



U.S. Department
of Transportation
Federal Aviation
Administration

800 Independence Ave., S.W.
Washington, D.C. 20591

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OFFICE OF DISPUTE
RESOLUTION FOR
ACQUISITION

April 5, 2005

Anthony N. Palladino, Director
Office of Dispute Resolution for Acquisition (ODRA)
Federal Aviation Administration
800 Independence Avenue, S.W., Room 323
Washington, DC 20591-0001

Re: Contests of Agency Tender Official James H. Washington and Kate Breen, as Agent for a Majority of Directly Affected FAA Employees, Under Solicitation No. DTFAAWACA-76-001, ODRA Docket Nos. 05-ODRA-00342C and 05-ODRA-00343C and GSBICA Docket No. 16614-FAA

On April 4, ODRA sent a letter to Counsel in the above-captioned Contests regarding the negotiated Memorandum of Agreement (Agreement) reached between the National Association of Air Traffic Specialists (NAATS) and the FAA on Reduction-in-Force (RIF) issues arising in connection with the Flight Service Station competitive sourcing initiative. That letter requested that by noon today, Counsel for the Program Office provide the ODRA with additional information concerning the Agreement and its impact on the suspension-related commitments previously made in the ODRA process by the Program Office.

In general, the Agreement provides far greater flexibility and benefit to the bargaining unit employees represented by NAATS¹ than any of the Program Office's prior commitments. Most of the Program Office's commitments were centered on eliminating the alleged irreparable harm to the employees regarding their participation in the Selection Priority Program and Preferred Placement Programs if they were to accept or decline job offers from Lockheed Martin after receiving a RIF notice. It is worth noting that this alleged harm only arises if the Contests are unsuccessful. As a result, these commitments are focused on benefits remaining open to the employees during the pendency of the Contests. The Agreement (Attachment 1 hereto) goes beyond these commitments previously provided and provides the affected employees with benefits that extend well past the probable end of the Contests. Pursuant to the Agreement,

¹ Although the MOA affects only bargaining unit employees, which the Contester has represented as being approximately 80% of the directly affected employees, the Agency has decided to extend those benefits to all affected employees, including those not in the NAATS bargaining unit. This does not mean that the MOA is extended to cover those other employees, but rather that the benefits of the Agreement (other than those relating solely to bargaining unit members, including, but not limited to, Sections 12, 15, and 16) will be extended to non-bargaining unit employees.

participation in the Selection Priority Program will continue for the affected employees for two years from the date of separation regardless of whether an employee accepts or declines the initial job offer from Lockheed Martin, and will also continue for two years if the employee rejects any subsequent job offer from Lockheed Martin.

The FAA has bargained in good faith, and reached agreement with NAATS on all aspects of any RIF that might occur in connection with the Flight Service Station competitive sourcing initiative. NAATS may not now allege in this forum that its represented employees should be granted additional benefits in order to avoid a purported harm that would only arise if Ms. Breen's Contest is unsuccessful. ODRA suspension procedures were not established to put Contesters in a better position by filing a Contest and *losing*, than it would have been in if no Contest had been filed at all.

The commitments made by the FAA, both by the Program Office in this Contest and in the Agreement, have eliminated any harm that has been purported to exist if the suspension is not granted. On the other hand, the Contesters have not rebutted the direct and certain harm to the FAA as a consequence of the delay in completing phase-in activities that will result if the suspension is granted. ODRA is not the proper forum to obtain additional labor/management concessions, particularly when these issues have been resolved through good faith negotiations that resulted in an Agreement binding upon all members of the bargaining unit represented by NAATS, including Ms. Breen.

To facilitate ODRA's review of the impact of the Agreement on the each of the suspension-related commitments, please see Attachment 2.

Respectfully submitted,



Nathan Tash
Federal Aviation Administration
Counsel for the Program Office

cc: (via facsimile)
Cyrus E. Phillips, IV, Esq.
David M. Nadler, Esq.
Thomas C. Papson, Esq.
Gerard F. Doyle, Esq.
Carl J. Peckinpugh, Esq.
Honorable Edwin B. Neill

**MEMORANDUM OF AGREEMENT
BETWEEN THE
NATIONAL ASSOCIATION OF AIR TRAFFIC SPECIALISTS (UNION)
AND THE
FEDERAL AVIATION ADMINISTRATION (AGENCY)¹**

Re: Reduction in Force (RIF) – Flight Service Station Competitive Sourcing Initiative

Section 1. The Employer agrees to implement RIF procedures in accordance with FAA Order 3350.2C, Staffing Adjustments and Reductions in Force, current agency directives, the Collective Bargaining Agreement (CBA), and the provisions of this MOA. For the purposes of this agreement, 'current agency directives' shall be defined as those directives in effect as of February 8, 2004, as well as any directives subsequent to that date handled in accordance with Article 114 of the CBA.

