

SHYAM DAS, ARBITRATOR

In the Matter of Arbitration)	ARBITRATOR'S OPINION
Between:)	AND AWARD
)	
)	
)	Case No. GETS 64635
)	
U.S. DEPARTMENT OF TRANSPORTATION)	
FEDERAL AVIATION ADMINISTRATION)	
(FAA))	Case Heard:
)	July 10, 2008
)	
)	
and)	Briefs Received:
)	October 21, 2008
)	
)	
PROFESSIONAL AIRWAYS SYSTEMS)	Award Issued:
SPECIALISTS (PASS))	February 15, 2009

Appearances:

On Behalf of the FAA:

Cabrina S. Smith
Labor Relations Specialist

On Behalf of the Union:

Michael D. Derby
PASS Counsel

The largest PASS bargaining unit is the Airway Facilities (AF) unit, which recently has been redesignated by the Agency as the Technical Operations unit. Employees in this unit, including Airway Transportation System Specialists (ATSS), maintain, certify, repair, monitor and install the equipment utilized in the FAA's air traffic control systems. A majority of the ATSSs work rotating shifts. Their shift assignments are contained in "watch schedules" established pursuant to Article 50 of the Collective Bargaining Agreement, which provides:

Section 1. Basic Watch Schedules

The basic watch schedule is defined as the days of the week, hours of the day, rotation of shifts and change in regular days off. The basic watch schedule must satisfy coverage requirements. Assignments of individual employees to the watch schedule are not considered changes to the basic watch schedule. The basic watch schedule will not be changed except for substantial operational reasons unless specifically requested by the Union. The Employer will notify the Union at the appropriate level in advance of any proposed change to the basic watch schedule and will negotiate with the Union regarding the proposed change. If the parties can not agree within thirty (30) days and there is compelling need, then management may implement the change as proposed.

Unless changed in accordance with Article 50, these watch schedules remain in effect for one year. As Union witnesses testified, this provides stability and predictability in terms of the ATSSs work schedules.

Article 41, Section 1 of the CBA specifies the days to be observed "in lieu of" actual holidays when a designated holiday (e.g. July 4) falls on an employee's regular day off. Article 41 goes on to provide as follows:

Section 2. To the extent that operational requirements permit, employees scheduled to work on actual established legal holidays or days observed in lieu of such holidays shall be given such day off if they so request.

Section 3. The Employer shall post a list of employees assigned to work an actual holiday thirty (30) days in advance. Employee names shall not be removed from this list unless the employee exercises his/her option under Section 2 above. The Employer shall determine the number of employees eligible to work an actual holiday based on operational requirements.

Section 4. Watch schedules on days in lieu of holidays shall not be changed so as to avoid payment of holiday pay. Specifically, employees qualified to work and whose normal schedule calls for them to work will not be placed on holiday leave on a day in lieu of a holiday without the employee's consent.

(Emphasis added.)

Employees who work on a holiday or a day in lieu of an actual holiday are paid double time.

Section 7106 of the Federal Service Labor-Management Statute (the Statute), 5 U.S.C. 7106, provides in relevant part as follows:

§7106 Management rights

(a) Subject to subsection (b) of this section, nothing in this chapter shall affect the authority of any management official of any agency--

* * *

(2) in accordance with applicable laws--

(A) to hire, assign, direct, layoff, and retain employees in the agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;

(B) to assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations shall be conducted;

* * *

(b) Nothing in this section shall preclude any agency and any labor organization from negotiating

* * *

(3) appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such management officials.

On May 24, 2007, the Agency notified the Union as follows:

The Agency submits that Section 4 of Article 41 of the PASS AF contract is contrary to law, and therefore, unenforceable. As

written, the section prohibits the Agency from making adjustments to the schedule, in order to maintain appropriate staffing levels, without the permission of the affected employee. If consent is not obtained then the Agency is precluded from reducing staffing. This provision excessively interferes with management's right to assign work, which includes the right not to assign work, under 7106 9a)(2)(A) [sic]. Therefore, the Agency has decided to no longer be bound by this provision.

