces than what was needed to meet demand. (Resp. App. A) Under the prior first-come, first-served process for allocating parking spaces, daily absences based on such reasons as leave, official travel, and alternative work schedules had masked this shortfall. (*Id.*) Under the new approach set forth in Revision J tenant command personnel were relegated to the last group in line to receive assigned parking spaces. Thus, they would absorb the entire shortage and would lose their parking spaces. (*Id.*) After unsuccessfully attempting to obtain additional parking spaces, Respondent notified FISC, Norfolk of the parking shortage and its effect on FISC personnel. (*Id.*)

On January 7, 2008, Respondent received a demand from Local 53 for an opportunity to bargain prior to the implementation of the changes in parking. (Resp. App. A at 3) In February 2008, the Respondent agreed to delay implementation of the Revision J process for several weeks to afford FISC, Norfolk and Local 53 an opportunity to conduct discussions on the matter. (*Id.*) At that point, Respondent informed IFPTE and NAIL that Revision J had not been implemented. On February 7, 2008, IFPTE and NAIL both filed unfair labor practice charges alleging that the Respondent repudiated the agreement reached in August 2007. (GC Ex. 1(a), (b))

By memoranda dated April 7, 2008, Respondent informed IFPTE and NAIL that it would not implement Revision J because of the effect it would have on the working conditions of employees in the AFGE, Local 53 bargaining unit. (GC Ex. 5, 6; Resp. Apps. C, D) The memoranda included "Draft SUPSHIPNNINST.5560.1K" (Draft Revision K), which the Respondent characterized as an effort to solve the parking problem that resulted

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[3] Revision J provides in relevant part:

7. Space Assignment

b. Eligible applicants will be assigned to specific parking assignment groups. Parking lot and space assignment will occur in assignment group order as follows:

(1) Group I – Special designated parking as listed in enclosure (1)

(2) Group II – Handicapped personnel.

(3) Group III – SUPSHIPNN and Tenant Command Carpools.

(4) Group IV – SUPSHIPNN individuals.

(5) Group V – Tenant Command individuals.

(GC Ex. 4 at 4)

from Revision J for the review of IFPTE and NAIL. (GC Ex. 5, 6; Resp. Apps. C, D, E)[4/] In the April 7, 2008, memoranda, the Respondent invited IFPTE and NAIL to request consultation/negotiation. (Resp. Apps. C, D; GC Ex. 5, 6) No negotiations occurred. (Resp. App. A)

Discussion and Analysis

Position of the Parties

A. General Counsel

The General Counsel (GC) contends that the Respondent, IFPTE and NAIL reached an agreement on parking at Respondent's facility and that the Respondent repudiated in violation of §7116(a)(1) and (5) of the Statute. The General Counsel acknowledges that repudiation is not a violation in circumstances where the agreement term at issue is contrary to law. (GC Brief at 3). The GC asserts that in this case there is no showing that any provision of the agreement is contrary to law and the impact of the agreement on employees in a bargaining unit represented by a labor organization other than the two who are parties to the agreement, does not render it illegal. (*Id.*) Rather than failing to implement the agreement reached with IFPTE and NAIL, the GC argues that the Respondent has the obligation to bargain with the representative of the other bargaining unit affected. (*Id.*)

As a remedy, the General Counsel seeks an order requiring the Respondent to cease and desist, implement Revision J, and post a notice to employees.

B. Respondent

The Respondent asserts that its actions in refusing to implement Revision J did not violate the Statute as alleged. (Resp. Response at 3) Respondent contends its actions were driven by its realization that implementation of Revision J would change the conditions of employment of employees in a third unit of recognition whose exclusive representative was not afforded an opportunity to bargain over the change. (*Id.*) Respondent avers that implementation of Revision J without the third union being afforded an opportunity to bargain would have subjected it to an allegation that it violated the Statute. (*Id.* at 4.) Additionally, the Respondent maintains that the remedy sought by the General Counsel would allow IFPTE and NAIL to negotiate a substantive change in a working condition of members of AFGE, Local 53 bargaining unit. (*Id.*)

Discussion and Analysis

A. The Respondent Refused to Implement the Agreement

It is undisputed that the Respondent entered into an agreement with IFPTE and NAIL that established a process for assigning the parking spaces under its control at its Newport News facility. That agreement was embodied in Revision J. It is also undisputed that Respondent refused to implement Revision J.

[4] Resp. App. E includes, in addition to Draft Revision K, pages 1 and 8 from Revision J. As it appears that those pages were inadvertently included in Resp. App. E, I will disregard those two pages.

B. The Respondent's Refusal to Implement the Agreement Did Not Constitute Unlawful Repudiation

A failure or refusal to honor an agreement constitutes a violation of the Statute when the breach of contract amounts to a wholesale repudiation of the collective bargaining agreement. *See, e.g., Dep't of Defense, Warner Robins Air Logistics Ctr, Robins Air Force Base, Ga.*, 40 FLRA 1211, 1217-19 (1991). The Authority, however, will not find an unlawful repudiation where the agreement allegedly repudiated is contrary to law. *E.g., U.S. Dep't of Transportation, Fed. Avia. Admin., Atlanta, Ga.*, 60 FLRA 985, 986 (2005). In this case, the Respondent essentially asserts that it could not lawfully implement Revision J because of the effect it would have on the working conditions of employees included in a bargaining unit represented by an exclusive representative that was not a party to the negotiations.

