

96 FLRR 1-1064

Department of the Air Force, Air Force Materiel Command, Wright-Patterson Air Force Base, OH and AFGE, Council 214

Federal Labor Relations Authority

CH-CA-30438; 51 FLRA No. 125; 51 FLRA 1532

July 16, 1996

Judge / Administrative Officer

Before: Segal, Chair, Armendariz and Wasserman, Members

Related Index Numbers

09.651

44.115 Subjects of Bargaining, Compensation, Wages and Salaries, Incentive Pay

72.614 Employer Unfair Labor Practices, Unilateral Change in Term or Condition of Employment, Union Request for Bargaining

72.641 Employer Unfair Labor Practices, Unilateral Change in Term or Condition of Employment, Changes After Expiration of Contract, Continuation of Contract Terms After Expiration

Case Summary

THE AGENCY WAS NOT REQUIRED TO BARGAIN OVER AN INCENTIVE AWARDS PROGRAM BECAUSE THE UNION'S REQUEST FOR NEGOTIATIONS WAS UNTIMELY

The agency afforded the union notice and an opportunity to bargain concerning a time-off incentive awards program which the agency intended to implement on January 10, 1993. The union informed the agency in December 1992 that it had no proposals regarding the program at that time. However, on January 20, 1993, ten days after the agency implemented the program, the union submitted a demand to bargain along with 11 proposals. The agency rejected the bargaining request on the ground that the union had waived its right to bargain by failing to submit its proposal within the time limits

established by the parties' bargaining agreement.

The Authority determined that the agency's bargaining obligation arose when it proposed to change an existing condition of employment, namely the incentive awards program. Once the agency's bargaining obligation had been triggered, the union was required to submit its proposals within 15 days, as provided by a provision in the parties' bargaining agreement. Although the bargaining agreement had expired, the provision which established time limits for submitting proposals remained in effect because neither party had notified the other that it would no longer be bound by the provision. Therefore, the agency was not required to consider the union's post-implementation bargaining request because it had not been submitted within contractually specified time limits.

Full Text

DECISION AND ORDER

I. Statement of the Case

This unfair labor practice case is before the Authority on exceptions to the attached decision of the Administrative Law Judge filed by the General Counsel. The Respondent filed an opposition to the exceptions.

The complaint alleges that the Respondent violated section 7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute (the Statute) by refusing to negotiate with the Union concerning the Respondent's time off incentive awards program.

Upon consideration of the Judge's decision and the entire record, we adopt the Judge's findings, conclusions, and recommended Order.

II. Judge's Decision

The facts are fully set forth in the Judge's decision and are briefly summarized here.

The Union was afforded notice and an opportunity to bargain, in accordance with section 33.02 of the parties' Master Labor Agreement (MLA)*1, concerning an agency-initiated time off

incentive awards program by letter dated November 13, 1992. In this letter, the Respondent proposed an implementation date of January 10, 1993. On November 18, 1992, the Union sought: (1) information regarding the proposed change; (2) a meeting to discuss the change; and (3) an extension of the time limit in order to develop proposals and engage in negotiations. The Respondent subsequently provided the requested information, a briefing and an extension of time. On December 11, 1992, the Union notified the Respondent that it had no proposals regarding the program "at this time." Judge's Decision at 4.

On January 20, 1993, 10 days after Respondent implemented the program, the Union submitted a demand to bargain along with 11 proposals. The Respondent rejected the Union's bargaining request contending, *inter alia*, that the Union waived its right to bargain over the program by not submitting proposals within the established time limits of section 33.02 of the parties' MLA.

The General Counsel issued a complaint alleging that the Agency violated section 7116(a)(1) and (5) of the Statute by refusing to negotiate with the Union concerning the Respondent's time off incentive awards program.

The Judge found that section 33.02 of the parties' MLA was in effect at all times relevant to these proceedings and that the Respondent fulfilled its responsibilities under Section 33.02 and the Statute before implementing the time off incentive awards program. The Judge concluded that "[t]he Union clearly and unmistakably declined bargaining on the proposal within the time frame set forth under the terms of the negotiated agreement" and that none of the January 20, 1993, proposals submitted by the Union encompassed any matter that could not have been submitted during that time frame. *Id.* at 7. Thus, the Judge found that the Respondent did not violate the Statute by refusing to negotiate over the proposals.