On June 5, 2007, the Union filed the present national grievance, stating in part:

On May 30, 2007, PASS received a letter from you stating that the Agency had "decided to no longer be bound by" Article 41, Section 4, of the Parties' agreement because the provision "interferes with management's right to assign work." Subsequently, we received reports that managers in the field have been informing bargaining unit employees of the Agency's repudiation of the agreement. PASS disagrees with the Agency's interpretation of Article 41, Section 4, and contends that the provision is not inconsistent with the law. The Agency's repudiation not only violates Article 41, Section 4, but constitutes an unfair labor practice under 5 U.S.C. Sec. 7116(a)(1) and (5).

In addition, as you know, this provision was recently relied on, in part, by Arbitrator Joshua Javits in finding the Agency in violation of the agreement and the law in a case arising in the Potomac Consolidated TRACON. The Agency decided against filing exceptions to the arbitrator's award even

though, based on your subsequent actions, the Agency obviously disputed his findings. Article 5, Section 8, Step 5, of the agreement provides that decisions of the arbitrator are "final and binding." Thus, the Agency's duplicative behavior constitutes a violation of Article 5, Section 8, Step 5, of the agreement and a repudiation of the arbitration decision because the Agency has a contractual obligation to be bound by the terms of the arbitrator's final decision.

Carlos Aguirre, a Union representative who works at the Miami Air Traffic Control Center, testified that, starting with the July 4 holiday in 2007, management at his location has been unilaterally changing watch schedules by designating some ATSSs to be on holiday leave on their days in lieu of holidays. Moreover, as reflected on a revised watch schedule placed into evidence by the Union, management in some cases has changed the schedules of other watch stander employees by reassigning them to provide needed ATSS coverage to fill in for the employees who have not been permitted to work on their days in lieu of holidays. These other employees were not paid double time, as would have been paid to the employees they filled in for, because the days in question were not days in lieu of holidays for them. Aguirre stated that in discussions with Miami ATCC management he was told this change in the application of the days in lieu of holidays provisions was done to save money for the Agency.

Michael Herlihy, the Agency's Manager of Third Party Services, testified that saving money -- by reducing holiday pay liability -- was not a factor in the Agency's decision to

discontinue observing Article 41, Section 4 of the CBA. The purpose, he said, was: "to make it consistent with what everybody else does." Employees who are scheduled to work on an actual holiday are placed on holiday leave on the holiday unless management determines it is necessary for them to work. He also insisted that directing employees to be off on their days in lieu of holidays did not change or affect the established watch schedules.

UNION POSITION

The Union contends that the Agency violated, misinterpreted and improperly repudiated Article 41, Section 4 of the CBA when it informed the Union that it no longer would be bound by that provision. The Union maintains that Article 41, Section 4 is an "appropriate arrangement" within the meaning of Section 7106(b) (3) of the Statute and, therefore, is negotiable, legal and enforceable under the Statute. The record establishes that Article 41, Section 4 was mutually designed to mitigate the adverse effects on employees who are required to work rotating shifts as a result of the exercise of a management right defined in Section 7106(a) of the Statute. Moreover, this provision does not excessively interfere with the relevant management right to assign work. See National Association of Government Employees, Local R14-87 and Kansas Army National Guard, 21 FLRA 24 (1986) (hereinafter KANG), and National Association of Government Employees, Local R14-52 and U.S. Department of the Army, 44 FLRA 738 (1992) (hereinafter NAGE).

The Union also maintains that the Agency erred in failing to interpret the CBA as a whole. The Agency reads Article 41, Section 4 in isolation and fails to consider the parties' agreement for changing watch schedules based on operational reasons as set forth in Article 50. Prior to the beginning of the year, management determines its appropriate staffing levels by providing the Union with a statement of its coverage/staffing requirements on each shift for the entire year including holidays and days in lieu of holidays. Under Article 50, this is solely a management decision. However, once the parties agree on the annual watch schedule it can only be changed based on operational reasons. This is because of the importance of continuity and predictability of a watch schedule for rotating shift employees, as recognized by Arbitrator Joshua Javits in his April 13, 2007 Award in Grievance No. PA-ABA-06-7515-PCT4 (Javits Award). The Union stresses that employee consent only comes into play when management's sole reason for wishing to change the watch schedule is based on avoidance of holiday pay. Management retains full authority under Article 50 to change watch schedules, provided the changes are based on operational needs. It can even unilaterally implement desired changes prior to the completion of bargaining based on "compelling need."