As discussed above, Revision J represented an agreement the Respondent reached with IFPTE and NAIL. In addition to determining conditions of employment of the employees in the bargaining units represented by those two labor organizations, Revision J directly determined conditions of employment of employees of the tenant organizations located at the Respondent's Newport News facility, some of whom are represented by the AFGE, Local 53. In particular, Revision J prescribed the order in which parking spaces would be assigned to employees located at the Respondent's Newport News facility including those employees represented by Local 53, s*upra* note 3 above. Thus, Revision J is not an agreement reached with IFPTE and NAIL that merely has "some impact" on employees in the AFGE bargaining unit, instead, it is an agreement reached with those two unions that actually "regulates" and eliminates a condition of employment previously enjoyed by employees in the AFGE, Local 53 bargaining unit. *See, e.g., Am. Fed'n of Gov't Employees, Local 2879, AFL-CIO*, 49 FLRA 1074, 1086-90 (1994).

Under §7114(a)(1) of the Statute, when a labor organization has been accorded exclusive recognition, it is the exclusive representative of the employees in the unit it represents and is entitled to act for and negotiate collective bargaining agreements covering all employees in the unit. Correlatively, once a union is certified as the exclusive representative of an appropriate unit of employees, an agency must "deal only with" that representative concerning matters affecting the conditions of employment of the employees in that unit. *See, e.g., Am. Fed'n of Gov't Employees, Nat'l Council of HUD Locals 222,* 54 FLRA 1267, 1276 (1998) (*HUD*). Allowing a union to directly determine the conditions of employment of employees in a bargaining unit for which another union holds exclusive recognition "would run afoul of the principle of exclusive recognition." *Nat'l Ass'n of Gov't Employees, Local R1-109*, 61 FLRA 593, 597 (2006), quoting *HUD*. If follows that allowing IFPTE and NAIL to directly determine, or regulate, the conditions of employment of employees in the AFGE Local 53 collective bargaining unit runs afoul of the principle of exclusive recognition as set forth in §7114 of the Statute.

Despite the absence of a collective bargaining relationship between the Respondent and the AFGE, Local 53, the Respondent nevertheless, had an obligation to honor AFGE's

status as the exclusive representative of the employees of FISC, Norfolk located at its facility. In this regard and as noted earlier, AFGE, Local 53's bargaining relationship was with FISC, Norfolk which was a tenant of the Respondent insofar as those FISC employees located at the Respondent's Newport News facility. The record shows that prior to Revision J, the FISC, Norfolk employees located at the Respondent's Newport News facility were provided parking in the spaces controlled by the Respondent at the facility. Parking arrangements for employees generally concern employees' conditions of employment and a change in parking arrangements generally constitutes a change in conditions of employment. *E.g., Soc. Sec. Admin., Office of Hearings and Appeals, Charleston, S.C.,* 59 FLRA 646, 649 (2004)*, aff'd as to other matters,* 397 F.3d 957 (D.C. Cir. 2005). In view of the fact that FISC, Norfolk had the bargaining relationship with AFGE, Local 53that entity had the responsibility for fulfilling the bargaining obligation owed to that union in conjunction with any change in the parking arrangements for the employees in its unit of recognition. *See, e.g., Headquarters, Def. Logistics Agency, Washington, D.C.*, 22 FLRA 875, 879-80 (1986) (*DLA*). Despite the fact that it was the responsibility of FISC, Norfolk rather than the Respondent, to fulfill the bargaining obligation owed to AFGE, Local 53 prior to changing the parking arrangements that applied to the employees in Local 53, Respondent would be in violation of the Statute if it took action that interfered with the bargaining relationship between the parties to that exclusive recognition. *See, e.g., DLA*. Although the theory of the violation would differ based on the relationship between the two organizational entities, such interference can occur regardless of whether the entities involved are in a superior/subordinate relationship in the same chain of command or are simply different organizational entities in the same agency. *See, e.g., id.; see also Air Force Logistics Command, Wright-Patterson Air Force Base, Ohio,* 46 FLRA 1184, 1186-87 (1993). Respondent was not free to disregard the exclusive recognition that AFGE held for the FISC, Norfolk employees and could not enter into an agreement with IFPTE and NAIL that directly affected conditions of employment for employees in the AFGE, Local 53 bargaining unit without violating the Statute.

I find that the Revision J agreement the Respondent reached with IFPTE and NAIL was contrary to §7114(a)(1) of the Statute because the detailed guidance regarding precedence in the assignment of assigned parking spots directly affected the conditions of employment for bargaining unit employees represented by AFGE, Local 53 as they were placed last in priority for the assignment of parking spaces when an insufficient number of spaces were available. Thus, parking that was previously provided to the Local 53 bargaining unit would be unilaterally taken away without bargaining. In view of this, the Respondent's action in refusing to implement the Revision J agreement bargained with two other unions, did not constitute unlawful repudiation.

For the reasons outlined above, I recommend that the Authority grant the Respondent's cross-motion for summary judgment and dismiss the consolidated complaint. Accordingly, it is recommended that the Authority adopt the following Order:

ORDER

It is ordered that the consolidated complaint be, and hereby is, dismissed.

Issued, Washington, D.C., March 29, 2010.

CHARLES R. CENTER
Chief Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of this **DECISION**, issued by CHARLES R. CENTER, Chief Administrative Law Judge, in Case Nos. WA-CA-08-0207 and WA-CA-08-0208, were sent to the following parties:

CERTIFIED MAIL & RETURN RECEIPT **CERTIFIED NOS:**

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Catherine Turner
Office of Administrative Law Judges
Federal Labor Relations Authority

Dated: March 29, 2010
Washington, DC