III. Positions of the Parties

A. General Counsel's Exceptions

The General Counsel argues that section 33.02 of the parties' MLA concerns only "pre-implementation bargaining over management-initiated changes" and is otherwise "silent as to the effect of a failure by the Union to pursue a pre-implementation bargaining opportunity." G.C. Brief at 4. The General Counsel argues that the Judge "impermissibly recasts" section 33.02 to preclude post-implementation bargaining, for which no clear and unmistakable waiver can necessarily be inferred from the Union's mere failure to pursue a pre-implementation bargaining opportunity. *Id.* at 4-6.

The General Counsel also argues that, to the extent section 33.02 operates as a "contractual waiver," this waiver terminated when the MLA expired on October 22, 1992. *Id.* at 7. Further, the General Counsel argues that the Judge's finding of waiver "is contrary to law and totally inconsistent with the Authority's well-established precedent on the right of unions to initiate bargaining over matters not addressed in an existing agreement." *Id.* at 8. Finally, the General Counsel argues that adoption of the Judge's finding that the Union waived its right to bargain is tantamount to finding that the Union is "barred forever from seeking to negotiate changes and modifications to the time-off program." *Id.*

B. Respondent's Opposition

The Respondent contends that adoption of the General Counsel's position would "vitiate" section 33.02 of the parties' MLA. Opposition at 3. Respondent argues that the "untenable result of [the General] Counsel's assertion would be to allow the Union the luxury of transforming any management-initiated change into an after-the-fact union-initiated proposal for bargaining anytime the union intentionally or unwittingly declined to enter into negotiations consistent with the mutually-agreed-upon provisions of Article 33 of the MLA." *Id.*

IV. Analysis and Conclusions

A. The Respondents Bargaining Obligation in

This Case Arose When It Proposed to Make a Change Affecting Employees' Working Conditions

It is undisputed that the time off incentive awards program is a matter concerning a condition of employment. See Department of Veterans Affairs Medical Center, St. Louis, Missouri, 50 FLRA 378 (1995) [95 FLRR 1-1043]. It is also undisputed that the matter of a time off incentive awards program is not covered by or contained in the parties' MLA. See generally U.S. Department of Health and Human Services, Social Security Administration, Baltimore, Maryland, 47 FLRA 1004 (1993) [93 FLRR 1-1148]. In addition, the record supports the Judge's determination that the Respondent fulfilled its statutory duty to provide notice and an opportunity to bargain regarding the proposed change. Accordingly, it was incumbent upon the Union to make a timely request to bargain when notified of a proposed change in conditions of employment. Department of Justice, United States Immigration and Naturalization Service, United States Border Patrol, Laredo, Texas, 23 FLRA 90, 94 (1986) [86 FLRR 1-1733].

Consistent with the foregoing, the sole issue raised in the exceptions is whether the Judge erred in concluding that, by failing to submit its proposals until 10 days after implementation of the time off incentive awards program and, thereby, failing to comply with section 33.02(b) of the parties' MLA, the Union waived its right to bargain on the proposals.

To determine whether the Union's request to bargain was timely, it is necessary, as a threshold matter, to identify the source of the Respondent's bargaining obligation. An agency's bargaining obligation may arise in one of the following contexts: (1) during term negotiations for a collective bargaining agreement; (2) in response to union-initiated mid-term proposals; and (3) when management proposes to change existing conditions of employment. Neither of the first two contexts applies in this case. With respect to the former, there is no record evidence to suggest that the Union's request to bargain, at issue here, was made in the context of term negotiations.*2 With respect to the

latter, the Union was not entitled to pursue union-initiated mid-term bargaining because, in October 1992, the parties' agreement expired. See United States Immigration and Naturalization Service, United States Border Patrol, Del Rio, Texas, 51 FLRA 768, 772-74 (1996) [96 FLRR 1-1007]. Thus, the source of the bargaining obligation was Respondent's proposed time off awards program.