The Union contends that the Agency committed an unfair labor practice under Section 7116(a)(1) and (5) of the Statute when it repudiated Article 41, Section 4 of the CBA and implemented changes in working conditions without bargaining. The evidence shows that the Agency's breach of the CBA was clear and patent and that it went to the heart of the parties'

agreement, thereby satisfying the two-pronged repudiation test applied by the Federal Labor Relations Authority (FLRA). See Department of Transportation, Federal Aviation Administration and Professional Airways Systems Specialists, DA-CA-70646 (1998), a decision by an FLRA Administrative Law Judge that subsequently was affirmed by the FLRA on appeal at 55 FLRA 951 (1999).

The Union argues that the Agency also violated Article 5, Section 8, Step 5 of the CBA by refusing to recognize the decision in the Javits Award as final and binding on the parties. Step 5 of the negotiated grievance procedure states: "The decision of the arbitrator is final and binding." Moreover, Section 7122 of the Statute states: "If no exception to an arbitrator's award is filed [with the FLRA]...during the 30-day period beginning on the date the award is served on the party, the award shall be final and binding." The Javits Award found that the Agency illegally repudiated Article 41, Section 4 of the CBA when it unilaterally changed the watch schedule on days in lieu of holidays based on its desire to avoid the payment of holiday pay. The Agency did not file an appeal with the FLRA. Rather, it complied with the Javits Award in all respects. Since the Agency's letter nullifying Article 41, Section 4 was received just over one month after receipt of the Javits Award, and the Agency disputes the legality of a contract provision that Arbitrator Javits enforced against the Agency, the only reasonable conclusion is the Agency did not consider itself bound by the findings contained in the Javits Award beyond the individual grievants involved in that case. If the Agency disagreed with the Javits Award, which it obviously did,

or believed that Article 41, Section 4 was non-negotiable and contrary to the Statute, it should have availed itself of the right to appeal the Javits Award to the FLRA. Absent such an appeal, it should be precluded from challenging the legality of that contract provision in this proceeding.

The Union requests that the remedy provided by the Arbitrator include the following:

- An order finding that the Agency misinterpreted, repudiated, breached and/or improperly terminated the application of Article 41, Section 4, of the agreement;
- An order finding that Article 41, Section 4, is negotiable as an appropriate arrangement and directing the Agency to cease and desist refusing to recognize and enforce Article 41, Section 4;
- An order finding that the Agency committed an unfair labor practice in violation of 5 U.S.C. Sec. 7116(a)(1) and (5) by repudiating Article 41, Section 4, of the Agreement;
- An order finding that the Agency breached Article 5, Section 8, Step 5, of the agreement by refusing to recognize Arbitrator Javits' decision as final and binding on the Parties;
- An order requiring the Agency to post a written Notice to All Employees in all FAA facilities where bargaining unit employees work, signed by Acting ATO COO Bobby Sturgell, acknowledging the Agency's breach of agreement and unfair labor practice, and confirming that Article 41, Section 4, is applicable and will be observed and enforced

by the Agency for the full term of the agreement;

- An order requiring the Agency to make whole all employees impacted by the Agency's repudiation through the payment of back pay, interest and the reimbursement of attorney's fees; and
- Any other relief deemed appropriate by the arbitrator.

The Union also requests that the Arbitrator retain jurisdiction for the limited purpose of assisting the parties with any questions they may have regarding implementation of the remedy, and to rule on the Union's petition for reimbursement of attorney's fees.

AGENCY POSITION

The Agency points to Article 4 of the CBA which provides: "The Employer retains all mandatory and discretionary rights reserved to the Employer as set forth in 5 U.S.C. 7106." Section 7106(a)(2)(B) of the Statute specifically mandates that the right to assign work is reserved exclusively to management. The Agency contends that Article 41, Section 4 of the CBA transfers management's right to determine whether employees take leave or work on their in lieu of holidays from management and places it with the employees. The Agency revoked Article 41, Section 4 on the grounds that it excessively interferes with management's right to assign work, and, therefore, is illegal and unenforceable. The FLRA has stated that proposals that require management to grant employee leave requests directly

interfere with management's right to assign work pursuant to 7106(a)(2)(B). See National Treasury Employees Union and the Department of the Treasury, Bureau of Alcohol, Tobacco, and Firearms, 41 FLRA 1106 (1991).