Section 2. Pursuant to EMP-1.22, employees who are likely to face displacement through anticipated FAA RIF or internal reorganization/reassignment to a different position shall be considered surplus, and employees who receive a FAA reduction-in-force (RIF) separation notice or who have been separated through RIF procedures in the FAA shall be considered displaced.

Section 3. In conjunction with FAA Order 3350.2c, section 31, entitled "Plan Development," the placement of surplus and displaced employees will be in accordance with Policy Bulletin #29, Air Traffic Preferred Placement Program, Policy Bulletin #32, FAA Preferred Placement Program and Policy #32a, Preferred Placement Program Supplement.

Section 4. A displaced employee shall be entitled to Selection Priority for positions within the FAA in accordance with the provisions of EMP-1.9. However, for Air Traffic controller positions, Selection Priority under this provision will be limited to positions, in level 5, 6, 7, and 8 terminals, for which Human Resource Management Division (HRMD) determines the employee is well qualified. Eligibility for Selection Priority will begin when the RIF notice is issued. It will continue for two years from the date of the separation or until the individual accepts or declines a position at the same pay as that from which he/she was separated or downgraded, with any other Federal or non-Federal employer, whichever occurs first. However, acceptance or declination of the initial job offer from the Service Provider shall not form the basis for such termination from selection priority. Acceptance of a subsequent job offer from the Service Provider shall terminate eligibility of EMP-1.9.

Section 5. Upon issuance of the specific reduction-in-force notices, retention registers shall be made available in each facility for review by those individuals who received said notice. The Parties at the local level shall designate a suitable location for review by employees.

Section 6. Impacted employees will be eligible for the Preferred Placement Programs. Coverage of the surplus/displaced AFSS and FSDPS employees will expire on or about October 1, 2005 (Anticipated RIF separation date) unless eligibility is terminated earlier. Eligibility will be terminated when any one of the following occurs:

- The employee applies for and accepts or declines an offer of employment in the FAA or another Federal agency (regardless of series, grade/pay level, or whether temporary or permanent), regardless of the effective date;
- The employee is separated from employment (e.g. retirement, resignation, etc.);
- The employee applies for retirement of any type (including VERA), regardless of the effective date;
- The employee submits a resignation, irrespective of the effective date.

Section 7. The Agency shall provide career transition assistance to all surplus and displaced bargaining unit employees in accordance with HRPM Career Transition Program EMP-1.22, Article 108 of the CBA and this agreement.

¹ Collectively referred to as "the Parties"

Section 8. Career Assistance Program

Until the individual accepts or declines a position at the same pay with FAA or any other employer, commits to a VERA, or on or about October 1, 2005 (Anticipated RIF separation date), the following hours can be used for career transition activities:

- Displaced employees will be given a minimum of thirty two (32) hours of duty time per pay period to pursue career transition activities.
- Surplus employees may be granted up to 16 hours of duty time per pay period to pursue career transition activities.

Upon advance request, in lieu of the aforementioned duty time, management may approve the earning of credit hours for those hour(s) an employee may use to pursue activities covered in this section.

If necessary, to ensure compliance with this section, either Party at the local level may initiate negotiations for the scheduling of employees requesting time to pursue career assistance activities.

Section 9. Notwithstanding the provisions in Section 8, in order to allow employees to pursue Federal employment, upon acceptance of non-federal employment, upon request, a surplus/displaced employee shall be granted eight (8) hours of duty time per pay period to pursue career transition activities towards federal employment. This will end upon acceptance of Federal employment or on or about October 1, 2005 (Anticipated RIF Separation date), whichever occurs first.

Section 10. The Employer agrees to support displaced Bargaining Unit Employees in his/her application for unemployment benefits or any other benefits for which they would be eligible pursuant to Order 3350.2C, Appendix 3.2 entitled "Unemployment Compensation for Federal Employees."

Section 11. Severance pay for eligible employees shall be made in accordance with FAA Order 3350.2C, Chapter 6, and will include the age allowance.

Section 12. The Union may designate one (1) representative to serve as a RIF/Career Transition liaison, in a full-time status until on or about October 1, 2005 (Anticipated RIF Separation date). The Agency shall pay necessary travel and per diem expenses, for the employee to be domiciled in Washington, in accordance with applicable regulations or the union may choose to perform the functions via electronic means (email, telephone, fax, etc.). The role of the liaison will be to assist in the facilitation of this MOA.

Section 13. The Agency will offer employees in the Alaska Flight Service Area the opportunity to apply for a voluntary separation incentive pay (VSIP) of \$25,000. Approval of a VSIP will be contingent upon selection of an impacted employee. Management will determine the number of VSIP vacancies. Separation dates will be determined by the Agency.

Section 14. The Agency will abide by the Privacy Act as it pertains to employee information released to the vendor.