B. The Union's Proposals Were Untimely

The Authority evaluates the timeliness of a union's proposals under either the parties' agreed upon contractual time limits or the Statute. With respect to contractual time limits for submitting proposals, the Authority has found that parties may define limits on rights, including bargaining rights under the Statute. See Federal Aviation Administration, Northwest Mountain Region, Seattle, Washington, 14 FLRA 644 (1984) [84 FLRR 1-1465] (Northwest). With respect to the Statute, the Authority has consistently found that an agency need only provide "reasonable notice" and that the adequacy of such notice is determined in light of the facts and circumstances of a particular case. See Department of the Treasury, U.S. Customs Service, Region I, (Boston, Massachusetts), 16 FLRA 654 (1984) [84 FLRR 1-1767] (Authority upheld ALJ's finding that the nature of the proposed change, as well as 10 days notice provided to the union was sufficient, and that union's 11th hour proposals were untimely); Internal Revenue Service (District Region, National Office Unit) 14 FLRA 698, 700 (1984) [84 FLRR 1-1468] (union's proposals, nearly three weeks after notification was given and on the same date as the validation study was scheduled to begin, were untimely).

Regardless of which standard is used to determine whether a union's demand to bargain is timely, the Authority has long held that once adequate notice is given, the union must act to submit proposals, request additional information, or request additional time. See Division of Military and Naval Affairs, State of New York, Albany, New York, 8 FLRA 307, 320 (1982) [82 FLRR 1-1447]. Failure to take such action may result in a finding that the union

has waived its bargaining rights. Bureau of Engraving and Printing, Washington, D.C., 44 FLRA 575, 582-83 (1992) [92 FLRR 1-1105].

The Judge concluded, and we agree, that the time limits in section 33.02 apply in determining whether the Union's bargaining request was timely.*3 The event that triggered the bargaining obligation was a "Command-level" change --the time off incentive awards program -- within the meaning of section 33.02 of the MLA. In addition, the Respondent's November 13, 1992, notification to the Union referenced the "15 workdays" time limit of section 33.02(b). Moreover, both the Union's November 18, 1992, and January 20, 1993, requests to negotiate specifically referenced section 33.02 of the MLA. Put simply, both parties acted as if section 33.02 applied.

We reject the General Counsel's argument that section 33.02(b) cannot be found to apply in this case because, as interpreted by the Judge, it constitutes a permissive subject of bargaining and, as such, terminated when the parties' MLA expired in 1992. Even if the provision constitutes a permissive subject of bargaining, a finding that is unnecessary to make in this case, it does not terminate automatically upon expiration of an agreement. It terminates only when a party notifies the other that it will no longer be bound by the provision. FAA, Northwest, 14 FLRA at 647-49. It is not argued or apparent that such notification occurred in this case. To the contrary, the relevant correspondence, including the Union's November 18, 1992, request to negotiate and its January 20, 1993, proposals, makes reference to section 33.02 of the parties' MLA. Indeed, as the General Counsel concedes, "[t]here is no dispute that the parties were, during the general time frame of these events, abiding by the terms of this article [Article 33], which expressly concerns bargaining pursuant to Command-initiated changes." G.C. Brief at 3.

We also reject the General Counsel's contention that section 33.02 does not address the situation where a union fails to pursue pre-implementation bargaining and, instead, makes proposals

post-implementation. The record is devoid of any evidence, and the General Counsel does not contend, that any past practice existed whereby the Union could reserve a "post-implementation" bargaining opportunity in the event it failed to meet the section 33.02(b) deadline of submitting proposals within 15 workdays. Moreover, the Authority has sanctioned "post-implementation" bargaining in only limited situations. In Headquarters, 127th Tactical Fighter Wing, Michigan Air National Guard, Selfridge Air National Guard Base, Michigan, 46 FLRA 582, 586-87 (1992) [92 FLRR 1-1373], the Authority upheld the Judge's finding that the Union was entitled under the Statute to bargain after implementation over matters that became evident only at that time. The Authority has also found that a union is entitled to bargain after an agency terminates an unlawful practice, a situation where the Statute does not require the agency to afford a union the opportunity to engage in pre-implementation bargaining. See Department of the Air Force, Air Force Logistics Command, Ogden Air Logistics Center, Hill Air Force Base, Utah, 17 FLRA 394 (1985) [85 FLRR 1-1063]. There is no argument or evidence that either situation is present in the case now before us. Moreover, there is no argument that the facts and circumstances of the instant case warrant extending the "post-implementation" opportunities beyond these two situations.