The Agency maintains that the Union has failed to present any evidence of repudiation. The Agency revoked Article 41, Section 4 because it is illegal. The FLRA has held that it is not repudiation to refuse to comply with an unlawful contract provision. See Office of the Adjutant General, Georgia, Department of Defense and Georgia State Chapter Association of Civilian Technicians, 54 FLRA 654 (1998). Moreover, repudiation, as that term has been interpreted by the FLRA, cannot properly be applied to the revocation of a contract article that does not go to the heart of a CBA. See United States Department of Labor and the American Federation of Government Employees, Local 12, 59 FLRA 112 (2003). Section 4 of Article 41, the Agency insists, cannot reasonably be alleged to go to the heart of the CBA.

The Agency also rejects the Union's contention that the Agency's action constituted a repudiation of the Javits Award. That award is not a contract provision, and therefore the award itself cannot be repudiated by definition. Moreover, assuming that the Union's contention is that by revoking Article 41, Section 4 the Agency somehow breached Article 5, Section 8, Step 5 of the CBA, that contention is not supported by the evidence. The Agency fully complied with the requirements spelled out in the Javits Award. It also is important to note that the Javits Award was about whether the Agency established a

suitable operational need to change a watch schedule pursuant to Article 50, whereas the present case concerns only the illegality of Article 41, Section 4. Accordingly, the Agency's compliance with the Javits Award has no bearing on the legality of the Agency's revocation of Article 41, Section 4.

The Agency stresses that this case is not about watch schedules or the means and methods available for effecting changes to watch schedules. It asserts that the Union did not present any evidence that anyone's watch schedule was changed. Having an employee occasionally cover the shift of another employee who is observing their day in lieu of a holiday is not tantamount to a change of the employee's entire watch schedule. The only change that occurred is that management disallowed employees from assigning themselves to work on their days in lieu of holidays and lawfully restored the right to make that determination to management. Inasmuch as watch schedules and shift assignments are not relevant to the disposition of this case, neither is Article 50 of the CBA. The Agency also notes that the Union never raised a violation of Article 50 or the issue of watch schedules prior to arbitration, and, therefore, any allegations regarding watch schedules are not properly before the Arbitrator.

The Agency further argues that there has been no change in the administration of holiday pay. In particular, the Agency never took any action to avoid payment of holiday pay, nor did it take any action for the purpose of avoiding payment of premium holiday pay. All employees received holiday pay prior to the revocation of Article 41, Section 4, and they

continue to do so. The revocation of Article 41, Section 4 may have impacted some employees' eligibility for premium holiday pay, but employees have no entitlement to receive such holiday premium pay. The fact that cessation of the illegal practice of Article 41, Section 4 ultimately results in a cost savings for the Agency has no bearing on the Agency's right to revoke that illegal provision.

The Agency contends that the FLRA has held that an agency may lawfully implement changes when necessary to correct an unlawful practice. See, e.g., Department of the Interior, U.S. Geological Survey, Conservation Division and American Federation of Government Employees, Local 3457, 9 FLRA 543 (1982). Contractual terms that violate the Statute are contrary to law, like any illegal practice, and an agency cannot be forced to comply with such a provision.

FINDINGS

The parties did not agree on a statement of the issue, and they agreed that the Arbitrator should frame the issue. Their respective statements are not far apart. The issue is: whether the Agency misinterpreted and/or violated Article 41, Section 4 of the CBA when it notified the Union that it no longer was bound by Article 41, Section 4 of the CBA; whether this action violated Article 5, Section 8, Step 5 of the CBA; and whether the Agency committed an unfair labor practice in violation of Section 7116(a) (1 and (5) of the Statute by repudiating Article 41, Section 4 of the CBA and implementing changes in working conditions without bargaining.

I suppose it could be argued that, technically, the Agency's assertion that it was revoking Article 41, Section 4 did not, in itself, constitute a violation of that provision. The record establishes, however, that shortly afterward the Agency knowingly failed to comply with that provision when it directed some watch stander employees to take holiday leave on their days in lieu of holidays, without their consent, so as to avoid payment of premium holiday pay.¹ The Agency's assertion that saving money -- which, if not in violation of the CBA, would be an appropriate goal -- was not a factor in its decision to revoke Article 41, Section 4 is unconvincing.

The Agency's only defense to what on its face was a violation of Article 41, Section 4 is its contention that this provision is unlawful and unenforceable. The Union does not disagree that if Article 41, Section 4 is unlawful, the Agency is not required to comply with it.