Section 15. The Parties recognize the need to address complaints that arise from the application of this MOU in an expedited manner. Therefore the parties agree to the following:

- a. Grievances filed by employees regarding RIF separation notice will be handled at Step 1 by the Flight Services Area Director or designee and at Step 2 by a Headquarters Human Resources designee. If the Union is not satisfied with the Step 2 decision, and wishes to continue the process, the next step in the appeal process will be arbitration.
- b. The Union shall be afforded the right to expedite the processing of grievances that result from alleged violations of this Agreement in accordance with Article 40; Section 14, Expedited Arbitration (a) of the CBA.

Section 16. In matters relating to the application of RIF procedures, an aggrieved employee shall have the option of using the grievance procedure or any other appellate procedure allowable through law or regulation, but not both.

Section 17. Employees separated from federal service, either voluntarily or involuntarily as a result of the RIF, shall receive a payout of all earned credit hours at his/her regular rate of pay at the time of separation.

Section 18. This agreement may be re-opened by mutual consent of the parties in accordance with the Parties' CBA and any other applicable laws, statutes, rules, or regulations. It will become effective and be implemented upon completion of the Agency Head Review and will be terminated on or about October 1, 2007 (Anticipated RIF Separation date plus two years). Those provisions with an earlier expiration date will expire as indicated.

Thomas J. Valent
March 31, 2005

Scott Malon
March 31, 2005

Melvin Harris
Director, Labor and Employee Relations
Agency Head Review
March 31, 2005

Attachment 2

Date	Commitment	Affect of MOA
03/06/05	To address the Contester's concern that a job offer from Lockheed Martin may cause an employee stress because there will be uncertainty as to whether he must work for Lockheed Martin if he accepts the offer and the Contest is sustained, Lockheed Martin has agreed to include in each and every offer of employment a notice stating that the offer is contingent on Lockheed Martin's keeping the work.	This commitment is unaffected by the MOA
03/06/05	To address the Contester's concern that a job offer from Lockheed Martin will eliminate that employee from the Agency's PPP, the Acquisition Team, with the concurrence of the FAA's Assistant Administrator for Human Resource Management, commits that no employee will be denied participation in the Agency's PPP based on that employee's receipt of a job offer from Lockheed Martin.	This commitment is unaffected by the MOA
03/06/05 revised 3/22/05	To address the Contester's concern raised this morning at the Preliminary Conference that a job offer from Lockheed Martin and the acceptance/declination of that offer by the employee will eliminate that employee from the Agency's Selection Priority Program, the Acquisition Team, with the concurrence of the FAA's Assistant Administrator for Human Resource Management commits that no employee will be denied participation in the Agency's Selection Priority Program based on that employee's acceptance/declination of an offer from Lockheed Martin for the duration of the Contest. Once the Contest is concluded employees who accepted or declined job offers with Lockheed Martin after receiving a RIF notice during the Contest are immediately subject to the termination of eligibility provisions contained the FAA's Selection Priority, EMP-1.9, effective October 22, 2001 based on that employee's prior acceptance/declination.	The MOA expanded employee rights beyond those obtained with this commitment. The conclusion of the contest will not eliminate an employee's participation.

03/06/05	At the conference this morning, ODRA also asked whether any of the employees would be subject to a Reduction-in-Force during the Contest period. Counsel for the Acquisition Team stated at the conference and hereby confirms that no Reductions-in-Force for affected Automated Flight Service Station employees will occur prior to September 30, 2005.	This commitment is unaffected by the MOA
3/23/05	Employees (under Category 4 of Selection Priority, EMP – 1-9) only become eligible when a Reduction-n-Force (RIF) Notice has been issued.	This commitment is unaffected by the MOA
3/23/05	For purposes of the above-captioned Contests, if an employee receives a RIF notice and thereafter receives a job offer from Lockheed Martin which he/she either does nothing or accepts or declines, that employee will continue to be eligible for participation in the Program for the duration of the Contest.	The MOA expanded employee rights beyond those obtained with this commitment. The conclusion of the contest will not eliminate an employee's participation.
3/23/05	Neither the RIF notice nor the acceptance/declination of a job offer from Lockheed Martin will have any affect on the employees if the Contests are successful on the merits.	This commitment is unaffected by the MOA
3/23/05	ODRA also asked whether an employee would lose his/her eligibility for the Program if a job offer came before a RIF notice, but acceptance/declination of that job offer occurred after the RIF notice. Normally, the eligibility would end upon the acceptance/declination. However, for purposes of the above-captioned Contests, if an employee receives a job offer from Lockheed Marin and thereafter receives a RIF notice and thereafter either does nothing, accepts or declines that job offer, the employee will continue to be eligible for participation in the Program for the duration of the Contest.	The MOA expanded employee rights beyond those obtained with this commitment. The conclusion of the contest will not eliminate an employee's participation.