Based on the foregoing, we conclude that section 33.02(b) applied to the proposed management-initiated change. There is no dispute that the Union did not act -- by requesting bargaining within the time limit set forth in section 33.02(b). Further, there is no record evidence to suggest that the Union sought, or Respondent agreed upon, an additional extension of time to submit proposals as the Union did on November 18, 1992. Accordingly, the Union did not timely request bargaining and the Respondent did not violate the Statute by refusing to bargain with the Union.

V. Order

The complaint is dismissed.

1. Article 33 ("Negotiations During the Term of the Agreement"), Section 33.02 ("Negotiations at Command Level") provides, in relevant part, as follows:

When a bargaining obligation is generated by a proposed directive at Command level or a directive issued above Command level, the following procedures will apply:

a. The Labor Relations Office will notify the designated Union official in Section 33.01 above of the intended changes in conditions of employment. A reasonable time period/date following the notification will be identified as the implementation date. . .

b. If the Union wishes to negotiate, in accordance with entitlements under CSRA, concerning proposed changes, the Union will submit written proposals to the Labor Relations Office not later than 15 workdays after receipt of Employer's notification If necessary, the identified implementation date may be postponed by the Employer to complete negotiations in good faith.

2. The record indicates that at the time of the hearing, the parties were engaged in term negotiations for a successor MLA. In this regard, there is no dispute that the Union retains the right to bargain over the time off awards program during such term negotiations. In fact, the Respondent concedes that nothing would preclude the Union from raising this matter during term negotiations. Opposition at 4-6. In addition, the Respondent further concedes in its opposition, "any subsequent changes to the program must be bargained." Id. at 5. Consequently, there is no support for the General Counsel's contention that adoption of the Judge's conclusion inevitably leads to a result that the Union is forever foreclosed from bargaining over the time off incentive award program.

3. In resolving the meaning of collective bargaining agreement provisions, such as section 33.02 here, the Judges and the Authority use the same standards and approaches used by arbitrators. Internal Revenue Service, Washington, D.C., 47 FLRA 1091,

1110 (1993) [93 FLRR 1-1155].

DECISION

Statement of the Case

This case arose under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the U.S. Code, 5 U.S.C. 7101, et seq. (herein the Statute).

Upon an unfair labor practice charge having been filed by the captioned Charging Party (herein the Union) against the captioned Respondent, the General Counsel of the Federal Labor Relations Authority (herein the Authority), by the Regional Director for the Chicago Regional Office, issued a Complaint and Notice of Hearing alleging Respondent violated the Statute by refusing to negotiate with the Union over the Respondent's time off incentive awards program.

A hearing on the Complaint was conducted in Dayton, Ohio, at which all parties were afforded full opportunity to adduce evidence, call, examine and cross-examine witnesses and argue orally. Briefs were filed by Respondent and the General Counsel and have been carefully considered.

Upon the entire record in this case, my observation of the witnesses and their demeanor and from my evaluation of the evidence. I make the following:

Findings of Fact

At all times material the American Federation of Government Employees, AFL-CIO (herein AFGE) has been the exclusive collective bargaining representative of various of Respondent's employees and Council 214 has been the agent of AFGE for the purpose of representing those employees. The collective bargaining unit is comprised of approximately 73,000 employees located within the Air Force Materiel Command (AFMC) Headquarters at Wright-Patterson Air Force Base and at various other Air Force bases throughout the country.

By correspondence of November 13, 1992 Respondent notified the Union that it received authority to grant employees time off from duty,

without loss of pay or charge to leave, as an incentive award. The program was new and it does not appear that the matter had been previously discussed by the parties nor is the subject addressed in their collective bargaining agreement. The document sent to the Union included Air Force operating guidance regarding the program. Respondent's cover letter stated, in part:

Should you wish to negotiate over any bargainable impact and implementation relative to this matter, your written proposals must be submitted to this office not later than 15 workdays after your receipt of this letter in accordance with Section 32.02 of the Master Labor Agreement. We wish to implement this program on 10 January 1993.