Obviously, the Agency did not consider Article 41, Section 4 to be illegal when it agreed to this provision as part of the 2000 CBA. Notably, this was not just a carry-over provision from the prior contract. Prior to the 2000 CBA, Article 41, Section 4 provided: "Assignments to the watch schedule for days in lieu of a holiday for airway facilities sector bargaining unit employees shall not be changed to avoid

¹ Whether the changes made to the schedules of other watch stander employees to enable the Agency to backfill for employees directed to take holiday leave constituted a violation of Article 50, Section 1 is not an issue in this case.

the payment of holiday pay." In the 2000 CBA -- whose provisions were subject to Agency head review for consistency with any applicable law, rule and regulation -- the parties agreed to the current language, which reads:

Section 4. Watch schedules on days in lieu of holidays shall not be changed so as to avoid payment of holiday pay. Specifically, employees qualified to work and whose normal schedule calls for them to work will not be placed on holiday leave on a day in lieu of a holiday without the employee's consent.

The Agency asserts that Article 41, Section 4 is unlawful because it excessively interferes with management's right to "assign work," which is a reserved right under Section 7106(a)(2)(B) of the Statute.² The Union does not dispute that Article 41, Section 4 "affects" the Agency's authority to assign the work force, for purposes of Section 7106(a)(2), but argues that it is legal because it is an "appropriate arrangement" under Section 7106(b)(3).

In accordance with the FLRA decisions cited by the parties, a determination as to whether a provision constitutes a negotiable appropriate arrangement is to be made applying the standards set forth in KANG. The initial step is to determine if Article 41, Section 4 is an arrangement for adversely affected employees. If it is, the next step is to determine if this provision is an appropriate arrangement, which requires an

² In its revocation notice to the Union, the Agency cited Section 7106(a)(2)(A) of the Statute which addresses management's right to "assign...employees."

examination of whether the negative impact on management's right to assign work and employees is disproportionate to the benefits the arrangement confers on employees. Stated another way, does Article 41, Section 4 excessively interfere with the right to assign work and employees?

The Agency has not disputed that Article 41, Section 4 was intended to compensate employees who are assigned to rotating watch schedules as a result of management's exercise of its right to assign the work force. In her decision in Case ALR-02-1-NAT-1 (2003), involving these same parties, Arbitrator S. R. Butler decided an issue relating to the scope of Article 50, Section 1. In doing so, she reached the following conclusion:

As stated above, a close reading of the Agreement and the record as a whole in this case persuades the Arbitrator that it was the Parties' mutual intent when they negotiated the 2000 Agreement that Systems Specialists providing watch coverage be compensated for the limitations on their time off according to those limitations, not according to the similarity of their duties. Therefore, in Article 50, the Parties agreed that Systems Specialists who work on basic watch schedules be compensated for the limitations entailed by rotation, i.e. for the personal sacrifices entailed by not always being able to spend weekends and holidays with their families and friends. In this instance the "compensation," is the ability to avail themselves of Article 41's provisions for holidays and in lieu of holidays.

As set forth in Arbitrator Butler's decision, part of the Agency's contentions in that case was that:

The purpose of the relevant contract language has been to "reduce inequities" in the employment terms of employees who are required to perform watch coverage. Thus, Article 41 provides that "when the watch schedule employees' holidays fall on days when they are scheduled off, they are entitled to another day off in lieu of the holiday. Watch schedule employees have the option of being off on the in lieu day, or working that day and receiving additional pay.

(Emphasis added.)

Accordingly, I find that Article 41, Section 4 is an arrangement for adversely affected employees. Moreover, it is properly "tailored" to only those employees, that is, employees on watch schedules assigned to rotating shifts. In my opinion, there can be no question that the second sentence of Article 41, Section 4 is directly and explicitly tied to the first sentence and applies only to employees on watch schedules.

The remaining issue under the standards set forth in KANG is whether Article 41, Section 4 excessively interferes with management's right to assign work and employees. The Agency has provided no support for its contention that Article 41, Section 4 excessively interferes with management's right to assign work other than its assertion that it "transfers management's right to determine whether employees take leave or work on their in lieu of holidays from management and places it

with employees." It presented no evidence that compliance with this provision will hamper the Agency's ability to perform its core functions -- to get its work done in an efficient and effective way. See National Weather Service Employees Org. and FLRA, Case No. 05-1397 (D.C. Cir. 2006), which cites AFGE, Local 1923 v. FLRA, 819 F. 2d 306 (D.C. Cir. 1987).