Article 33 of the parties' collective bargaining agreement, considered to be in effect at all time relevant to these proceedings, is entitled "Negotiations During the Terms of the Agreement." Section 33.02, entitled "Negotiations at Command Level," Provides, in relevant part:

**SECTION 33.02: NEGOTIATIONS AT
COMMAND LEVEL**

When a bargaining obligation is generated by a proposed directive at Command level or a directive issued above Command level, the following procedures will apply:

a. The Labor Relations Office will notify the designated Union official in Section 33.01 above of the intended changes in conditions of employment. A reasonable time period/date following the notification will be identified as the implementation date. The Council President or designee may request and be granted a meeting to discuss the change.

b. If the Union wishes to negotiate, in accordance with entitlements under CSRA, concerning proposed changes, the Union will submit written proposals to the Labor Relations Office not later than 15 workdays after receipt of Employer's notification. Negotiations will normally begin within five workdays after receipt by the Labor Relations Office of the timely Union proposals. If necessary, the

identified implementation date may be postponed by the Employer to complete negotiations in good faith.

c. The parties may mutually agree to delegate responsibility for negotiations to subordinate activities and local Union officials.

d. Agreements reached under this Section will be promptly implemented by the Employer in the appropriate form such as regulation, letter, or operating instruction. Disputes over the application of the implementing directive will be subject to resolution under Articles 6 and 7 of this Master Labor Agreement.

On November 18, 1992 the Union sent Respondent the following letter:

This responds to your letter dated 13 November 1992, received in this office on 13 November 1992, providing AFGE Council 214 written notification pursuant to Section 33.02 of the Master Labor Agreement (MLA) in connection with proposed changes in conditions of employment as referenced above.

AFGE Council 214 requests to negotiate over the intended changes in conditions of employment prior to any implementation in accordance with the Civil Service Reform Act of 1978 (CSRA) and MLA. In order that AFGE Council 214 may intelligently develop proposals and subsequently engage as such in negotiations, the following is requested:

(X) The data as identified in the attached list pursuant to Section 7114(b)(4) of the Labor Statute (CSRA).

(X) A meeting to discuss the change pursuant to Section 32.02a of the MLA (AFGE is prepared to meet at your earliest convenience).

(X) An extension of the time limits to fifteen (15) workdays after receipt of the items(s) requested immediately above due to a current heavy workload (A non-response by 4 days before the deadline will be interpreted as agreed).

Your immediate response will be appreciated.

The record reveals that shortly after the Union's

response, Respondent provided the Union with an extension of the contractual time limits, a briefing by Respondent regarding the time off incentive awards program and the data the Union requested.

By letter dated December 11, 1992 the Union notified Respondent that it had no proposals regarding the time off incentive awards "at this time." The Union further stated "we do reserve the right to initiate bargaining in the future if we deem it necessary."*1 Respondent implemented the time off incentive awards programs on January 10, 1993 without further communication with the Union. On January 20, 1993 the Union sent a letter to Respondent captioned "Subject: Union Initiated Demand to Bargain/Time Off Incentive Awards," noting "Implementation Date: Upon Reaching Final Agreement" and referencing, "Authority: AFGE/AFLC Agreement, 25 October 1988 and Labor Statute." The letter stated:

Attached hereto are AFGE Council 214's proposals with respect to Time Off Incentive Awards, Public Law 101-509.

Should you wish to negotiate, your written proposals must be submitted to this office not later than fifteen (15) work days after receipt of this notification in accordance with Section 33.02 of the Master Labor Agreement (MLA) and AFGE/AFLC Agreement on Procedures for Union Initiated Mid-Term Bargaining dated 25 October 1988.

Should you waive your right to negotiate by not submitting timely counter proposals, the Union proposals will become the agreement and we will require that management implement.

I have set aside 10 February 1993 at 10:00 AM here at the Council office to begin Negotiations.*2

The Union submitted the following proposals:

1. The employer will fairly, equitably and objectively consider all eligible employees for the subject award.

2. Employer agrees to a one time test basis only in 1993 to provide AFGE Council 214 Equal Employment Opportunity (EEO) data for bargaining

unit members nominated and selected for this award. This data will be reviewed to mutually determine relevance to the eligible bargaining unit population. The one time collection of this data will have no effect on the nomination or selection process.

3. Each local president, Council 214 president or their designees may submit bargaining unit members for nomination in accordance with subject regulation.

4. The employer shall provide to the Council 214 president or designee the following information about employees receiving the award:

(a) Name (b) Job Title, Series, and Grade Level (c) AFMC Facility and Organizational Symbol (d) Telephone Number

5. The following additional information for each bargaining unit member receiving an award is also to be provided so that EEO can be monitored by AFGE in conjunction with Article 19 of the Master Labor Agreement:

(a) Race (b) Color (c) National Origin (d) Sex (e) Age (f) Handicap

6. Employees will be notified when recommended for the time off incentive award. If not selected, employee will be advised in writing the rationale for non-selection/approval.