As already noted, Article 41, Section 4 applies only to employees on watch schedules. Moreover, as the Union stresses, this provision only limits management's ability to assign employees to holiday leave without their consent when the reason is to avoid payment of holiday pay (i.e., holiday premium pay). As the Union also points out, the work of watch standers does not go away on holidays because one of their main functions is to monitor live air traffic control equipment, and their work days and shifts were designated by management as operationally necessary when the annual watch schedule was established in accordance with Article 50, Section 1.³ There also is evidence that at the same time management directed employees to take holiday leave on a day in lieu of a holiday, it changed the schedule of other employees who did not have a day in lieu of a holiday to fill in for the missing employees, which shows that, in those instances at least, operational needs had nothing to do with management's actions. Furthermore, Article 50, Section 1

³ This is not to say that management could not in some instances defer certain work or otherwise reduce the need for watch stander coverage, as it evidently does on actual holidays, when it is entitled under Article 41, Section 3 to determine the number of employees eligible to work based on operational requirements.

provides a procedure by which management can change watch schedules for substantial operational reasons.

Thus, while there undoubtedly is some cost to the Agency in complying with Article 41, Section 4, I am not persuaded that the negative impact on management's right to assign work and employees is disproportionate to the benefits the arrangement confers on employees. See NAGE. Therefore, I find that Article 41, Section 4 is a lawful provision of the CBA.

The Agency's revocation of Article 41, Section 4, and its subsequent failure to comply with that provision, constituted a clear and patent violation of the CBA. The Agency does not question the meaning of that provision as it applies to watch standers, and the Agency flatly announced that the Agency no longer would comply with it. In my opinion, the Agency's contract violation also went to the heart of the parties' agreement. I do not agree with the Agency's contention that the test is whether the provision in Article 41, Section 4 goes to the heart of the CBA. Rather, I adopt the approach also followed in the Javits Award which looks to whether the Agency has violated a central element of Article 41, Section 4. As in the Javits Award, I find that the Agency's action "undercuts the whole rationale for the contractual provision itself." Accordingly I conclude that the Agency's actions constituted a repudiation of Article 41, Section 4 of the CBA and a change in working conditions without bargaining. As such, the Agency committed an unfair labor practice under Section 7116(a) (1) and (5) of the Statute.

I am not persuaded that the Agency violated Article 5, Section 8, Step 5 of the CBA by refusing to recognize the decision in the Javits Award as final and binding on the parties. In that case, the Agency unilaterally changed established watch schedules by staffing up on actual holidays, and, presumably, staffing down on days that otherwise would have been days in lieu of holidays. In this case, the Agency repudiated Article 41, Section 4 and directed watch stander employees to take holiday leave on their days in lieu of holidays. The Agency's action at issue in this case may be inconsistent with some of the findings in the Javits Award, but the Agency has taken a different tack and its action did not violate Article 5, Section 8, Step 5 of the CBA.

For the reasons stated above, I conclude that Article 41, Section 4 of the CBA is lawful and enforceable, and that the Agency had no contractual or legal basis on which to revoke that provision or for its failure to comply with that provision after notifying the Union that it no longer considered itself bound by that provision. I further conclude that the Agency committed an unfair labor practice in violation of Section 7116(a)(1) and (5) of the Statute by repudiating Article 41, Section 4 of the CBA. The appropriate remedy is set forth in the Award that follows.

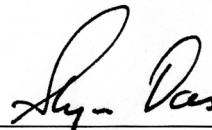
AWARD

The grievance is sustained to the extent set forth in the last paragraph of the above Findings.

By way of remedy, the Agency is directed to take the following action:

- (1) To cease and desist refusing to recognize and enforce Article 41, Section 4, and to henceforth comply with that provision of the CBA;
- (2) To make whole all employees adversely affected by the Agency's repudiation through the payment of back pay, interest and the reimbursement of attorney's fees to the extent provided by law; and
- (3) To post a written Notice to All Employees in all FAA facilities where bargaining unit employees work, acknowledging the Agency's breach of the CBA and unfair labor practice, and confirming that Article 41, Section 4, is applicable and will be observed and enforced by the Agency for the full term of the CBA.

I retain jurisdiction for the limited purpose of ruling on any issues that the parties are unable to resolve regarding implementation of the remedy provided for herein, including the reimbursement of attorney's fees.



Shyam Das, Arbitrator