7. Notices by organization will be posted quarterly on official Bulletin Boards listing all recipients of the award for the quarter.

8. Time period for award to be taken by employee shall be jointly agreed to by supervision and the employee.

9. Turn around time for submission of recommendation of employee for the award and approval shall not exceed 30 calendar days.

10. In qualifying for assignment of Category 3 awards for merit promotion, (Time off awards, accumulative, by quarter) are to be used to meet the Category 3 requirements and qualify for Category 3 awards.

11. No rights of the employee, the union or management are waived by this agreement.

Respondent, in its reply to the Union of February 3, 1993, stated, *inter alia*:

By letter dated 13 November 1993 [sic], you were notified of our intent to implement the time off incentive awards program. You were reminded that should you wish to negotiate over this initiative, your written proposals must be submitted to this office not later than 15 workdays after your receipt of the notification letter in accordance with Section 33.02 of the Master Labor Agreement. You submitted no proposals.

Since you waived your right to bargain by not submitting proposals within the time limits outlined in Section 33.02 of the MLA, we must reject your 20 January 1993 demand to bargain. In addition, based on the decision by the 4th Circuit Court of Appeals referenced in our 20 March 1992 letter, the Union does not have the right to initiate bargaining in accordance with the Civil Service Reform Act of 1978 outside contract negotiations.

No bargaining even occurred between the parties regarding the time off incentive awards program.

Discussion and Conclusions

The General Counsel essentially contends that Respondent was obligated to negotiate with the Union concerning the Union's proposals regarding the time off incentive awards program since the matter was neither addressed in the previously negotiated agreement nor waived by the Union during negotiations. Respondent essentially contends that the parties' agreement regarding bargaining procedures to be followed when a bargaining obligation arises obligates the parties to follow that procedure if bargaining is desired and the Union's failure to follow the negotiated procedure extinguishes any further bargaining right or obligation on the matter.

In my view Respondent fulfilled its responsibilities under the collective bargaining agreement and the Statute before implementing the time off incentive awards program which, beyond question, was a matter concerning a condition of employment. Thus, Respondent gave the Union notice

of the pending change substantially in advance of the implementation date, granted the Union a meeting on the matter during which a briefing occurred, supplied requested data and, at the Union's request, granted an extension of time to submit negotiating proposals. The Union clearly and unmistakably declined bargaining on the proposal within the time-frame set forth under the terms of the negotiated agreement which established mutually agreed upon procedures for bargaining on a change such as the one herein. This conduct, in my view, constituted a clear and unmistakable waiver of the Union's Statutory right to bargain on the matter. Cf. U.S. Immigration and Naturalization Service, 24 FLRA 786, 790 (1986) [86 FLRR 1-1909].

Further, I give no effect to the Union's statement in its December 11, 1992 letter that it had no proposals "at this time," and its statement that it would "reserve the right to initiate bargaining" in the future if it was deemed necessary. There is no contention or indication in the record that the Union could have reasonably considered Respondents lack of response to this attempt to reserve a right to negotiate to constitute an acceptance of the Union's position. The parties' agreement provided for proposals to be submitted during a specific time frame. The Union may not unilaterally amend the procedural requirements set forth in their bilateral agreement simply by stating it could proceed in the future without regard to the constraints imposed by their negotiated agreement.

The General Counsel also argues that the Union's January 20, 1993 request to bargain constituted a demand for mid-term bargaining on the time off incentive awards program, citing Headquarters, 127th Tactical Fighter Wing, Michigan Air National Guard, Selfridge Air National Guard Base, Michigan (Selfridge), 46 FLRA 582 (1992) [92 FLRR 1-1373] and Department of the Air Force, 3800 ABW/AU, Maxwell Air Force Base, Alabama (Maxwell), 39 FLRA 1461 (1991) [91 FLRR 1-1157] where agency refusals to bargain were found to have violated the Statute. While both of those cases concerned a union

demand for mid-term bargaining and a claim of "waiver," both cases are distinguishable from the situation herein. In *Selfridge* the agency refused to enter mid-term negotiations with the union, which represented the employees, over safety concerns of bargaining unit employees relating to a prior staffing reduction in the agency's boiler plant operations. In *Selfridge* there was no claim that the union's bargaining request involved a substantive or procedural matter contained in or covered by the existing collective bargaining agreement and moreover, the timing of the demand to bargain vis a vis the change was substantially different from the case herein. Thus the Authority held in *Selfridge*, at 586-87:

Here, the facts do not establish that the Union relinquished its interest in negotiating over safety concerns as part of a bargain reached with the Agency prior to implementation. In this case, the parties reached no agreement and the entire matter was left unresolved. . . . Moreover, even assuming that the Union, by its actions, waived its right to object to the Agency's institution of a system that entailed the use of rovers and personal duress alarms to maintain safety after staff reductions, it does not follow that the Union waived its right to bargain over safety concerns relating to breakdowns and failures in that system that became evident only after several months of experience with the reduced staffing patterns.

Maxwell involved a mid-term request to bargain on agency smoking policy. In *Maxwell*, neither the terms of the agreement nor bargaining history contained any reference concerning smoking policy and the agreement specifically provided for a mid-term reopener. The Authority found ". . . the mid-term reopener provision allow[ed] negotiations on all subjects in the same manner as basic contract negotiations over a new agreement, and would therefore encompass even matter that had been waived by a party under the current agreement." *Maxwell*, at 1462. In view of this conclusion, the Authority found it unnecessary to pass on the Administrative Law Judge's finding that the proposal

"would have been mandatorily [sic] negotiable at any time unless there was a waiver." (Emphasis in original.) *Maxwell*, at 4462-63.

In the case herein the parties' collective bargaining agreement does not address the time off incentive awards program. However, the agreement does set forth procedures for negotiating mid-term changes in conditions of employment. Respondent followed those procedures before implementing the change herein. On November 13, 1992 Respondent notified the Union of the January 10, 1993 implementation date. On December 11 the Union declined to negotiate on the matter and the change was implemented as scheduled. Ten days thereafter the Union demanded to bargain on the program. None of the proposals encompassed any matter which could not have been considered in the period the collective bargaining agreement set forth for the submission of proposals.

One of the most important benefits of having a collective bargaining agreement is to provide the parties to the agreement with some semblance of "stability and repose" with respect to matters reduced to writing in the agreement which extends to the procedures the parties agree to regarding changes during the term of an agreement and the opportunity to negotiate regarding such changes. Cf. U.S. Department of Health and Human Services, Social Security Administration, Baltimore, Maryland, 47 FLRA 1004, 1016-19 (1993) [93 FLRR 1-1148]. It is well settled that when an agency notifies a union which is the collective bargaining representative that a change in a condition of employment is envisioned, the union must make a timely request to bargain if it wishes to preserve its right to negotiate on the matter. See Internal Revenue Service (District, Region, National Office Unit), 14 FLRA 698, 700 (1984) [84 FLRR 1-1468] and Department of the Treasury, U.S. Customs Service, Region I (Boston, Massachusetts), 16 FLRA 654 (1984) at 668-71 [84 FLRR 1-1767]. See also Army and Air Force Exchange Service (AAFES), Lowry AFB Exchange, Lowry AFB, Colorado, 13 FLRA 310 (1983) [83 FLRR 1-1305].

To allow the Union herein to, in effect, extend its right to negotiate which was procedurally circumscribed by the terms of its collective bargaining agreement, and impose a continuing obligation upon Respondent to negotiate on time off incentive awards within ten days after the change was effectuated under the guise of enforcing the Union's right to engage in mid-term bargaining would substantially undermine the stability that contractual agreements seek to establish when addressing substantive or procedural rights and obligations.

Accordingly, I conclude that by its refusal to negotiate with the Union, in the circumstances herein, Respondent did not violate section 7116(a)(1) and (5) of the Statute as alleged and I recommend the Authority issue the following:

ORDER

It is hereby ordered that the complaint in Case No. CH-CA-30438 be, and hereby is, dismissed.

Issued, Washington, DC, December 20, 1994

SALVATORE J. ARRIGO Administrative Law Judge

1. The Union was in the process of soliciting proposals from its members but did not wish to delay implementation of the program since it was beneficial to its members.

2. No "AFGE/AFLC Agreement on Procedures for Union Initiated Mid-term Bargaining dated 25 October 1988" was identified at the hearing or offered as an exhibit for the record.